

**2016 No. 880**

**INFRASTRUCTURE PLANNING**

**The Triton Knoll Electrical System Order 2016**

*Made* - - - - *5th September 2016*

*Coming into force* - - *27th September 2016*

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On 14th November 2013 the Secretary of State gave a direction under section 35 of the Planning Act 2008(a) (the “2008 Act”) that the development set out in a letter from RWE Npower Renewables Limited (now RWE Innogy UK Limited) received on 25th October 2013, together with any matters associated with it, be treated as development for which development consent is required.

An application under section 37 of the 2008 Act has been made to the Secretary of State for an order granting development consent for the development referred to in the direction.

The application has been examined by a Panel, which has made a report to the Secretary of State under section 74(2) of the 2008 Act. After receiving the report, the Secretary of State requested further information from various persons.

The Secretary of State has considered the report and recommendation of the Panel, has taken into account the environmental information in accordance with regulation 3 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009(b) and has had regard to the documents and matters referred to in section 105(2) of the 2008 Act.

The Secretary of State is satisfied that the special category land (as defined in article 30 of the Order), when burdened with the Order rights (as defined in that article), will be no less advantageous than it was before to the persons in whom it is vested; other persons, if any, entitled to rights of common or other rights; and the public; and that, accordingly, section 132(3) of the 2008 Act applies.

The Secretary of State, having decided the application, has determined to make an order giving effect to the proposals comprised in the application on terms that in the opinion of the Secretary of State are not materially different from those proposed in the application.

Accordingly, the Secretary of State, in exercise of the powers conferred by sections 114 and 120 of the 2008 Act, makes the following Order:

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(a) 2008 c.29. Section 35 was substituted by section 26(2) of the Growth and Infrastructure Act 2013 (c.27). Section 37 was amended by section 137(5) of, and paragraph 5 of Schedule 13 to, the Localism Act 2011 (c.20). Section 74(2) was amended by paragraph 29(2) of that Schedule. Section 105 was amended by paragraph 50 of that Schedule. Section 114 was amended by paragraph 55 of that Schedule. Section 120 was amended by section 140 of, and paragraph 60 of Schedule 13 to, that Act. Section 132 was amended by section 24(3) of the Growth and Infrastructure Act 2013.

(b) S.I. 2009/2263. Regulation 3 was amended by S.I. 2012/635 and 2012/787.

# PART 1

## Preliminary

### Citation and commencement

- 1.—(1) This Order may be cited as the Triton Knoll Electrical System Order 2016.
- (2) This Order comes into force on 27th September 2016.

### Interpretation

- 2.—(1) In this Order—

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

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

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

“1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981(d);

“1989 Act” means the Electricity Act 1989(e);

“1990 Act” means the Town and Country Planning Act 1990(f);

“1991 Act” means the New Roads and Street Works Act 1991(g);

“2008 Act” means the Planning Act 2008;

“2009 Act” means the Marine and Coastal Access Act 2009(h);

“access to works and streets plans” means the plans certified as the access to works and streets plans by the Secretary of State under article 35 (certification of plans, etc.);

“ancillary works” means the ancillary works described in Part 2 of Schedule 1 (ancillary works) and any other works authorised by this Order that are not development within the meaning of section 32 of the 2008 Act;

“authorised development” means the development and associated development described in Part 1 of Schedule 1 (authorised development) and any other development authorised by this Order that is development within the meaning of section 32 of the 2008 Act;

“authorised project” means the authorised development and the ancillary works authorised by this Order;

“book of reference” means the book of reference certified by the Secretary of State as the book of reference under article 35;

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

“cable” includes fibre-optic cables either within the cable or laid alongside it;

“cable ducts” means conduits for the installation of electrical cables;

“cable protection” means measures to protect cables from physical damage and exposure due to loss of sea bed sediment including (but not limited to) the use of bagged solutions filled with gravel or other materials as approved by the MMO, protective aprons or covering mattresses, flow energy dissipation devices or rock and gravel placement;

“collector substations” means the collector substations authorised by the Triton Knoll Offshore Wind Farm Order 2013(i);

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- (a) 1961 c.33.
  - (b) 1965 c.56.
  - (c) 1980 c.66.
  - (d) 1981 c.66.
  - (e) 1989 c.29.
  - (f) 1990 c.8.
  - (g) 1991 c.22.
  - (h) 2009 c.23.
  - (i) S.I. 2013/1734.

“commence” means begin to carry out—

- (a) the activities authorised by the deemed marine licence other than pre-construction surveys and monitoring; and
- (b) in respect of any other works comprised in the authorised project, except as provided otherwise in this Order, any material operation (as defined in section 155 of the 2008 Act) forming part of the authorised project other than operations consisting of—
  - (i) site clearance;
  - (ii) pre-construction archaeological investigations;
  - (iii) environmental surveys;
  - (iv) removal of hedgerows;
  - (v) investigations for the purpose of assessing ground conditions;
  - (vi) diversion and laying of services;
  - (vii) erection of any temporary means of enclosure related to pre-construction archaeological investigations and environmental surveys;
  - (viii) the temporary display of site notices or advertisements;

and “commencement” must be construed accordingly;

“completion” means, in respect of any stage of works, the end of final testing of that stage;

“construction compound” means a temporary construction site associated with the onshore works including hard standings, lay down and storage areas for construction materials and equipment, areas for spoil, areas for vehicular parking, bunded storage areas, areas for welfare facilities including offices and canteen and washroom facilities, workshop facilities and temporary fencing or other means of enclosure and areas for other facilities required for construction purposes;

“crossings schedule” means the document certified as the crossings schedule by the Secretary of State under article 35;

“deemed marine licence” means the marine licence set out in Schedule 9 (deemed licence under Marine and Coastal Access Act 2009);

“design principles document” means the design principles document certified by the Secretary of State under article 35;

“electrical circuit” means a number of electrical conductors necessary to transmit electricity between 2 points within the authorised development (onshore) to take the form of 3 separate cables laid in cable ducts including fibre-optic cables and earthing cables either within the electrical circuit or laid alongside;

“environmental statement” means the document certified as the environmental statement by the Secretary of State under article 35;

“external electrical equipment” means any electrical equipment in relation to Work No. 9 or 50 that is not housed within a building and has been assessed in the environmental statement and is otherwise referred to as “external transmission components” in the environmental statement and “additional electrical infrastructure” in the design principles document;

“hedgerow plans” means the plans certified as the hedgerow plans by the Secretary of State under article 35;

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

“IEC enabling works” means, in relation to Work No. 9,—

- (a) site clearance;
- (b) the establishment of temporary working areas;
- (c) temporary fencing;

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(a) “Highway” is defined in section 328(1). For “highway authority”, see section 1.

- (d) the installation of construction haul roads;
- (e) ground works including the installation of cabling ducting and the relocation and installation of below-ground utilities and drainage;
- (f) ground-raising and establishment of stoned site platform; and
- (g) electrical earthing works;

“intermediate electrical compound” means the area containing (but not limited to) switchgear, busbars, capacitors, reactors, reactive power compensation equipment, filters, cooling equipment, control and welfare buildings, lightning rods (if required), internal roads, security fencing and other associated equipment, structures and buildings including noise-attenuation works;

“land plans” means the plans certified as the land plans by the Secretary of State under article 35;

“landfall transition joint bay” means an underground pit where the offshore cables comprised in Work No. 2 are joined to the onshore works;

“limits of deviation” means the limits for the Works as shown on the works plans;

“main river” has the meaning given by the Water Resources Act 1991(a);

“maintain” includes—

- (a) inspect, upkeep, repair, adjust and alter; and
- (b) in relation to any of the ancillary works, remove, reconstruct and replace,

to the extent assessed in the environmental statement; and “maintenance” must be construed accordingly;

“MCA” means the Maritime and Coastguard Agency;

“mean low water” means the average height of all low waters above chart datum;

“MHWS” (mean high water springs) means the average throughout a year of the heights of 2 successive high waters during the periods of 24 hours when the range of the tide is greatest, as defined by the MMO and shown on the Order limits plans;

“MMO” means the Marine Management Organisation;

“onshore works” means Work Nos. 2 to 56 and any related further associated development in connection with those Works including, in relation to the installation of electrical circuits and cable ducts jointing bays, manholes, marker posts and other works associated with the installation of electrical circuits and cable ducts;

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

“Order limits” means the limits shown on the Order limits plans within which the authorised project may be carried out, whose grid co-ordinates seaward of MHWS are set out in the table in paragraph 2 of Part 1 of Schedule 1;

“Order limits plans” means the plans certified as the Order limits plans by the Secretary of State under article 35;

“outline access management plan” means the document certified as the outline access management plan by the Secretary of State under article 35;

“outline code of construction practice (onshore)” means the document certified as the outline code of construction practice (onshore) by the Secretary of State under article 35;

“outline landscape strategy and ecological management plan” means the document certified as the outline landscape strategy and ecological management plan by the Secretary of State under article 35;

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(a) 1991 c.57. “Main river” is defined in section 113(1). The definition was amended by section 59(3) of the Water Act 2014 (c.21).

“outline onshore written scheme of investigation” means the document certified as the outline onshore written scheme of investigation by the Secretary of State under article 35;

“outline traffic management plan” means the document certified as the outline traffic management plan by the Secretary of State under article 35;

“owner”, in relation to land, has the same meaning as in section 7 of the Acquisition of Land Act 1981(a);

“pipeline crossings” means the crossing of existing subsea pipelines by the cables authorised by this Order together with physical protection measures including concrete mattresses or rock placement;

“public rights of way plans” means the plans certified as the public rights of way plans by the Secretary of State under article 35;

“relevant planning authority”, in relation to any land, means the district planning authority for the area in which the land is situated;

“Requirement” means a Requirement set out in Part 3 of Schedule 1; and a reference to a numbered Requirement is a reference to the Requirement set out in the paragraph of that Part with the same number;

“statutory nature conservation body” means the government’s advisor on the natural environment;

“statutory undertaker” means any person falling within section 127(8) of the 2008 Act;

“street” means a street within the meaning of section 48 of the 1991 Act(b), together with land on the verge of a street or between 2 carriageways, and includes part of a street;

“substation enabling works” means, in relation to Work No. 50,—

- (a) site clearance;
- (b) the establishment of temporary working areas;
- (c) temporary fencing;
- (d) the installation of construction haul roads;
- (e) ground works including the installation of cabling ducts and the relocation and installation of below-ground utilities and drainage;
- (f) ground-raising and establishment of stoned site platform; and
- (g) electrical earthing works;

“temporary highways alterations” includes temporary removal and replacement of street furniture and the temporary plating and matting of grass verges to be carried out within the highway boundary;

“trenchless techniques” means the installation of electrical circuits by means of boring techniques for installing cable ducts including horizontal directional drilling, pipe jacking/horizontal auger boring and micro-boring;

“Tribunal” means the Lands Chamber of the Upper Tribunal;

“Trinity House” means the Corporation of Trinity House of Deptford Strond;

“undertaker” means, subject to article 5(9) (transfer of benefit of Order), Triton Knoll Offshore Wind Farm Limited (company number 03696654);

“unlicensed works” means works needed to connect the authorised project to the National Grid substation at Bicker Fen that National Grid is not required, under its transmission licence, to carry out itself including (but not limited to) cabling, cable sealing ends, circuit breakers, surge arrestors, dis-connectors, transformers, busbars and busbar clamp measuring equipment, relay marshalling rooms and electrical earthing works;

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(a) 1981 c.67. The definition was amended by paragraph 9 of Schedule 15 to the Planning and Compensation Act 1991 (c.34).

(b) Section 48 was amended by section 124(2) of the Local Transport Act 2008 (c.26).

“vessel” means every description of vessel, however propelled or moved, and includes a non-displacement craft, a personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel, a hovercraft or any other amphibious vehicle and any other thing constructed or adapted for movement through, in, on or over water and which is at the time in, on or over water;

“watercourse” includes any river, stream, creek, ditch, drain, canal, cut, culvert, dyke, sluice, sewer and passage through which water flows except a public sewer or drain;

“Work” means a Work set out in Part 1 of Schedule 1; and a reference to a Work designated by a number, or by a combination of a number and a letter (for example, “Work No. 3A”) is a reference to the Work so designated in that Part;

“works plans” means the plans certified as the works plans by the Secretary of State under article 35.

(2) References in this Order to rights over land include references to rights to do or to place and maintain, anything in, on or under land or in the air-space above its surface.

(3) All distances, directions and lengths referred to in this Order are approximate, except for the parameters referred to in—

- (a) Requirements 3 and 5; and
- (b) Condition 1 of the deemed marine licence.

(4) References in this Order to points identified by letters must be construed as references to the points so lettered on the works plans unless otherwise stated.

(5) The expression “includes” must be construed without limitation.

## PART 2

### Principal powers

#### **Development consent granted by Order**

**3.**—(1) Subject to the provisions of this Order and to the Requirements, the undertaker is granted—

- (a) development consent for the authorised development; and
- (b) consent for the ancillary works,

to be carried out within the Order limits.

(2) Each Work may be constructed and maintained only within the limits of deviation for that Work.

(3) Schedule 1 (authorised project) has effect.

#### **Maintenance of authorised project**

**4.** The undertaker may at any time maintain the authorised project except to the extent that this Order or an agreement made under this Order provides otherwise.

#### **Transfer of benefit of Order**

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

(2) The undertaker may—

- (a) transfer to another person (the “transferee”) any or all of the benefit of the provisions of this Order (including the deemed marine licence) and such related statutory rights as may be agreed between the undertaker and the transferee; or



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

(3) The consent of the Secretary of State is required for a transfer or grant under paragraph (2), except where—

- (a) the transfer or grant is to a person licensed under section 6 of the 1989 Act<sup>(a)</sup>; or
- (b) the time limits for claims for compensation in respect of the acquisition of land or effects on land under this Order have elapsed and either no such claim has been made or, if such a claim has been made,—
  - (i) the claim has been comprised or withdrawn;
  - (ii) compensation has been paid in final settlement of the claim;
  - (iii) payment of compensation into court has taken place in lieu of settlement of the claim; or
  - (iv) a tribunal or court of competent jurisdiction has determined that no compensation is payable in respect of the claim.

(4) Where the consent of the Secretary of State is required for a transfer or grant under paragraph (2), the Secretary of State must consult the MMO before giving consent if the proposed transfer or grant is relevant to the exercise of functions within the MMO’s jurisdiction.

(5) Where there is a transfer or grant under paragraph (2), the exercise by the transferee or, as the case may be, by the lessee of any benefit or right conferred by the transfer or grant is subject to the same restrictions, liabilities and obligations as would apply under this Order if the benefit or right were exercised by the undertaker.

(6) Despite anything in Part 4 of the 2009 Act (marine licensing), but subject to paragraphs (3) to (5), the undertaker may transfer or grant under paragraph (2) any of the provisions set out in Part 1 of the deemed marine licence together with the corresponding conditions set out in Part 2 of the licence (and subsections (7) and (8) of section 72 of the 2009 Act do not apply to such a transfer or grant).

(7) The undertaker must give notice in writing of any transfer or grant under paragraph (2)—

- (a) to the Secretary of State; and
- (b) if the transfer or grant is relevant to the exercise of functions within the MMO’s or the relevant planning authority’s jurisdiction, to the MMO or relevant planning authority (or to both),

at least 10 days before the transfer or grant takes effect or, if the transfer or grant is relevant to the exercise of functions within the MMO’s jurisdiction and the Secretary of State’s consent is not required for the transfer or grant, at least 28 days before the transfer or grant takes effect.

(8) The notice must—

- (a) state—
  - (i) the name and contact details of the transferee or lessee;
  - (ii) the date on which the transfer or grant will take effect;
  - (iii) the provisions to be transferred or granted; and
  - (iv) the restrictions, liabilities and obligations that, in accordance with paragraph (5), will apply to the transferee or lessee;
- (b) be accompanied by—
  - (i) where relevant, a plan showing the Works or areas to which the transfer or grant relates;

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(a) Section 6 was substituted by section 30 of the Utilities Act 2000 (c.27) and amended by sections 136 and 145 of, and by Schedule 23 to, the Energy Act 2004 (c.20) and by S.I. 2011/2704 and 2012/2400.

- (ii) where the Secretary of State’s consent is needed for the transfer or grant, a copy of the consent; and
- (iii) a copy of the document effecting the transfer or grant signed by the person making the transfer or grant and the transferee or lessee; and

(c) be signed by the person making the transfer or grant and the transferee or lessee.

(9) Where there is a transfer or grant under paragraph (2), references in this Order to the undertaker, except in paragraph (5), include references to the transferee or the lessee.

**Application and modification of legislative provisions**

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

“(k) for carrying out development which has been authorised by development consent granted under the Planning Act 2008.”.

(2) The following provisions do not apply in relation to the construction of works carried out for the purpose of, or in connection with, the construction or maintenance of the authorised project—

- (a) the Environmental Permitting (England and Wales) Regulations 2010(b), to the extent that they require a permit for anything that would have required consent under section 109 of the Water Resources Act 1991 immediately before the repeal of that section;
- (b) the provisions of any byelaws made under, or having effect as if made under, paragraphs 5, 6 or 6A of Schedule 25 to the Water Resources Act 1991(c) that require consent or approval for the carrying out of works;
- (c) section 23 of the Land Drainage Act 1991(d) (prohibition of obstructions, etc. in watercourses); and
- (d) the provisions of any byelaws made under section 66 of the Land Drainage Act 1991 (powers to make byelaws) that require consent or approval for the carrying out of works.

(3) The provisions of the Lindsey County Council (Sandhills) Act 1932(e) do not apply in relation to the exercise of any power conferred by this Order.

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

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

- (a) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised project and is attributable to the carrying out of the authorised project in accordance with a notice served under section 60 (control

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(a) S.I. 1997/1160. Regulation 6 was amended by paragraph 35 of Schedule 1 to S.I. 2015/377.  
 (b) S.I. 2010/675. See amendments made by S.I. 2016/475.  
 (c) Paragraph 5 was amended by section 100 of the Natural Environment and Rural Communities Act 2006 (c.16), section 84(2) of, and paragraph 3 of Schedule 11 to, the Marine and Coastal Access Act 2009, paragraph 49 of Schedule 2 to the Flood and Water Management Act 2010 (c.29) and paragraph 315 of Schedule 2 to S.I. 2013/755. Paragraph 6 was amended by paragraph 26 of Schedule 15 to the Environment Act 1995 (c.25) and section 224 of, and paragraph 24 of Schedule 16 and Part 5 of Schedule 22 to, the Marine and Coastal Access Act 2009. Paragraph 6A was inserted by section 103(3) of the Environment Act 1995.  
 (d) 1991 c.59. Section 23 was amended by paragraph 192 of Schedule 22 to the Environment Act 1995, paragraph 32 of Schedule 2 to the Flood and Water Management Act 2010 and S.I. 2013/755. Section 66 was amended by paragraph 38 of Schedule 2 to the Flood and Water Management Act 2010 and by section 86(3) of the Water Act 2014.  
 (e) 1932 c. lxxxvi.  
 (f) 1990 c.43. Section 82(1) was amended by paragraph 6 of Schedule 17 to the Environment Act 1995. Section 82(2) was amended by section 5(2) of the Noise and Statutory Nuisance Act 1993 (c.40) and paragraph 6 of Schedule 17 to the Environment Act 1995.

of noise on construction site), or a consent given under section 61 (prior consent for work on construction site), of the Control of Pollution Act 1974(a);

(b) is a consequence of the construction or maintenance of the authorised project and cannot reasonably be avoided; or

(c) is a consequence of the use of the authorised project and cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 does not apply where the consent relates to the use of premises by the undertaker for purposes of or in connection with the construction or maintenance of the authorised project.

## PART 3

### Streets

#### Street works

**8.**—(1) The undertaker may, for the purposes of the authorised project, enter on so much of any of the streets specified in Schedule 2 (streets subject to street works) as is within the Order limits and may—

(a) break up or open the street, or any sewer, drain or tunnel under it;

(b) tunnel or bore under the street;

(c) place apparatus under the street;

(d) maintain apparatus under the street or change its position; and

(e) execute any works required for or incidental to any works referred to in sub-paragraphs (a) to (d).

(2) The authority given by paragraph (1) is a statutory right for the purposes of sections 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the 1991 Act.

(3) Sections 54 to 106 of the 1991 Act(b) apply to any street works carried out under paragraph (1).

(4) In this article, “apparatus” has the same meaning as in Part 3 of the 1991 Act(c) (street works in England and Wales).

#### Temporary stopping up of streets

**9.**—(1) Subject to paragraph (4), the undertaker, during and for the purposes of carrying out the authorised project, may temporarily stop up, alter or divert any street within the Order limits and may for any reasonable time—

(a) divert the traffic or a class of traffic from the street; and

(b) subject to paragraph (2), prevent persons from passing along the street.

(2) The undertaker must provide reasonable access for pedestrians going to or from premises abutting a street affected by the temporary stopping up, alteration or diversion of a street under this article if there would otherwise be no such access.

(3) Without limiting paragraph (1), the undertaker may—

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

(b) A number of these provisions have been amended, including by the Traffic Management Act 2004 (c.18).

(c) “Apparatus” is defined in section 105(1).

- (a) temporarily stop up, alter or divert the streets specified in column (2) of Schedule 3 (streets to be temporarily stopped up); and
- (b) temporarily stop up, alter or divert—
  - (i) any footpath specified in column (2) of Schedule 3 to the extent of the diversion zone for that footpath shown on the public rights of way plans;
  - (ii) any diverted footpath to the extent of the diversion zone agreed with the highway authority.

(4) The undertaker must not temporarily stop up, alter or divert—

- (a) any street referred to in paragraph (3) without notifying the relevant planning authority and the highway authority;
- (b) any other street without the consent of the highway authority, which may attach reasonable conditions to any consent (such consent not to be unreasonably withheld or delayed).

(5) Except as agreed in advance by the relevant planning authority, any notification under paragraph (4)(a) must be made at least 14 days before the temporary stopping up, alteration or diversion takes place.

(6) Any person who suffers loss by the suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act (determination of questions of disputed compensation).

(7) In this article, “diverted footpath” means a footpath identified in column (2) of Schedule 3 that has been diverted by the highway authority before commencement of the onshore works.

#### **Access to works and temporary highways alterations**

**10.** The undertaker may, for the purposes of the authorised project,—

- (a) form and lay out a means of access, or improve an existing means of access, in the locations specified in column (2) of Schedule 4 (access to works);
- (b) after consultation with the highway authority and with the approval of the relevant planning authority, form and lay out such other means of access, or improve an existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised project; and
- (c) after consultation with the highway authority and with the approval of the relevant planning authority, carry out the temporary highways alterations.

#### **Agreements with a highway authority**

**11.—**(1) A highway authority and the undertaker may enter into agreements with respect to—

- (a) any temporary stopping up, alteration or diversion of a street authorised by this Order; or
- (b) the carrying out in the street of any of the works referred to in article 8(1) (street works).

(2) An agreement referred to in paragraph (1) may, without limiting that paragraph,—

- (a) provide for the highway authority to carry out any function under this Order which relates to the street in question;
- (b) include an agreement between the undertaker and highway authority specifying a reasonable time for the completion of the works; and
- (c) contain such terms as to payment and otherwise as the parties consider appropriate.

## PART 4

### Supplemental powers

#### Discharge of water

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

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

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

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

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

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

(6) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain under this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(7) Nothing in this article overrides the requirement for an environmental permit under regulation 12(1)(b) of the Environmental Permitting (England and Wales) Regulations 2010.

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

(9) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to a sewerage undertaker(b), the Environment Agency, an internal drainage board or a local authority; and
- (b) except as provided in article 2 (interpretation), other expressions used both in this article and in the Water Resources Act 1991 have the same meaning as in that Act.

#### Authority to survey and investigate land

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

- (a) survey or investigate the land;

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(a) 1991 c.56. Section 106 was amended by sections 35(8) and 43(2) of, and Schedule 2 to, the Competition and Service (Utilities) Act 1992 (c.43) and sections 36(2) and 99 of the Water Act 2003 (c.37). The section is amended by paragraph 16(2) of Schedule 3 to the Flood and Water Management Act 2010 (c.29) from a date to be appointed.

(b) “Sewerage undertaker” is defined in Schedule 1 to the Interpretation Act 1978 (c.30).

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

(2) Paragraph (1) does not authorise the undertaker to carry out any of the actions listed in sub-paragraphs (a) to (d) on any land seaward of MHWS.

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

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

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

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

- (a) in land located within the highway boundary without the consent of the highway authority; or
- (b) in a private street without the consent of the street authority.

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

(7) If either a highway authority or street authority which receives an application for consent—

- (a) under paragraph (5)(a), in the case of a highway authority; or
- (b) under paragraph (5)(b), in the case of a street authority,

fails to notify the undertaker of its decision within 28 days of receiving the consent, the authority is deemed to have given consent.

### **Removal of human remains**

**14.—**(1) In this article, “specified land” means the land within the limits of deviation.

(2) Before the undertaker carries out any development or works which will or may disturb any human remains in the specified land, it must remove the human remains from the specified land, or cause them to be removed, in accordance with the following provisions of this article.

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

- (a) publishing a notice in each of 2 successive weeks in a newspaper circulating in the area of the authorised project; and
- (b) displaying a notice in a conspicuous place on or near to the specified land.

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

(5) At any time within 56 days after the first publication of a notice under paragraph (3), any person who is a personal representative or relative of any deceased person whose remains are interred in the specified land may give notice in writing to the undertaker of that person's intention to undertake the removal of the remains.

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

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

and that person must, as soon as reasonably practicable after the re-interment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (11).

(7) If the undertaker is not satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be, or that the remains in question can be identified, the question must be determined on the application of either party in a summary manner by the county court, and the court may make an order specifying who must remove the remains and as to the payment of the costs of the application.

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

(9) If—

- (a) within the period of 56 days referred to in paragraph (5) no notice under that paragraph is given to the undertaker in respect of any remains in the specified land;
- (b) notice under paragraph (5) is given and no application is made under paragraph (7) within 56 days after the giving of the notice, but the person who gave the notice fails to remove the remains within a further period of 56 days;
- (c) within 56 days after any order is made by the county court under paragraph (7) any person, other than the undertaker, specified in the order fails to remove the remains; or
- (d) it is determined that the remains to which a notice under paragraph (5) relates cannot be identified,

subject to paragraph (10), the undertaker must remove the remains and cause them to be re-interred in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose; and, so far as possible, remains from individual graves must be re-interred in individual containers which must be identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

(10) If the undertaker is satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be and that the remains in question can be identified, but that person does not remove the remains, the undertaker must comply with any reasonable request that person may make in relation to the removal and re-interment or cremation of the remains.

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

- (a) a certificate of re-interment or cremation must be sent by the undertaker to the Registrar-General giving the date of re-interment or cremation and identifying the place from which the remains were removed and the place in which they were re-interred or cremated; and
- (b) a copy of the certificate of re-interment or cremation and the record referred to in paragraph (9) must be sent by the undertaker to the relevant planning authority referred to in paragraph (4).

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

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

(14) Section 25 of the Burial Act 1857<sup>(a)</sup> (offence of removal of body from burial ground) does not apply to a removal carried out in accordance with this article.

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(a) 1857 c.81. Section 25 was substituted by section 2 of the Church of England (Miscellaneous Provisions) Measure 2014 (2014 No. 1).

## PART 5

### Powers of acquisition

#### Compulsory acquisition of land

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

(2) This article is subject to—

- (a) article 17 (time limit for exercise of authority to acquire land compulsorily);
- (b) article 18(2) (compulsory acquisition of rights);
- (c) article 24(9) (temporary use of land for carrying out authorised project); and
- (d) article 40 (Crown rights).

(3) From the day on which a compulsory acquisition notice under section 134 of the 2008 Act<sup>(a)</sup> is served or the day on which the Order land, or any part of it, is vested in the undertaker, whichever is the later, the land or that part of it that is vested (as the case may be) is discharged from all rights, trusts and incidents to which it was previously subject.

#### Compulsory acquisition of land: minerals

**16.** Parts 2 and 3 of Schedule 2 (minerals) to the Acquisition of Land Act 1981 (minerals) are incorporated in this Order, subject to the following modifications—

- (a) paragraph 8(3) is not incorporated;
- (b) for “acquiring authority” substitute “undertaker”; and
- (c) for “undertaking” substitute “authorised project”.

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

**17.**—(1) After 4th September 2021—

- (a) no notice to treat may be served under Part 1 of the 1965 Act; and
- (b) no declaration may be executed under section 4 of the 1981 Act<sup>(b)</sup> as applied by article 20 (application of Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The authority conferred by article 24 ceases at the end of 4th September 2021, except that nothing in this paragraph prevents the undertaker remaining in possession of land after that date, if the land was entered, and possession taken, on or before 4th September 2021.

#### Compulsory acquisition of rights

**18.**—(1) Subject to paragraph (2), the undertaker may acquire compulsorily such rights or impose such restrictive covenants over the Order land as may be required for any purpose for which that land may be acquired under article 15 (compulsory acquisition of land), by creating them as well as by acquiring rights already in existence.

(2) In the case of the Order land specified in column (1) of Schedule 5 (land in which only new rights, etc. may be acquired), the undertaker’s powers of compulsory acquisition are limited to the acquisition of such new rights and the imposition of such restrictive covenants as may be required for the purpose specified in relation to that land in column (2) of that Schedule.

(3) Subject to section 8 of the 1965 Act (other provisions as to divided land) as substituted by paragraph 5 of Schedule 6 (modification of compensation and compulsory purchase enactments

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<sup>(a)</sup> Section 134 was amended by section 142 of, and Schedule 25 to, the Localism Act 2011.

<sup>(b)</sup> Section 4 is amended, from a date to be appointed, by sections 184 and 185 of, and paragraph 2 of Schedule 18 to, the Housing and Planning Act 2016 (c.22).



for creation of new rights and restrictive covenants), where the undertaker acquires a right over land or the benefit of a restrictive covenant under paragraph (1) or (2), the undertaker is not required to acquire a greater interest in that land.

(4) Schedule 6 has effect for the purpose of modifying the enactments referred to in that Schedule in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of restrictive covenants.

(5) In any case where the acquisition of new rights under paragraph (1) is required for the purpose of diverting, replacing or protecting apparatus of a statutory undertaker, the undertaker may, with the consent of the Secretary of State, transfer the power to acquire such rights to the statutory undertaker in question.

(6) The exercise by a statutory undertaker of any power in accordance with a transfer under paragraph (5) is subject to the same restrictions, liabilities and obligations as would apply under this Order if that power were exercised by the undertaker.

### **Private rights**

**19.**—(1) Subject to the provisions of this article, all private rights over land subject to compulsory acquisition under this Order are extinguished—

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

whichever is the earlier.

(2) Subject to the provisions of this article, all private rights over land subject to the compulsory acquisition of rights or the imposition of restrictive covenants under this Order are extinguished in so far as their continuance would be inconsistent with the exercise of the right or restrictive covenant—

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

whichever is the earlier.

(3) Subject to the provisions of this article, all private rights over land owned by the undertaker which, being within the limits of land which may be acquired shown on the land plans, is required for the purposes of this Order are extinguished on the appropriation of the land by the undertaker for any of those purposes.

(4) Subject to the provisions of this article, all private rights over land of which the undertaker takes temporary possession under this Order are suspended and unenforceable for as long as the undertaker remains in lawful possession of the land.

(5) Any person who suffers loss by the extinguishment or suspension of any private right under this article is entitled to compensation in accordance with the terms of section 152 of the 2008 Act<sup>(a)</sup> to be determined, in case of dispute, under Part 1 of the 1961 Act.

(6) This article does not apply in relation to any right to which section 138 of the 2008 Act<sup>(b)</sup> (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 27 (statutory undertakers) applies.

(7) Paragraphs (1) to (4) have effect subject to—

- (a) any notice given by the undertaker before—

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(a) Section 152 was amended by S.I. 2009/1307.

(b) Section 138 was amended by section 23(4) of the Growth and Industry Act 2013.

- (i) the completion of the acquisition of the land or the acquisition of rights or the imposition of restrictive covenants over or affecting the land;
  - (ii) the undertaker's appropriation of the land;
  - (iii) the undertaker's entry onto it; or
  - (iv) the undertaker's taking temporary possession of it,
- that any or all of those paragraphs do not apply to any right specified in the notice; or
- (b) any agreement made at any time between the undertaker and the person in or to whom the right in question is vested or belongs.
- (8) If any agreement referred to in paragraph (7)(b)—
- (a) is made with a person in or to whom the right is vested or belongs; and
  - (b) is expressed to have effect also for the benefit of those deriving title from or under that person,

it is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

(9) References in this article to private rights over land include references to any trusts or incidents to which the land is subject.

### **Application of Compulsory Purchase (Vesting Declarations) Act 1981**

**20.**—(1) The 1981 Act applies as if this Order were a compulsory purchase order and as if the undertaker were a public authority under section 1(2) of that Act.

(2) The 1981 Act, as so applied, has effect with the following modifications.

(3) In section 3 (preliminary notices), for subsection (1) substitute—

“(1) Before making a declaration under section 4 with respect to any land which is subject to a compulsory purchase order, the acquiring authority must include the particulars specified in subsection (3) in a notice which is—

- (a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession); and
- (b) published in a local newspaper circulating in the area where the land is situated.”.

(4) In that section, in subsection (2)—

- (a) for “(1)(b)” substitute “(1)”; and
- (b) after “given” insert “and published”.

(5) In that section, for subsections (5) and (6) substitute—

“(5) For the purpose of this section, a person has a relevant interest in land if—

- (a) the person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in the reversion; or
- (b) the person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds 1 month.”

(6) In section 5 (earliest date for execution of declaration)—

- (a) in subsection (1), after “publication” insert “in a local newspaper circulating in the area in which the land is situated”; and
- (b) omit subsection (2).

(7) In section 7 (constructive notice to treat), in subsection (1)(a), omit “(as modified by section 4 of the Acquisition of Land Act 1981)”.

(8) References to the 1965 Act in the 1981 Act must be construed as references to that Act as applied by section 125 of the 2008 Act<sup>(a)</sup> to the compulsory acquisition of land under this Order.

### **Acquisition of subsoil only**

**21.**—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in article 15(1) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(2) Where the undertaker acquires any part of, or rights in, the subsoil of land under paragraph (1), the undertaker is not required to acquire an interest in any other part of the land.

(3) Paragraph (2) does not prevent article 23 (acquisition of part of certain properties) from applying where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

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

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

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

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

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

(4) Subject to paragraph (5), any person who—

- (a) is an owner or occupier of land appropriated under paragraph (1) without the undertaker acquiring any part of that person's interest in the land; and
- (b) suffers loss as a result,

is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) Compensation is not payable under paragraph (4) to any person who is an undertaker to whom section 85 of the 1991 Act (sharing cost of necessary measures) applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

### **Acquisition of part of certain properties**

**23.**—(1) This article applies instead of section 8(1) of the 1965 Act (other provisions as to divided land) (as applied by section 125 of the 2008 Act) where—

- (a) a notice to treat is served on a person (the “owner”) under the 1965 Act (as so applied) in respect of land forming only part of a house, building or manufactory or of land consisting of a house with a park or garden (the “land subject to the notice to treat”); and
- (b) a copy of this article is served on the owner with the notice to treat.

(2) In such a case, the owner may, within the period of 21 days beginning with the day on which the notice was served, serve on the undertaker a counter-notice objecting to the sale of the land subject to the notice to treat which states that the owner is willing and able to sell the whole (the “land subject to the counter-notice”).

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(a) Section 125 was amended by paragraph 17 of Schedule 16 to the Housing and Planning Act 2016.

(3) If no counter-notice is served within that period, the owner is required to sell the land subject to the notice to treat.

(4) If a counter-notice is served within that period, the question whether the owner is required to sell only the land subject to the notice to treat must, unless the undertaker agrees to take the land subject to the counter-notice, be referred to the Tribunal.

(5) If on a reference the Tribunal determines that the land subject to the notice to treat can be taken—

- (a) without material detriment to the remainder of the land subject to the counter-notice; or
- (b) in the case of part of land consisting of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the owner is required to sell the land subject to the notice to treat.

(6) If on a reference the Tribunal determines that only part of the land subject to the notice to treat can be taken—

- (a) without material detriment to the remainder of the land subject to the counter-notice; or
- (b) in the case of part of land consisting of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the notice to treat is deemed to be a notice to treat for that part.

(7) If on a reference the Tribunal determines that—

- (a) the land subject to the notice to treat cannot be taken without material detriment to the remainder of the land subject to the counter-notice; but
- (b) the material detriment is confined to a part of the land subject to the counter-notice,

the notice to treat is deemed to be a notice to treat for the land to which the material detriment is confined in addition to the land already subject to the notice, whether or not the additional land is land which the undertaker is authorised to acquire compulsorily under this Order.

(8) If—

- (a) the undertaker agrees to take the land subject to the counter-notice; or
- (b) the Tribunal determines that—
  - (i) none of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice or, as the case may be, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house; and
  - (ii) the material detriment is not confined to a part of the land subject to the counter-notice,

the notice to treat is deemed to be a notice to treat for the land subject to the counter-notice whether or not the whole of that land is land which the undertaker is authorised to acquire compulsorily under this Order.

(9) Where, by reason of a determination by the Tribunal under this article, a notice to treat is deemed to be a notice to treat for less land or more land than that specified in the notice, the undertaker may, within the period of 6 weeks beginning with the day on which the determination is made, withdraw the notice to treat; and, if it does so, must pay the owner compensation for any loss or expense occasioned to the owner by the giving and withdrawal of the notice, to be determined in case of dispute by the Tribunal.

(10) Where the owner is required under this article to sell only part of a house, building or manufactory or of land consisting of a house with a park or garden, the undertaker must pay the owner compensation for any loss sustained by the owner due to the severance of that part in addition to the value of the interest acquired.

## Temporary use of land for carrying out authorised project

24.—(1) The undertaker may, in connection with the carrying out of the authorised project,—

- (a) enter on and take temporary possession of—
  - (i) the land specified in column (2) of Schedule 7 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the part of the authorised project specified in column (4) of that Schedule; and
  - (ii) any other Order land in respect of which no notice of entry has been served under section 11 of the 1965 Act (powers of entry) (other than in connection with the acquisition of rights or restrictive covenants only) and no declaration has been made under section 4 of the 1981 Act;
- (b) remove any buildings and vegetation from that land;
- (c) construct any permanent or temporary works (including the provision of means of access), haul roads, security fencing, bridges, structures and buildings on that land;
- (d) use the land for the purposes of a working site with access in connection with the authorised project; and
- (e) construct or carry out any works (including mitigation works or operations) or use the land for the purposes of the authorised project.

(2) Not less than 14 days before entering on and taking temporary possession of land under this article, the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(3) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article—

- (a) in the case of land specified in paragraph (1)(a)(i) above, after the end of the period of 1 year beginning with the date of completion of the part of the authorised project specified in relation to that land in column (4) of Schedule 7; or
- (b) in the case of land referred to in paragraph (1)(a)(ii), after the end of the period of 1 year beginning with the date of completion of the work for which temporary possession of the land was taken unless the undertaker has, before the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act in relation to that land or has otherwise acquired the land subject to temporary possession.

(4) Before giving up possession of land of which temporary possession has been taken under paragraph (1)(a)(i), unless otherwise agreed by the owners of the land, the undertaker must remove all works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not required to—

- (a) replace a building removed under this article;
- (b) remove or reposition any apparatus belonging to statutory undertakers or any necessary mitigation works.

(5) Before giving up possession of land of which temporary possession has been taken under paragraph (1)(a)(ii), unless otherwise agreed by the owners of the land, the undertaker must either acquire the land referred to in paragraph (3)(b) or remove all works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not required to replace a building removed under this article.

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

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

(8) Nothing in this article affects any liability to pay compensation under section 10(2) of the 1965 Act (further provisions as to compensation for injurious affection) or under any other

enactment in respect of loss or damage arising from the carrying out of the authorised project, other than loss or damage for which compensation is payable under paragraph (6).

(9) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i) (but the undertaker is not precluded from carrying out a survey of that land under article 13 (authority to survey and investigate land)).

(10) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

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

### **Temporary use of land for maintaining authorised project**

**25.**—(1) Subject to paragraph (2), at any time during the maintenance period relating to any part of the authorised project, the undertaker may—

- (a) enter on and take temporary possession of any land within the Order limits if such possession is reasonably required for the purpose of maintaining the authorised project;
- (b) enter on any land within the Order limits for the purpose of gaining such access as is reasonably required for the purpose of maintaining the authorised project; and
- (c) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for those purposes.

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

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

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

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

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

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

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

(8) Nothing in this article affects any liability to pay compensation under section 10(2) of the 1965 Act or under any other enactment in respect of loss or damage arising from the maintenance of the authorised project, other than loss or damage for which compensation is payable under paragraph (6).

(9) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

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(a) Section 13 was amended by section 139 of, and paragraph 28(2) of Schedule 13 and Part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c.15).

(10) Section 13 of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act.

(11) In this article, “maintenance period”, in relation to any part of the authorised project, means the period of 5 years beginning with the date on which that part of the authorised project first exports electricity to the national electricity transmission network.

### **Protective provisions**

**26.** Schedule 8 (protective provisions) has effect.

### **Statutory undertakers**

**27.—**(1) Subject to Schedule 8, the undertaker may—

- (a) exercise the powers conferred by articles 15 and 18 in relation to so much of any land referred to in those articles as belongs to statutory undertakers;
- (b) construct the authorised development in such a way as to cross underneath or over apparatus belonging to statutory undertakers and other like bodies within the Order limits; and
- (c) extinguish the rights of, remove, relocate or reposition the apparatus belonging to statutory undertakers over or within the Order limits.

(2) In this article, a reference to a statutory undertaker includes a reference to a public communications provider (as defined in article 29(4) (recovery of costs of new connections)).

### **No double recovery**

**28.** Compensation is not payable in respect of the same matter both under this Order and under any other enactment, any contract or any rule of law.

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

**29.—**(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 27, any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 27, any person who is—

- (a) the owner or occupier of premises the drains of which communicated with the sewer; or
- (b) the owner of a private sewer which communicated with the sewer,

is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by the person, in consequence of the removal, for the purpose of making the drain or sewer belonging to the person communicate with any other public sewer or with a private sewerage disposal plant.

(3) This article does not have effect in relation to apparatus to which Part 3 of the 1991 Act applies.

(4) In this article—

“public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003(a);

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(a) 2003 c.21.

“public utility undertaker” has the same meaning as in the 1980 Act(a).

### **Special category land**

**30.**—(1) On the exercise by the undertaker of the Order rights, so much of the special category land as is required for the purposes of the exercise of those rights is discharged from all rights, trusts and incidents to which it was previously subject, so far as their continuance would be inconsistent with the exercise of the Order rights.

(2) In this article—

“Order rights” means rights exercisable over the special category land by the undertaker under article 18;

“special category land” means the land identified as such on the land plans and numbered 01/01 in the book of reference.

## **PART 6**

### **Miscellaneous and general**

#### **Deemed marine licence under Marine and Coastal Access Act 2009**

**31.** The marine licence set out in Schedule 9 is deemed to have been issued under Part 4 of the 2009 Act for the licensed marine activities specified in Part 1 of the licence and subject to the conditions specified in Part 2 of the licence.

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

**32.**—(1) This article applies to—

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

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

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

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

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

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(a) “Public utility undertaker” is defined in section 329.



## **Operational land for purposes of Town and Country Planning Act 1990**

**33.** Development consent granted by this Order must be treated as specific planning permission for the purposes of section 264(3) of the 1990 Act (cases in which land is to be treated as operational land for the purposes of that Act).

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

**34.**—(1) The undertaker may, for the purposes of the authorised project, remove any hedgerows within the Order limits, specified in Schedule 10 (removal of hedgerows) and identified on the hedgerow plans that may be required for the purposes of carrying out the authorised project.

(2) In paragraph (1), “hedgerow” has the same meaning as in the Hedgerows Regulations 1997(a).

(3) The undertaker may fell or lop any tree or shrub within or overhanging the Order limits, or cut back its roots if it reasonably believes it to be necessary to do so, in order to prevent the tree or shrub from obstructing or interfering with the construction, maintenance or operation of the authorised project or any apparatus used in connection with the authorised project.

(4) In carrying out any activity authorised by paragraph (3)—

- (a) the undertaker must not do unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from the activity; and
- (b) the duty contained in section 206(1) of the 1990 Act (replacement of trees) does not apply(b).

(5) The authority given by paragraph (3) constitutes a deemed consent under the relevant tree preservation order.

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

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

**35.**—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of—

- (a) the works plans (rev. C);
- (b) the Order limits plans (rev. C);
- (c) the land plans (rev. C);
- (d) the book of reference (rev. D, dated 8th August 2016);
- (e) the environmental statement (rev. A);
- (f) the access to works and streets plans (rev. C);
- (g) the hedgerow plans (rev. C);
- (h) the public rights of way plans (rev. C);
- (i) the crossings schedule (rev. 4.0);
- (j) the design principles document (rev. A);
- (k) the outline code of construction practice (onshore) (rev. C) comprising—
  - (i) the outline construction method statement (rev. E);
  - (ii) the outline health and safety plan;
  - (iii) the outline noise and vibration management plan (rev. B);
  - (iv) the outline air quality management plan;

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(a) S.I. 1997/1160.

(b) Section 206(1) was amended by paragraph 11 of Schedule 8 to the Planning Act 2008.

- (v) the outline soil management plan (rev. E);
  - (vi) the outline artificial light emissions plan;
  - (vii) the outline site waste management plan;
  - (viii) the outline pollution prevention and emergency incident response plan (rev. C);
  - (ix) the outline construction environment management plan (rev. B);
  - (x) the outline communications plan (rev. B);
  - (l) the outline landscape strategy and ecological management plan (rev. D);
  - (m) the outline traffic management plan (rev. B);
  - (n) the outline onshore written scheme of investigation (rev. B);
  - (o) the outline offshore written scheme of investigation (rev. A);
  - (p) the outline access management plan (rev. B);
  - (q) the outline offshore operations and maintenance plan (rev. A),
- for certification that they are true copies of the documents referred to in this Order.
- (2) A plan or document so certified is admissible in proceedings as evidence of the contents of the document of which it is a copy.

### **Arbitration**

**36.** Any difference under any provision of this Order, unless otherwise provided for, must be referred to and settled by a single arbitrator to be agreed between the parties, or failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the Secretary of State.

### **Guarantees in respect of payment of compensation**

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

- (a) a guarantee approved by the Secretary of State in respect of the liabilities of the undertaker to pay compensation under this Order in respect of the exercise of the relevant power in relation to that land; or
- (b) an alternative form of security for that purpose approved by the Secretary of State.

(2) The provisions are—

- (a) article 15 (compulsory acquisition of land);
- (b) article 16 (compulsory acquisition of land: minerals);
- (c) article 18 (compulsory acquisition of rights);
- (d) article 19 (private rights);
- (e) article 21 (acquisition of subsoil only);
- (f) article 22 (rights under or over streets);
- (g) article 24 (temporary use of land for carrying out authorised project);
- (h) article 25 (temporary use of land for maintaining authorised project); and
- (i) article 27 (statutory undertakers).

(3) A guarantee or alternative form of security given in respect of any liability of the undertaker to pay compensation under this Order must be treated as enforceable against the guarantor or person providing the alternative form of security by any person to whom such compensation is payable and must be in such a form as to be capable of enforcement by such a person.

(4) Nothing in this article requires a guarantee or alternative form of security to be in place for more than 15 years after the date on which the relevant power is exercised.

### **Procedure regarding certain approvals, etc.**

**38.**—(1) Where an application is made to, or a request is made of, the relevant planning authority, a highway authority, a street authority or the owner of a watercourse, sewer or drain for any consent, agreement or approval required or contemplated by any of the provisions of this Order, the consent, agreement or approval must, if given, be given in writing and is not to be unreasonably withheld or delayed.

(2) Schedule 11 (procedure for discharge of Requirements) has effect in relation to all consents, agreements or approvals granted, refused or withheld in relation to the Requirements unless otherwise agreed in writing between the undertaker and the relevant planning authority.

### **Saving provisions for Trinity House**

**39.** Nothing in this Order prejudices or derogates from any of the rights, duties or privileges of Trinity House.

### **Crown rights**

**40.**—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and, in particular, nothing in this Order authorises the undertaker or any licensee to take, use, enter on or in any manner interfere with any land or rights of any description (including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary)—

- (a) belonging to Her Majesty in right of the Crown and forming part of the Crown Estate without the consent in writing of the Crown Estate Commissioners;
- (b) belonging to Her Majesty in right of the Crown and not forming part of the Crown Estate without the consent in writing of the government department having the management of that land; or
- (c) belonging to a government department or held in trust for Her Majesty for the purposes of a government department without the consent in writing of that government department.

(2) Paragraph (1) does not apply to the exercise of any right under this Order for the compulsory acquisition of an interest in any Crown land (as defined in the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown.

(3) A consent under paragraph (1)—

- (a) may be given unconditionally or subject to terms and conditions;
- (b) is deemed to have been given in writing where it is sent electronically.

Signed by authority of the Secretary of State for Business, Energy and Industrial Strategy

5th September 2016

*Giles Scott*  
Head of Energy Infrastructure Planning and Coal Liabilities  
Department for Business, Energy and Industrial Strategy

# SCHEDULE 1

Articles 2 and 3

## Authorised project

### PART 1

#### Authorised development

1. Development which, in accordance with a direction made by the Secretary of State under section 35 of the 2008 Act on 14th November 2013, is development for which development consent is required on the bed of the North Sea from the coast to approximately 33 kilometres off the coast of Lincolnshire and 46 kilometres off the coast of Norfolk within the Renewable Energy Zone and within the County of Lincolnshire and the District of East Lindsey and Borough of Boston, comprising—

#### **Offshore**

Work No. 1 – up to 6 cables for the transmission of high voltage alternating current electricity laid on or beneath the seabed between the collector substations and Work No. 2 including pipeline crossings and cable protection;

#### **In the County of Lincolnshire, District of East Lindsey**

Work No. 2 – up to 6 cables for the transmission of high voltage alternating current electricity laid on or beneath the seabed and/or underground in cable ducts from mean low water connecting Work No. 1 and Work No. 3;

Work No. 3 –

- (a) up to 6 cables connecting up to 6 electrical circuits for the transmission of high voltage alternating current electricity laid underground including in cable ducts connecting Work No. 2 and Work No. 5;
- (b) Work No. 3A – up to 6 landfall transition joint bays including ground preparation and ground-raising;
- (c) access to Work No. 2 including the construction of haul roads;
- (d) Work No. 3B – a temporary construction compound;

Work No. 4 – upgrading of the existing access to provide a permanent access from Roman Bank to Work Nos. 2 and 3;

Work No. 5 – up to 6 electrical circuits for the transmission of high voltage alternating current electricity laid underground in cable ducts from Work No. 3 in a generally south-south westerly direction for a distance of 5.5 kilometres to Work No. 7 including access for construction from the public highway and temporary haul roads;

Work No. 6 – a temporary construction compound to the north side of the A52 highway including access from the public highway;

Work No. 7 – a temporary construction compound to the south side of the A52 highway including access from the public highway;

Work No. 8 – up to 6 electrical circuits for the transmission of high voltage alternating current electricity laid underground in cable ducts from Work No. 5 in a generally south-south westerly direction for a distance of 4.9 kilometres to Work No. 9 including access for construction from the public highway and temporary haul roads;

Work No. 9 –

- (a) the IEC enabling works;

- (b) Work No. 9A – the intermediate electrical compound for the compensation of reactive power;
- (c) landscaping and drainage, utilities connections, temporary and permanent access roads, a security gate, cabling and ducting to the south of Marsh Lane near Orby;

Work No. 10 – a temporary construction compound for Work No. 9 including access from the public highway;

Work No. 11 – up to 6 electrical circuits for the transmission of high voltage alternating current electricity laid underground in cable ducts from Work No. 9 in a generally south-south westerly direction for a distance of 3.3 kilometres to Work No 14 including accesses for construction from the public highway and temporary haul roads;

Work No. 12 – a temporary construction compound to the north side of the A158 highway including access from the public highway;

Work No. 13 – a temporary construction compound to the south side of the A158 highway including access from the public highway;

Work No. 14 – up to 6 electrical circuits for the transmission of high voltage alternating current electricity laid underground in cable ducts from Work No. 11 in a generally south westerly direction for a distance of 6.3 kilometres to Work No. 17 including the construction of a temporary haul road and accesses for construction;

Work No. 15 – a temporary construction compound to the south of Tipp Lane including access from the public highway;

Work No. 16 – a temporary construction access to the south of the Lymn;

Work No. 17 – up to 6 electrical circuits for the transmission of high voltage alternating current electricity laid underground in cable ducts from Work No. 14 in a generally south westerly direction for a distance of 0.4 kilometres to Work No. 19 including accesses for construction from the public highway and temporary haul roads;

Work No. 18 – a temporary construction compound to the west of Steeping River including access from the public highway;

Work No. 19 – up to 6 electrical circuits for the transmission of high voltage alternating current electricity laid underground in cable ducts from Work No. 17 in a generally south westerly direction for a distance of 2.3 kilometres to Work No. 21 including accesses for construction from the public highway and temporary haul roads;

Work No. 20 – a temporary construction compound to the south side of Station Road including access from the public highway;

Work No. 21 – up to 6 electrical circuits for the transmission of high voltage alternating current electricity laid underground in cable ducts from Work No. 19 in a generally south westerly direction for a distance of 2.5 kilometres to Work No. 22 including accesses for construction from the public highway and temporary haul roads;

Work No. 22 – up to 6 electrical circuits for the transmission of high voltage alternating current electricity laid underground in cable ducts from Work No. 21 in a generally south westerly direction for a distance of 4.4 kilometres to Work No. 24 including accesses for construction from the public highway and temporary haul roads;

Work No. 23 – a temporary construction compound to the east side of Hobhole Bank including access from the public highway;

Work No. 24 – up to 6 electrical circuits for the transmission of high voltage alternating current electricity laid underground in cable ducts from Work No. 22 in a generally south westerly direction for a distance of 1.3 kilometres to Work No. 26 including accesses for construction from the public highway and temporary haul roads;

Work No. 25 – a temporary construction compound to the north side of Fodder Dike including access from the public highway;

Work No. 26 – up to 6 electrical circuits for the transmission of high voltage alternating current electricity laid underground in cable ducts from Work No. 24 in a generally south-south westerly direction for a distance of 4.3 kilometres to Work No. 29 including accesses for construction from the public highway and temporary haul roads;

Work No. 27 – a temporary construction compound to the east side of the A16 highway including access from the public highway;

Work No. 28 – a temporary construction compound to the west side of the A16 highway including access from the public highway;

Work No. 29 – up to 6 electrical circuits for the transmission of high voltage alternating current electricity laid underground in cable ducts from Work No. 26 in a generally south westerly direction for a distance of 3.6 kilometres to Work No. 31 including accesses for construction from the public highway and temporary haul roads;

Work No. 30 – a temporary construction compound to the west side of Staunt Road including access from the public highway;

Work No. 31 – up to 6 electrical circuits for the transmission of high voltage alternating current electricity laid underground in cable ducts from Work No. 29 in a generally south westerly direction for a distance of 1 kilometre to Work No. 33 including accesses for construction from the public highway and temporary haul roads;

Work No. 32 – a temporary construction compound to the east side of Carrington Road including access from the public highway;

Work No. 33 – up to 6 electrical circuits for the transmission of high voltage alternating current electricity laid underground in cable ducts from Work No. 31 in a generally south-south westerly direction for a distance of 5 kilometres to Work No. 37 including accesses for construction from the public highway and temporary haul roads;

Work No. 34 – a temporary construction compound to the north side of Leagate Road including access from the public highway;

Work No. 35 – a temporary construction compound to the north side of Mere Booth Road including access from the public highway;

Work No. 36 – a temporary construction compound to the south side of Mere Booth Road including access from the public highway;

#### **In the County of Lincolnshire, Borough of Boston**

Work No. 37 – up to 6 electrical circuits for the transmission of high voltage alternating current electricity laid underground in cable ducts from Work No. 33 in a generally south westerly direction for a distance of 2.3 kilometres to Work No. 39 including accesses for construction from the public highway and temporary haul roads;

Work No. 38 – a temporary construction compound to the north side of North Forty Foot Bank including access from the public highway;

Work No. 39 – up to 6 electrical circuits for the transmission of high voltage alternating current electricity laid underground in cable ducts from Work No. 37 in a generally south-south westerly direction for a distance of 3.9 kilometres to Work No. 42 including accesses for construction from the public highway and temporary haul roads;

Work No. 40 – a temporary construction compound to the north side of Sutterton Drove including access from the public highway;

Work No. 41 – a temporary construction compound to the west side of Claydike Bank including access from the public highway;

Work No. 42 – up to 6 electrical circuits for the transmission of high voltage alternating current electricity laid underground in cable ducts from Work No. 39 in a generally south-south westerly direction for a distance of 1.8 kilometres to Work No. 44 including accesses for construction from the public highway and temporary haul roads;

Work No. 43 – a temporary construction compound to the north side of the A17 highway including access from the public highway;

Work No. 44 – up to 6 electrical circuits for the transmission of high voltage alternating current electricity laid underground in cable ducts from Work No. 42 in a generally south-south westerly direction for a distance of 0.6 kilometres to Work No. 46 including accesses for construction from the public highway and temporary haul roads;

Work No. 45 – a temporary construction compound to the south side of the A17 highway including access from the public highway;

Work No. 46 – up to 6 electrical circuits for the transmission of high voltage alternating current electricity laid underground in cable ducts from Work No. 44 in a generally south westerly direction for a distance of 3.4 kilometres to Work No. 50 including accesses for construction from the public highway and temporary haul roads;

Work No. 47A – a temporary construction compound to the west side of the A17 highway and to the north of Work No. 49 including access from the public highway;

Work No. 48 – a permanent access from the A17 to Work No. 50 including security gates;

Work No. 49 – a temporary access from the A17 to Work No. 50 including security fencing and access from the public highway;

Work No. 50 –

- (a) the substation enabling works;
- (b) Work No. 50A – a compound for the connection of the electrical circuits to the transmission network (the “substation compound”) containing (but not limited to) switchgear and electrical equipment including power transformers, reactive compensation equipment, filters, cooling equipment, control and welfare buildings, lightning rods, internal roads, security fencing and other associated equipment, structures and buildings including noise-attenuation works;
- (c) landscaping and drainage, utilities connections, temporary and permanent access roads, a security gate, cabling and ducting to the north west of the existing National Grid substation at Bicker Fen;

Work No. 51 – the temporary construction compound for Work No. 50;

Work No. 52 – up to 4 electrical circuits for the transmission of high voltage alternating current electricity including earthing connections between Work Nos. 50 and 55 laid underground in cable ducts from Work No. 50 in a generally south easterly direction for a distance of 1.3 kilometres to the connection point at the National Grid substation at Bicker Fen including earthing connections between Work Nos. 50 and 54, accesses for construction, operations and maintenance;

Work No. 53 – a temporary construction compound to the north side of the National Grid substation at Bicker Fen.

**2. Associated development comprising the following—**

Work No. 54 –

- (a) unlicensed works at the National Grid substation at Bicker Fen including cable ducts and cabling;

- (b) Work No. 54A – connecting bays at the northern part of the National Grid substation at Bicker Fen housing circuit breakers, cable sealing ends, dis-connectors, surge arrestors, transformers, busbars and busbar clamps, measuring equipment and relay/marshalling rooms;
- (c) Work No. 54B – a connection bay at the southern part of the National Grid substation at Bicker Fen housing circuit breakers, cable sealing ends, dis-connectors, surge arrestors, transformers, busbars and busbar clamps, measuring equipment and relay/marshalling rooms;
- (d) electrical earthing works;

Work No. 55 – up to 2 electrical circuits for the transmission of high voltage alternating current electricity including earthing connections between Work Nos. 52 and 54 laid underground in cable ducts from Work No. 52 in a generally southerly direction for a distance of 0.3 kilometres to Work No. 54B including landscaping;

Work No. 56 – temporary highways alterations.

3. In connection with Work Nos. 2 to 56, further associated development shown on the plans referred to in, or approved under, the Requirements including—

- (a) ramps, means of access and footpaths;
- (b) bunds, embankments, swales, landscaping and boundary treatments;
- (c) habitat creation;
- (d) boreholes;
- (e) jointing bays, manholes, link boxes, marker posts and other works associated with the installation of cable ducts and electrical circuits including trenchless techniques, tunnelling works beneath sea defences, watercourses and roads and trenchless techniques launch and receptor pits;
- (f) water supply works, foul drainage provision and surface water management systems;
- (g) temporary structures including those needed to facilitate the crossing of watercourses including bailey bridges;
- (h) temporary construction laydown areas and compounds including accesses and their restoration;
- (i) temporary drilling and tunnelling compounds and working areas and their restoration;
- (j) works to remove, reconstruct or alter the position of apparatus including mains, sewers, drains, cables and pipelines; and
- (k) such other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised project,

which fall within the scope of the works assessed by the environmental statement.

4. The grid co-ordinates for the part of the authorised project which is seaward of MHWS are specified below and more particularly shown on the Order limits plans—

**Co-ordinates for Order limits seaward of MHWS**

<i>Point</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>	<i>Point</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>
AI	53° 32' 16.234" N	0° 51' 40.692" E	G	53° 17' 0.671" N	0° 23' 40.084" E
AJ	53° 24' 31.248" N	0° 59' 39.385" E	H	53° 17' 20.885" N	0° 24' 5.700" E
AS	53° 22' 56.159" N	0° 46' 8.201" E	I	53° 17' 25.462" N	0° 24' 16.736" E
AT	53° 22' 35.877" N	0° 45' 39.771" E	J	53° 19' 9.809" N	0° 25' 20.599" E
AU	53° 20' 58.870" N	0° 45' 30.470" E	K	53° 19' 38.094" N	0° 25' 44.472" E
AV	53° 20' 18.829" N	0° 44' 23.598" E	L	53° 20' 27.460" N	0° 26' 42.541" E
AW	53° 20' 2.612" N	0° 43' 18.260" E	M	53° 20' 43.520" N	0° 27' 29.635" E
AX	53° 20' 1.822" N	0° 41' 58.661" E	N	53° 20' 46.705" N	0° 28' 38.086" E



AY	53° 20' 4.107" N	0° 41' 22.273" E	O	53° 20' 39.043" N	0° 34' 13.401" E
AZ	53° 20' 1.898" N	0° 40' 30.850" E	P	53° 20' 31.962" N	0° 35' 58.445" E
BA	53° 19' 58.395" N	0° 39' 51.749" E	Q	53° 20' 32.022" N	0° 36' 28.081" E
BB	53° 19' 59.805" N	0° 37' 16.544" E	R	53° 20' 35.314" N	0° 37' 11.880" E
BC	53° 19' 56.528" N	0° 36' 32.931" E	S	53° 20' 33.895" N	0° 39' 46.605" E
BD	53° 19' 56.382" N	0° 35' 55.878" E	T	53° 20' 37.303" N	0° 40' 24.656" E
BE	53° 20' 3.584" N	0° 34' 8.235" E	U	53° 20' 39.751" N	0° 41' 23.781" E
BF	53° 20' 11.127" N	0° 28' 36.545" E	V	53° 20' 37.410" N	0° 42' 1.047" E
BG	53° 20' 7.964" N	0° 27' 43.904" E	W	53° 20' 37.931" N	0° 43' 9.122" E
BH	53° 20' 1.938" N	0° 27' 23.706" E	X	53° 20' 47.002" N	0° 43' 46.826" E
BI	53° 19' 17.721" N	0° 26' 33.517" E	Y	53° 21' 11.473" N	0° 44' 32.598" E
BJ	53° 18' 55.345" N	0° 26' 14.927" E	Z	53° 22' 14.571" N	0° 44' 36.340" E
BK	53° 17' 2.447" N	0° 25' 4.201" E	AA	53° 22' 50.453" N	0° 44' 45.224" E
BL	53° 16' 54.685" N	0° 24' 46.623" E	AB	53° 23' 37.771" N	0° 45' 8.186" E
BM	53° 16' 37.940" N	0° 24' 25.834" E	AC	53° 24' 10.968" N	0° 45' 42.526" E
BN	53° 16' 4.626" N	0° 23' 15.114" E	AD	53° 25' 2.619" N	0° 44' 32.111" E
BO	53° 15' 55.271" N	0° 21' 40.714" E	AE	53° 28' 4.193" N	0° 44' 10.434" E
BP	53° 15' 52.991" N	0° 20' 45.646" E	AF	53° 28' 19.752" N	0° 44' 13.790" E
BQ	53° 15' 51.994" N	0° 20' 34.705" E	AG	53° 29' 12.732" N	0° 41' 28.840" E
BR	53° 15' 51.249" N	0° 19' 42.683" E	AH	53° 31' 42.626" N	0° 42' 58.368" E
BS	53° 15' 58.542" N	0° 19' 24.827" E	AR	53° 24' 6.378" N	0° 48' 43.578" E
BT	53° 16' 0.730" N	0° 19' 19.467" E	AQ	53° 24' 46.233" N	0° 49' 44.994" E
A	53° 16' 6.688" N	0° 19' 15.877" E	AP	53° 25' 38.625" N	0° 52' 49.002" E
B	53° 16' 23.419" N	0° 19' 35.327" E	AO	53° 25' 38.029" N	0° 53' 0.402" E
C	53° 16' 27.466" N	0° 20' 29.534" E	AN	53° 25' 21.824" N	0° 53' 25.522" E
D	53° 16' 28.433" N	0° 20' 40.181" E	AM	53° 24' 38.801" N	0° 55' 38.414" E
E	53° 16' 30.664" N	0° 21' 34.324" E	AL	53° 24' 39.002" N	0° 56' 17.146" E
F	53° 16' 38.211" N	0° 22' 53.464" E	AK	53° 24' 31.246" N	0° 56' 45.454" E

## PART 2

### Ancillary works

Works and operations within the Order limits and which fall within the scope of the work assessed by the environmental statement comprising—

- (a) temporary landing places, moorings or other means of accommodating vessels in the construction or maintenance of the authorised development;
- (b) temporary or permanent buoys, beacons, fenders and other navigational warning or ship impact protection works;
- (c) temporary works for the protection of land or structures affected by the authorised development;
- (d) cable route preparation works including grapnel runs and pre-lay jetting; and
- (e) the removal, reconstruction or alteration of the position of subsea cables.

## PART 3

### Requirements

#### **Interpretation**

##### **1. In this Part—**

“above-ground infrastructure” means the buildings, busbars, capacitors, reactors, reactive power compensation equipment, filters, cooling equipment, control and welfare buildings, lightning rods, security fencing and other associated equipment, structures and buildings including noise-attenuation panels required for the intermediate electrical compound and the substation compound (Work No. 50A);

“AIS” means air-insulated switchgear;

“AOD” means above ordnance datum;

“GIS” means gas-insulated switchgear;

“stage” means one of the following 28 stages of the onshore works—

- (a) the IEC enabling works (using the temporary construction compound at Work No. 10);
- (b) the substation enabling works (using the temporary construction compound at Work No. 51);
- (c) Work Nos. 3 and 4 including Work Nos. 3A and 3B (using the temporary construction compound at Work No. 3B);
- (d) Work No. 5 (using the temporary construction compound at Work No. 6);
- (e) Work No. 8 (using the temporary construction compound at Work No. 7);
- (f) Work No. 9 excluding the IEC enabling works and Work No. 9A (using the temporary construction compound at Work No. 10);
- (g) Work No. 9A (using the temporary construction compound at Work No. 10);
- (h) Work No. 11 (using the temporary construction compound at Work No. 12);
- (i) Work No. 14 (using the temporary construction compounds at Work Nos. 13 and 15);
- (j) Work No. 17 (using the access at Work No. 16);
- (k) Work No. 19 (using the temporary construction compound at Work No. 18);
- (l) Work No. 21 (using the temporary construction compound at Work No. 20);
- (m) Work No. 22 (using the temporary construction compound at Work No. 23);
- (n) Work No. 24 (using the temporary construction compound at Work No. 25);
- (o) Work No. 26 (using the temporary construction compounds at Work Nos. 27 and 28);
- (p) Work No. 29 (using the temporary construction compound at Work No. 30);
- (q) Work No. 31 (using the temporary construction compound at Work No. 32);
- (r) Work No. 33 (using the temporary construction compounds at Work Nos. 34, 35 and 36);
- (s) Work No. 37 (using the temporary construction compound at Work No. 38);
- (t) Work No. 39 (using the temporary construction compounds at Work Nos. 40 and 41);
- (u) Work No. 42 (using the temporary construction compound at Work No. 43);
- (v) Work No. 44 (using the temporary construction compound at Work No. 45);
- (w) Work No. 46 (using the temporary construction compound at Work No. 47A or 51 and access at Work No. 48);
- (x) Work Nos. 48 and 49 (using the temporary construction compound at Work No. 47A);
- (y) Work No. 50 excluding the substation enabling works and Work No. 50A (using the temporary construction compound at Work No. 51);
- (z) Work No. 50A (using the temporary construction compound at Work No. 51);

- (aa) Work No. 52 (using the temporary construction compound at Work No. 53);
  - (bb) Work No. 55 (using the temporary construction compound at Work No. 53),
- or such other stage of the onshore works agreed in writing with the relevant planning authority.

### **Time limit for commencing authorised development**

- 2. The authorised development must be commenced on or before 26th September 2021.

### **Detailed offshore design parameters**

- 3.—(1) The total number of cables comprising Work No. 1 must not exceed 6.
- (2) The total length of the cables comprising Work No. 1 must not exceed 396 kilometres.
- (3) The total amount of cable protection for the cables comprising Work No. 1 must not exceed 367,200 square metres and 320,760 cubic metres.
- (4) The finished height of any cable protection must not exceed 10% of the navigable water depth existing before works commence unless otherwise agreed in writing in advance with the MMO and the MCA.

### **Offshore decommissioning**

- 4. No part of the development seaward of MHWS may be commenced until a written decommissioning programme in compliance with any notice served on the undertaker by the Secretary of State under section 105(2) of the Energy Act 2004(a) has been submitted to the Secretary of State for approval.

### **Detailed design onshore**

- 5.—(1) The IEC enabling works and the substation enabling works must not be commenced until details of the ground-raising and stoned site platform have been submitted to and approved by the relevant planning authority.
- (2) No part of Work No. 9A may be commenced until details of the layout, scale and external appearance of the above-ground infrastructure including permanent fencing relating to Work No. 9A have been submitted to and approved by the relevant planning authority.
- (3) No part of Work No. 50A may be commenced until—
  - (a) details of the layout, scale and external appearance of the above-ground infrastructure including permanent fencing relating to Work No. 50A have been submitted to and approved by the relevant planning authority; and
  - (b) the undertaker has notified the relevant planning authority whether AIS or GIS is to be installed for Work No. 50A.
- (4) Any details provided by the undertaker under paragraphs (2) and (3) must, where relevant to that stage, be in accordance with the design principles document.
- (5) Finished floor levels for Work Nos. 9A and 50A must, after consultation with the Environment Agency, be based on the results of topographic surveys.
- (6) In relation to Work No. 3A—
  - (a) the total area in which the landfall transition joint bays may be contained must not exceed 20,288 square metres;
  - (b) the total area of land raising must not exceed 5,000 square metres; and
  - (c) the total number of landfall transition joint bays must not exceed 6.
- (7) In relation to Work No. 9A—

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(a) Section 105(2) was substituted by section 69(2) of the Energy Act 2008.

- (a) the highest part of any building must not exceed 16.54 metres AOD;
  - (b) the highest part of any external electrical equipment, excluding lightning rods, must not exceed 14.04 metres AOD;
  - (c) the total number of lightning rods within the fenced compound must not exceed 4 and the height of any lightning rod must not exceed 21.54 metres AOD;
  - (d) the total area of the fenced compound (excluding its accesses) must not exceed 17,000 square metres; and
  - (e) any GIS building may be located only within the dotted area shown within Work No. 9A on the works plans.
- (8) In relation to Work No. 50A—
- (a) if AIS is installed—
    - (i) the highest part of any building must not exceed 10 metres AOD;
    - (ii) the highest part of any external electrical equipment, excluding lightning rods, must not exceed 15 metres AOD; and
    - (iii) the total area of the fenced compound (excluding its accesses) must not exceed 86,000 square metres;
  - (b) if GIS is installed—
    - (i) the highest part of any building must not exceed 16 metres AOD;
    - (ii) the highest part of any external electrical equipment, excluding lightning rods, must not exceed 13.5 metres AOD; and
    - (iii) the total area of the fenced compound (excluding its accesses) must not exceed 69,000 square metres; and
  - (c) the total number of lightning rods within the fenced compound must not exceed 22 and the height of any lightning rod must not exceed 21 metres AOD.
- (9) In relation to Work No. 54—
- (a) the total number of connection bays must not exceed 2;
  - (b) the connection bays may be located only within the hatched areas shown within Work Nos. 54A and 54B on the works plans; and
  - (c) if 2 connection bays are accommodated within Work No. 54A, Work Nos. 54B and 55 must not be constructed.
- (10) Unless otherwise agreed by the relevant planning authority, after consultation with the relevant drainage boards, the Environment Agency and the highways authority, where identified in the crossings schedule for the purpose of passing under a relevant obstruction, trenchless techniques must be used to install the cable ducts and electrical circuits within Work Nos. 2, 3, 5, 8, 11, 14, 17, 19, 21, 22, 24, 26, 29, 31, 33, 37, 39, 42, 44 and 46.
- (11) The undertaker must—
- (a) at least 3 months before the commencement of the onshore cable works—
    - (i) submit to the relevant planning authority a cable route sequencing plan including details of the indicative sequencing of the onshore cable works; and
    - (ii) notify the public and owners of land of the sequencing of the onshore cable works in accordance with the communications plan approved as part of the code of construction practice;
  - (b) before construction of any stage of the onshore cable works, submit to the relevant planning authority a copy of the cable installation plans provided to owners in accordance with the soil management plan approved as part of the code of construction practice; and
  - (c) within 3 months of the completion of the installation of the cable circuits for any stage of the onshore cable works, submit to the relevant planning authority as built plans for that stage showing the alignment of the cable circuits.

(12) Any plans submitted in accordance with paragraph (11)(a) and (b) may be updated from time to time and must be submitted to the relevant planning authority and communicated to owners and the public in accordance with the code of construction practice.

(13) In this Requirement, “onshore cable works” means Work Nos. 3, 5, 8, 11, 14, 17, 19, 21, 22, 24, 26, 29, 31, 33, 37, 39, 42, 44, 46 and 52.

### **Provision of landscaping**

**6.**—(1) Work Nos. 9A and 50A must not be commenced until a written landscaping scheme and associated work programme (in accordance with the outline landscape strategy and ecological management plan) for the relevant work has been submitted to and approved by the relevant planning authority.

(2) The written landscaping scheme must include details of all proposed hard and soft landscaping works including—

- (a) location, number, species, size and planting density of any proposed planting including any trees; and
- (b) implementation timetables for all landscaping works.

(3) If Work No. 55 is constructed before the completion of the unlicensed works, a written landscaping scheme and associated work programme (in accordance with the outline landscape strategy and ecological management plan) must be submitted to and approved by the relevant planning authority after consultation with National Grid Electricity Transmission plc (company number 02366977).

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

**7.**—(1) All landscaping works must, where relevant, be carried out in accordance with the landscaping scheme approved under Requirement 6.

(2) Any tree or shrub planted as part of an approved landscaping scheme that, within 10 years after planting, is removed, dies or becomes, in the reasonable opinion of the relevant planning authority, seriously damaged or diseased must be replaced in the first available planting season with a specimen of the same species and size as that originally planted.

### **Highway accesses and improvements**

**8.**—(1) No stage of the onshore works may be commenced until for that stage written details (which accord with the outline access management plan) of the siting, design, layout, sequencing and timing and any access management measures for any new permanent or temporary means of access to a highway to be used by vehicular traffic, or any alteration to an existing means of access to a highway, have, after consultation with the highway authority, been submitted to and approved by the relevant planning authority.

(2) The highway accesses for that stage must be constructed or altered, and the works described in paragraph (1) in relation to access management measures carried out, in accordance with the approved details before the relevant highway accesses are brought into use for the purposes of the authorised development.

(3) No stage of the onshore works may be commenced until for that stage a scheme of temporary highways alterations within the highway boundary has, after consultation with the highway authority, been submitted to and approved by the relevant planning authority.

(4) The temporary highways alterations for that stage must be constructed in accordance with the approved scheme before they are brought into use for the purposes of the authorised development.

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

**9.**—(1) No stage of the onshore works may be commenced until for that stage written details of all proposed fences, walls or other means of enclosure have been submitted to and approved by the relevant planning authority.

(2) All temporary construction compounds must remain securely fenced in accordance with the approved details at all times during construction of the onshore works.

(3) Temporary fencing, except temporary fencing for the beach works, must be removed on completion of the relevant stage of the onshore works.

(4) Temporary fencing for the beach works must be removed on completion of construction of those works excluding testing.

(5) Any approved permanent fencing in relation to Work Nos. 9A and 50A must be completed before the relevant Work is brought into use and maintained for the operational lifetime of Work Nos. 9A and 50A.

(6) In this Requirement, “beach works” means Work No. 2 and works related to the installation of cable ducts and cable circuits within Work No. 3 but excluding Work Nos. 3A and 3B.

### **Requirement for surface water drainage scheme**

**10.**—(1) Work Nos. 9, 50, 54A and 54B must not be commenced until a surface water drainage scheme for the Work, or part of the Work, in question has, after consultation with Lincolnshire County Council and the relevant drainage boards, been submitted to and approved by the relevant planning authority.

(2) The surface water drainage scheme submitted under paragraph (1) must be based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the authorised development and must be in accordance with the surface water drainage strategy submitted as part of the flood risk assessment included within the environmental statement.

(3) Where relevant to the Work, or part of the Work, in question, the scheme must include—

- (a) provision for limiting the surface water run-off generated by all rainfall events up to the 1 in 100 year plus 20% (for climate change) critical rain storm so that it will not exceed the run-off from the undeveloped site and not increase the risk of flooding off-site;
- (b) provision of surface water run-off attenuation storage to accommodate the difference between the allowable discharge rates and all rainfall events up to the 1 in 100 year plus 20% (for climate change) critical rain storm;
- (c) detailed design (plans, cross-sections and calculations) in support of any surface water drainage scheme including details of any attenuation system and the outfall arrangements;
- (d) details of how the scheme is to be maintained and managed after completion; and
- (e) details of percolation testing (carried out in accordance with Building Research Establishment Digest 365 or Construction Industry Research and Information Association guidance R156) to demonstrate that the use of infiltration techniques are suitable.

(4) The surface water drainage scheme must be implemented as approved.

(5) In this Requirement, “relevant drainage boards” means the drainage boards within the meaning of section 25 of the Land Drainage Act 1991(a) for the area in which the Work is situated.

### **Requirement for foul water drainage scheme**

**11.**—(1) Work Nos. 9 and 50 must not be commenced until a detailed foul water drainage scheme (including means of pollution control) for the Work, or part of the Work, in question has,

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(a) Section 25 was amended by paragraph 33 of Schedule 2 to the Flood and Water Management Act 2010.

after consultation with Anglian Water Services Limited (company number 02366656) and the Environment Agency, been submitted to and approved by the relevant planning authority.

(2) The foul water drainage scheme must be implemented as approved.

### **Archaeology**

**12.**—(1) No stage of the onshore works may be commenced until for that stage a written scheme of investigation in accordance with the outline onshore written scheme of investigation has been submitted to and approved by the relevant planning authority.

(2) The approved scheme must—

- (a) identify areas where archaeological work is required; and
- (b) the measures to be taken to protect, record or preserve any significant archaeological remains (as defined in the outline onshore written scheme of investigation) that may be found.

(3) Pre-construction archaeological investigations and pre-commencement material operations which involve intrusive ground works may take place only in accordance with a specific written scheme of investigation which—

- (a) is in accordance with the details set out in the outline onshore written scheme of investigation; and
- (b) has been submitted to and approved by the relevant planning authority.

(4) Any archaeological works must be carried out by a suitably qualified and competent person or body previously notified to the relevant planning authority.

(5) The written scheme of investigation must be implemented as approved.

### **Ecological management plan and removal of hedgerows**

**13.**—(1) No stage of the onshore works may be commenced until for that stage a written ecological management plan (which accords with the outline landscape strategy and ecological management plan) reflecting the survey results and ecological mitigation and enhancement measures included in the environmental statement has after consultation with the appropriate statutory nature conservation body been submitted to and approved by the relevant planning authority.

(2) The ecological management plan must include an implementation timetable and measures to be taken to reinstate hedgerows on completion of the relevant stage of the onshore works.

(3) The ecological management plan must be implemented as approved.

(4) Any hedgerow removal or replacement undertaken before approval of the written ecological management plan under paragraph (1) must be carried out in accordance with the details set out in the outline landscape strategy and ecological management plan.

### **Code of construction practice**

**14.**—(1) No stage of the onshore works may be commenced until for that stage a code of construction practice in accordance with the outline code of construction practice (onshore) has, after consultation with the Environment Agency, been submitted to and approved by the relevant planning authority.

(2) The code of construction practice must, where relevant to that stage, cover all the matters set out in the outline code of construction practice (onshore).

(3) The code of construction practice must include—

- (a) a construction method statement including details of the management of public rights of way and methods (including trenchless and non-trenchless techniques) for the crossing of watercourses (main river crossings to be undertaken using trenchless techniques only);
- (b) a health and safety plan;

- (c) a noise and vibration management plan;
- (d) an air quality management plan;
- (e) a soil management plan;
- (f) an artificial light emissions plan;
- (g) a site waste management plan;
- (h) a pollution prevention and emergency incident response plan;
- (i) a construction environment management plan; and
- (j) a communications plan.

(4) The soil management plan (which forms part of the code of construction practice) must, where relevant to a stage, secure that any link box located in a place where agricultural machinery may pass over it has a cover that is—

- (a) capable of bearing agricultural machinery loads; and
- (b) designed so as to allow the wheels or tracks of agricultural machinery to pass over the link box without damaging the wheels or tracks of the machinery or the link box.

(5) The code of construction practice must be implemented as approved.

### **Unexpected contamination**

**15.**—(1) If, during any stage of the authorised development, contamination not identified or addressed within the relevant code of construction practice is found to be present within the Order limits, no further development in the vicinity of the contamination may be carried out until a written scheme to deal with the associated risks has been submitted to and approved by the relevant planning authority after consultation with the Environment Agency.

(2) The scheme must include an investigation and assessment report, prepared by a specialist consultant notified in advance to the relevant planning authority, the purpose of which is to identify the extent of any contamination and the remedial measures to be taken to render the land fit for its intended purpose, together with a management plan which sets out long-term measures with respect to any contaminants remaining on site.

(3) No remedial work identified in accordance with paragraph (2) may be carried out until the scheme has been approved.

(4) The scheme and management plan must be implemented as approved.

### **Control of operational artificial light emissions**

**16.**—(1) Work Nos. 9A and 50A must not be brought into operation until a written scheme for the management and mitigation of artificial light emissions for the relevant Work has been submitted to and approved by the relevant planning authority.

(2) The approved schemes for the management and mitigation of artificial light emissions must be implemented and maintained during the lifetime of Work Nos. 9A and 50A.

### **Construction hours**

**17.**—(1) Except as otherwise agreed in the code of construction practice and subject to paragraphs (2) to (4), construction of the onshore works and construction-related traffic movements to or from the site of the relevant Work may take place only between 7 a.m. and 7 p.m. from Monday to Saturday, with no activity on Sundays or bank holidays.

(2) If agreed in advance with the relevant planning authority, construction of the onshore works and construction-related traffic movements to or from the site of the relevant Work may take place outside the hours specified in paragraph (1) for certain identified works including—

- (a) where continuous periods of construction are required, for works such as concrete pouring and finishing, electrical circuit pulling and jointing and testing;



- (b) for the delivery and unloading of abnormal loads;
- (c) for the landfall works; and
- (d) for any other time-critical element of the onshore works.

(3) Except as provided in paragraph (4), all construction works which are to be undertaken outside the hours specified in paragraph (1) must be agreed in advance with the relevant planning authority.

(4) In respect of trenchless techniques—

- (a) where continuous 24-hour working is required, the undertaker must notify the relevant planning authority in advance of such works;
- (b) where a trenchless technique is to take place within 100 metres of an occupied dwelling, the works must take place within the hours specified in paragraph (1) unless otherwise agreed in advance with the resident of that dwelling and notified to the relevant planning authority.

### **Control of noise during operational phase**

**18.**—(1) The rating level of the overall operational noise immissions from Work No. 9A or 50A must not exceed 35 dB LAeq (5 min.) free-field (as defined in and measured in accordance with BS4142:2014 including any relevant penalties for tonal or impulsive character) at any residential property that lawfully exists on the date on which this Order is made.

(2) In the event of a complaint to the relevant planning authority relating to noise immissions from the operation of Work No. 9A or 50A which may reasonably be expected to result in levels above those allowed by paragraph (1)—

- (a) the undertaker must submit a proposed measurement and assessment procedure, based on the guidance and assessment methodology outlined in BS4142:2014, including a proposed measurement methodology and monitoring locations to the relevant planning authority for approval;
- (b) measurements must be undertaken in accordance with the approved procedure by an independent consultant appointed by the undertaker in order to determine compliance or otherwise with paragraph (1).

### **Construction traffic**

**19.**—(1) No stage of the onshore works may be commenced until for that stage, after consultation with the highway authority, a construction traffic management plan in accordance with the outline traffic management plan including a contractor travel plan has been submitted to and approved by the relevant planning authority.

(2) Construction and contractor traffic related to the authorised development must use only Work No. 48 or 49 to access Work Nos. 50 to 55.

(3) The timings for the construction of Work Nos. 48 and 49 must be included within the construction method statement approved as part of the relevant code of construction practice.

(4) The construction traffic management plan and contractor travel plan must be implemented as approved.

### **European protected species**

**20.**—(1) No stage of the onshore works may be commenced until for that stage final pre-construction survey work has been carried out to establish whether a European protected species is present on any of the land affected, or likely to be affected, by that stage of the onshore works or in any of the trees to be lopped or felled as part of that stage of the onshore works.

(2) Where a European protected species is shown to be present, the relevant stage of the onshore works may not be commenced until, after consultation with the statutory nature conservation body

and the relevant planning authority, a scheme of protection and mitigation measures has been submitted to and approved by the relevant planning authority.

(3) The relevant stage of the onshore works must be carried out in accordance with the approved scheme.

(4) In this Requirement, “European protected species” means a European protected species of animal or plant within the meaning of Part 3 of the Conservation of Habitats and Species Regulations 2010(a).

### **Restoration of land used temporarily for construction**

**21.**—(1) Any land landward of MHWS which is used temporarily for construction of the onshore works and not ultimately incorporated in permanent works or approved landscaping must be reinstated within 6 months of completion of the relevant stage of the onshore works in accordance with details approved by the relevant planning authority.

(2) Any hedgerow reinstatement must be carried out on accordance with Requirement 13(3).

### **Onshore decommissioning**

**22.** Within 6 months of the cessation of commercial operation of the onshore works, and after consultation with owners in relation to their landholding, an onshore decommissioning plan must be submitted to the relevant planning authority for approval.

### **Local employment**

**23.**—(1) No stage of the onshore works within a relevant planning authority’s area may be commenced until, after consultation with the relevant planning authority and the Greater Lincolnshire Local Enterprise Partnership, a plan detailing arrangements to promote local employment and skills development opportunities related to the onshore works has been notified to the relevant planning authority.

(2) The plan must include proposals for working with the Greater Lincolnshire Local Enterprise Partnership and the relevant planning authority to promote such opportunities.

(3) The employment and skills plan must be implemented and maintained for the duration of the construction of the onshore works.

### **Approval, etc. to be in writing**

**24.** Where the approval or agreement of the Secretary of State or the relevant planning authority is required under a Requirement, that approval or agreement must be given in writing.

### **Amendments to approved plans, etc.**

**25.**—(1) Where a Requirement requires the authorised development to be carried out in accordance with a plan, scheme, statement, strategy or details (the “plan”) approved by the relevant planning authority, the plan must be carried out as approved unless an amendment is previously agreed in writing by the relevant planning authority in accordance with paragraph (2).

(2) Any amendment to the approved plan must be in accordance with the principles and assessments set out in the environmental statement and the other documents set out in article 35; and the agreement of the relevant planning authority to an amendment may be given only where it has been demonstrated to the satisfaction of the relevant planning authority that the amendment is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

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(a) S.I 2010/490. See regulations 40 and 44.

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

## SCHEDULE 2

Article 8

### Streets subject to street works

(1) <i>District</i>	(2) <i>Street subject to street works (see access to works and streets plans)</i>	(3) <i>Grid co-ordinates</i>	
		<i>Easting</i>	<i>Northing</i>
East Lindsey	Hutt/10/4/footpath	554608	376836
East Lindsey		554503	376813
East Lindsey	Ande/17/2/footpath	554237	376293
East Lindsey	Ande/25/1/footpath	553749	375398
East Lindsey	Sea Road	553747	375899
East Lindsey	Roman Bank	554325	376452
East Lindsey	Roman Bank	554192	376734
East Lindsey	Hutt/10/4/footpath	554197	376740
East Lindsey	Ande/22/4/footpath	553722	375727
East Lindsey	Ande/23/1/footpath	553722	375727
East Lindsey	Ande/22/3/footpath	553722	375727
East Lindsey	Mumb/26/1/footpath	553404	375064
East Lindsey	Mumb/59/8/footpath	553278	374481
East Lindsey	Mumb/61/1/footpath	553076	374192
East Lindsey	Langham Road	552852	373850
East Lindsey		552745	372633
East Lindsey	Sloothby High Lane	552768	371237
East Lindsey	Listoft Lane	552737	371863
East Lindsey	Hogs/58/2/footpath	552716	373428
East Lindsey	Marsh Lane	552235	367778
East Lindsey	Ingoldmells Road	551927	366133
East Lindsey	Chalk Lane	551979	366293
East Lindsey	Younger's Lane	551854	365781
East Lindsey	BurM/265/1/footpath	551849	365045
East Lindsey	Skegness Road	551884	364653
East Lindsey	Skegness Road	551677	364700
East Lindsey	BurM/261/2/footpath	551210	364293
East Lindsey	Low Lane	549737	363928
East Lindsey	Billgate Lane	550874	364061
East Lindsey	High Lane	549541	363837
East Lindsey	Lymn Bank	547595	361881
East Lindsey	Spilsby Road	547576	361869
East Lindsey	Tip Lane	547187	361492
East Lindsey	Tip Lane	546959	361475
East Lindsey	Lymn Bank	546707	361686
East Lindsey	Harrison's Lane	545951	360772
East Lindsey		546451	360602
East Lindsey	Fendike Bank	545225	360887
East Lindsey		544335	360672
East Lindsey		544406	360646

East Lindsey	Spilsby Road	540547	358398
East Lindsey		538464	357361
East Lindsey	Fodder Dike Bank	537270	356983
East Lindsey	Black Drove	536854	356970
East Lindsey		535854	355477
East Lindsey	Main Road	535171	354456
East Lindsey	Thorndales Lane	535143	354569
East Lindsey	Main Road	535164	354554
East Lindsey	Westhouses	534385	353879
East Lindsey	Staunt Road	532754	352939
East Lindsey		532759	352950
East Lindsey		532704	352947
East Lindsey	Carrington Road	531478	351306
East Lindsey	Westville Road	531252	350893
East Lindsey	Canister Lane	530901	350507
East Lindsey	Peacock's Road	530071	349321
East Lindsey	Leagate Road	529247	348560
East Lindsey	Mere Booth Road	528535	348075
Boston (B)	Langrick Road	526770	347276
Boston and South Holland	Brot/2/1/footpath	526284	347004
Boston (B)	Kirton Drove	525143	346217
Boston (B)	North Forty Foot Bank	525615	346514
Boston (B)	Sutterton Drove	524323	345745
Boston (B)	Claydike Bank	523493	345383
Boston (B)	Claydike Bank	523450	345437
Boston (B)		521383	343290
Boston (B)	Station Road	521732	342951
Boston (B)		521729	342991
Boston (B)		521273	343376
Boston (B)	Station Road	522154	342298
Boston (B)	Doubletwelves Drove	519105	340112
Boston (B)	Bicker Drove	519871	339207
Boston (B)		519930	338732
East Lindsey		546596	367333
East Lindsey		546845	367295
East Lindsey	Sausthorpe Road	540505	367977
East Lindsey		537720	363658
Boston (B)	Boardsides	530280	343449
Boston (B)	Sleaford Road	530692	343547
Boston (B)	John Adams Way	532582	343678
Boston (B)	Liquorpond Street	532517	343690
Boston (B)	South End	532834	343751
Boston (B)	John Adams Way	532884	343787
Boston (B)	John Adams Way	532805	343750

### SCHEDULE 3

Article 9

#### Streets to be temporarily stopped up

(1)	(2)	(3)	(4)	(5)	(6)	(7)
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District	Streets to be temporarily stopped up (see access to works and streets plans)	Grid co-ordinates (start)		Identifier	Grid co-ordinates (end)		Identifier	Extent of stopping up
		Easting	Northing		Easting	Northing		
East Lindsey								
	Hutt/10/4/footpath	554608	376836	Cx	554704	376859	Cy	
	Ande/17/2/footpath	554226	376295	Dx	554130	376277	Dy	
	Roman Bank	554191	376754	AC	554194	376713	AD	41
	Roman Bank	554311	376482	AE	554338	376422	AF	66
		554197	376754	AA	554809	376886	AB	629
	Hutt/10/4/footpath	554197	376740	Ca	554815	376888	Cb	
	Sea Road	553723	375923	AG	553771	375876	AH	67
	Langham Road	552820	373849	AI	552884	373848	AJ	64
		552692	372642	AK	552797	372624	AL	107
	Ande/25/1/footpath	553583	375327	Ha	553564	375283	Hb	
	Ande/25/1/footpath	553535	375216	Hx	553462	375199	Hy	
	Ande/22/4/footpath	553722	375727	Ex	553728	375729	Ey	
	Ande/23/1/footpath	553722	375727	Fx	553725	375719	Fy	
	Ande/22/3/footpath	553722	375727	Gx	553652	375683	Gy	
	Mumb/26/1/footpath	553404	375064	Ix	553450	375020	Iy	
	Mumb/59/8/footpath	553278	374481	Jx	553337	374466	Jy	
	Mumb/61/1/footpath	553076	374192	Kx	553089	374117	Ky	
	Listoft Lane	552705	371875	AM	552768	371875	AN	67
	Sloothby High Lane	552738	371225	AO	552798	371248	AP	64
	Marsh Lane	552225	367773	AQ	552415	367878	AR	217
	Hogs/58/2/footpath	552716	373428	Lx	552773	373332	Ly	
	Chalk Lane	551931	366283	AS	552026	366303	AT	97
	Ingoldmells Road	551883	366094	AU	551971	366172	AV	117
	Younger's Lane	551817	365777	AW	551891	365785	AX	74
	BurM/265/1/footpath	551849	365045	Mx	551917	365039	My	
	Skegness Road	551624	364712	AY	551730	364688	AZ	108
	Skegness Road	551798	364673	BA	551970	364634	BB	176
	Billgate Lane	550834	364072	BC	550915	364050	BD	84

	BurM/261/2/ footpath	551210	364293	Nx	551249	364246	Ny	
	Low Lane	549721	363954	BE	549753	363902	BF	61
	High Lane	549526	363863	BG	549555	363810	BH	60
	Lymn Bank	547579	361892	BI	547611	361870	BJ	38
	Spilsby Road	547579	361892	BK	547574	361845	BL	47
	Tip Lane	547140	361487	BM	547235	361497	BN	95
	Tip Lane	546955	361488	BO	546973	361469	BP	26
	Lymn Bank	546690	361682	BQ	546722	361691	BR	33
		546434	360599	BS	546468	360605	BT	34
	Harrison's Lane	545940	360803	BU	545962	360742	BV	65
	Fendike Bank	545231	360917	BW	545222	360857	BX	60
		544301	360685	BY	544369	360660	BZ	72
		544390	360652	CA	544421	360641	CB	33
		541839	359030	CC	541939	359060	CD	104
	Spilsby Road	540555	358432	CE	540539	358364	CF	70
		538472	357404	CG	538456	357318	CH	87
	Black Drove	536858	356990	CI	536850	356951	CJ	40
	Fodder Dike Bank	537235	356981	CK	537305	356982	CL	70
		535819	355479	CM	535888	355475	CN	69
	Main Road	535152	354586	CO	535159	354575	CP	13
	Thorndales Lane	535127	354562	CQ	535159	354519	CR	60
	Main Road	535169	354510	CS	535166	354401	CT	109
	Westhouses	534374	353911	CU	534396	353847	CV	68
	Staunt Road	532754	353010	CW	532754	352868	CX	141
		532688	352946	CY	532720	352948	CZ	33
		532725	352948	DA	532793	352953	DB	69
	Carrington Road	531475	351340	DC	531482	351272	DD	68
	Westville Road	531225	350908	DE	531278	350879	DF	60
	Canister Lane	530869	350498	DG	530934	350516	DH	67
	Peacock's Road	530060	349349	DI	530083	349293	DJ	60
	Leagate Road	529222	348584	DK	529273	348538	DL	69
	Mere Booth Road	528507	348090	DM	528563	348060	DN	63
<b>Boston (B)</b>								
	Langrick Road	526754	347301	DO	526786	347250	DP	60
	North Forty Foot Bank	525586	346544	DQ	525643	346485	DR	81
	Kirton Drove	525126	346235	DS	525160	346198	DT	50
	Sutterton Drove	524304	345769	DU	524342	345722	DV	60
	Claydike Bank	523441	345449	DW	523459	345426	DX	30
	Claydike Bank	523474	345407	DY	523512	345360	DZ	61
		521246	343393	EA	521301	343358	EB	66
		521341	343325	EC	521424	343255	ED	109
	Station Road	522137	342325	EE	522171	342271	EF	63
	Doubletwelves	519277	340463	EG	518939	339758	EH	782

	Drove							
	Bicker Drove	519836	339223	EI	519906	339192	EJ	77
		519942	338749	EK	519922	338712	EL	42
Boston and South Holland								
	Brot/2/1/ footpath	526284	347004	Px	526244	346908	Py	

## SCHEDULE 4

Article 10

### Access to works

(1) <i>District</i>	(2) <i>Grid reference points</i>		(3) <i>Description of access (see access to works and streets plans)</i>
	<i>Easting</i>	<i>Northing</i>	
East Lindsey	554197	376740	AC1
East Lindsey	554327	376455	AC2
East Lindsey	554323	376451	AC3
East Lindsey	553747	375901	AC4
East Lindsey	553746	375896	AC5
East Lindsey	552855	373852	AC6
East Lindsey	552853	373849	AC7
East Lindsey	552742	372636	AC8
East Lindsey	552742	372631	AC9
East Lindsey	552737	371866	AC10
East Lindsey	552738	371858	AC11
East Lindsey	552766	371242	AC12
East Lindsey	552767	371236	AC13
East Lindsey	552239	367778	AC14
East Lindsey	551981	366294	AC15
East Lindsey	551977	366291	AC16
East Lindsey	551927	366135	AC17
East Lindsey	551926	366129	AC18
East Lindsey	551855	365783	AC19
East Lindsey	551854	365778	AC20
East Lindsey	551675	364696	AC22
East Lindsey	551915	364651	AC21
East Lindsey	550882	364063	AC23
East Lindsey	550880	364061	AC24
East Lindsey	549739	363926	AC25
East Lindsey	549736	363924	AC26
East Lindsey	549545	363842	AC27
East Lindsey	549540	363839	AC28
East Lindsey	547600	361883	AC29
East Lindsey	547572	361865	AC30
East Lindsey	547193	361494	AC31
East Lindsey	547190	361490	AC32
East Lindsey	546955	361473	AC33
East Lindsey	546708	361684	AC34
East Lindsey	546450	360601	AC35

East Lindsey	545954	360773	AC36
East Lindsey	545950	360773	AC37
East Lindsey	545226	360888	AC38
East Lindsey	545223	360888	AC39
East Lindsey	544407	360643	AC40
East Lindsey	541886	359040	AC41
East Lindsey	541883	359034	AC42
East Lindsey	540547	358397	AC43
East Lindsey	540541	358395	AC44
East Lindsey	538462	357336	AC45
East Lindsey	536854	356969	AC46
East Lindsey	535857	355480	AC47
East Lindsey	535854	355477	AC48
East Lindsey	535175	354463	AC49
East Lindsey	535169	354463	AC50
East Lindsey	534385	353879	AC51
East Lindsey	532759	352955	AC52
East Lindsey	532705	352945	AC53
East Lindsey	531481	351305	AC54
East Lindsey	531475	351300	AC55
East Lindsey	531252	350895	AC56
East Lindsey	530903	350511	AC57
East Lindsey	530902	350505	AC58
East Lindsey	530072	349323	AC59
East Lindsey	530069	349322	AC60
East Lindsey	529245	348564	AC61
East Lindsey	529240	348562	AC62
East Lindsey	528537	348077	AC63
East Lindsey	528534	348074	AC64
Boston (B)	526773	347277	AC65
Boston (B)	526767	347274	AC66
Boston (B)	525599	346533	AC67
Boston (B)	525146	346219	AC68
Boston (B)	525143	346216	AC69
Boston (B)	524325	345746	AC70
Boston (B)	524321	345743	AC71
Boston (B)	523499	345381	AC72
Boston (B)	523449	345438	AC73
Boston (B)	521386	343293	AC74
Boston (B)	521381	343287	AC75
Boston (B)	522152	342298	AC76
Boston (B)	519870	339210	AC77
Boston (B)	519871	339206	AC78
Boston (B)	519909	338733	AC79

SCHEDULE 5

Article 18

Land in which only new rights, etc. may be acquired

East Lindsey District

(1)	(2)
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<i>Number of plot shown on land plans</i>	<i>Purpose for which rights may be acquired</i>
<p>01/01, 01/02, 01/06, 01/08, 02/01, 02/03, 02/05, 02/06, 02/07, 02/10, 02/12, 02/14, 02/15, 02/17, 02/18, 03/01, 03/03, 03/04, 04/01, 04/05, 04/09, 04/10, 04/11, 04/13, 04/16, 04/17, 04/18, 05/01, 05/03, 05/06, 05/08, 05/09, 05/10, 05/16, 05/21, 05/30, 05/33, 06/01, 06/02, 06/03, 06/05, 06/07, 06/08, 06/10, 06/11, 06/12, 06/13, 06/14, 07/01, 07/02, 07/05, 07/06, 07/08, 07/11, 07/12, 07/13, 07/14, 07/18, 08/01, 08/03, 08/05, 09/01, 09/02, 09/04, 09/05, 10/01, 10/04, 10/11, 10/12, 10/13, 11/01, 11/02, 11/03, 11/04, 11/06, 11/07, 11/10, 11/12, 11/13, 11/15, 11/16, 12/01, 12/03, 12/04, 12/06, 12/07, 12/08, 12/09, 12/10, 12/11, 12/16, 12/17, 12/21, 12/22, 12/24, 12/26, 13/01, 13/07, 13/11, 13/13, 13/14, 13/15, 13/16, 13/17, 13/21, 13/22, 13/23, 13/24, 15/01, 15/02, 15/04, 15/06, 15/07, 15/11, 15/15, 15/16, 15/17, 15/18, 15/19, 16/01, 16/02, 16/03, 16/05, 16/07, 16/09, 16/11, 16/12, 16/14, 16/15, 16/16, 16/17, 16/20, 16/21, 16/22, 16/23, 16/25, 17/01, 17/02, 17/03, 17/06, 17/07, 17/10, 17/11, 17/12, 17/14, 17/16, 17/17, 17/19, 17/20, 18/01, 18/03, 18/05, 18/07, 18/08, 18/13, 18/14, 18/16, 18/17, 18/18, 18/19, 19/01, 19/04, 19/05, 19/06, 19/08, 19/09, 20/01, 20/02, 20/04, 20/05, 20/06, 20/07, 20/08, 20/10, 20/15, 20/16, 20/17, 21/01, 21/07, 21/09, 22/01, 22/02, 22/05, 22/10, 22/14, 22/15, 22/18, 22/20, 22/21, 22/22, 22/25, 24/01, 24/02, 24/03, 24/05, 24/08, 24/09, 24/10, 24/11, 24/12, 24/13, 25/01, 25/02, 25/03, 25/05, 25/06, 25/07, 25/10, 25/11, 25/12, 25/13, 25/14, 25/15, 25/16, 25/17, 25/18, 25/19, 25/20, 25/22, 25/23, 25/24, 26/01, 26/03, 26/06, 26/07, 26/09, 27/01, 27/06, 27/07, 27/09, 27/11, 27/13, 28/01, 28/02, 28/04, 28/05, 28/08, 28/11, 29/03, 29/04, 29/05, 29/06, 29/07, 29/08, 29/09, 29/12, 29/17, 29/18, 29/19, 29/21, 29/22, 29/23, 30/01, 30/02, 30/07, 30/08, 30/09, 30/10, 30/13, 30/14, 30/15, 30/17, 30/18, 31/01, 31/03, 31/04, 31/05, 31/06, 31/07, 31/08, 31/09, 31/10, 31/11, 31/13, 32/01,</p>	<p>A restrictive covenant over the land for the benefit of the remainder of the Order land to—</p> <p>(a) prevent anything being done in or on the land or any part thereof for the purpose of—</p> <p>(i) the erection of any buildings; or</p> <p>(ii) the construction, erection or works of any kind requiring foundations, footings or other supporting structures,</p> <p>without the consent in writing of the undertaker (such consent not to be unreasonably withheld or delayed if the proposed building, erection, construction or works would not cause damage to the relevant part of the authorised project nor make it materially more difficult to access or maintain the authorised project);</p> <p>(b) prevent anything to be done by way of hard surfacing of the land with concrete of any kind or with any other material or surface whatsoever without the consent in writing of the undertaker (such consent not to be unreasonably withheld or delayed if the proposed surfacing would not cause damage to the relevant part of the authorised project nor make it materially more difficult to access or maintain the authorised project) provided that the undertaker acknowledges that—</p> <p>(i) the laying of new hard core access tracks does not require the consent of the undertaker where no manhole, access chamber or other access point serving the authorised project is located on the surface of the land; and</p> <p>(ii) the maintenance or repair of pre-existing hard surfacing, hard core surfaces or tracks with the same or equivalent surface or material does not require the consent of the undertaker where no manhole, access chamber or other access point serving the authorised project is located on the surface of the land;</p> <p>(c) prevent—</p> <p>(i) mole draining;</p> <p>(ii) anything to be done by way of excavation of any kind or agricultural practices exceeding 0.6 metres in depth from—</p> <p>(aa) the surface of the land; or</p> <p>(bb) the hard bed level of the open drain, ditch, watercourse or river; or</p> <p>(iii) any activities which increase or decrease ground cover or soil levels or change the</p>

<p>32/03, 32/08, 32/09, 32/10, 32/11, 32/14, 33/01, 33/02, 33/04, 33/05, 33/10, 33/12, 33/13, 33/15, 33/16, 34/01, 34/03, 34/04, 34/07, 34/08, 34/09, 34/12, 34/13, 34/15, 34/16, 35/01, 35/02, 35/03, 35/06, 35/07, 35/08, 36/01, 36/06, 36/07, 36/09, 37/01, 37/06, 37/11, 37/13, 37/17, 37/18, 37/19, 37/20</p>	<p>composition of the land in any manner whatsoever,</p> <p>without the consent in writing of the undertaker (such consent not to be unreasonably withheld or delayed, with consent for mole requests to be determined within 24 hours not including weekend or bank holiday hours, if the proposed activity would not cause damage to the relevant part of the authorised project nor make it materially more difficult to access or maintain the authorised project, with such consent being subject to such reasonable conditions as the undertaker may require) provided that—</p> <p>(iv) acts of cultivation including soil preparation, ploughing and sub-soiling not exceeding 0.6 metres in depth from the surface of the land do not require the consent of the undertaker; and</p> <p>(v) flushing of land drainage systems, maintenance of outfalls and culverts of land drainage systems, clearance of vegetation (by use of machinery or by hand) and the operation of existing land drainage systems do not require the consent of the undertaker;</p> <p>(d) prevent the planting or growing within the land of any trees, shrubs or underwood without the consent in writing of the undertaker (such consent not to be unreasonably withheld or delayed provided that the proposed trees, shrubs or underwood would not cause damage to the relevant part of the authorised project nor make it materially more difficult to maintain or to access the relevant part of the authorised project) provided that the growing within the land of any pre-existing trees, shrubs or underwood do not require the consent of the undertaker; and</p> <p>(e) prevent anything being done in or on the land or any part thereof which will, or which the owner can reasonably foresee may, interfere with the exercise of the other rights set out in this Schedule or the use of the authorised project or in any way render the authorised project or any part thereof in breach of any statute or regulation for the time being in force and applicable thereto,</p> <p>provided that nothing in the preceding restrictions in paragraphs (a) to (e) restricts National Grid Electricity Transmission plc, the Environment Agency or any other body from exercising their respective statutory functions, statutory powers, statutory rights, statutory duties, statutory responsibilities or statutory obligations.</p>
<p>01/01, 01/02, 01/06, 01/08, 02/01, 02/03, 02/05, 02/06, 02/07, 02/10, 02/12, 02/14, 02/15, 02/17, 02/18, 03/01, 03/03, 03/04, 04/01, 04/05,</p>	<p>Rights for the purposes of the construction, installation, operation, maintenance and decommissioning of the authorised project to—</p>

<p>04/09, 04/10, 04/11, 04/13, 04/16, 04/17, 04/18, 05/01, 05/03, 05/06, 05/08, 05/09, 05/10, 05/16, 05/21, 05/30, 05/33, 06/01, 06/02, 06/03, 06/05, 06/07, 06/08, 06/10, 06/11, 06/12, 06/13, 06/14, 07/01, 07/02, 07/05, 07/06, 07/08, 07/11, 07/12, 07/13, 07/14, 07/18, 08/01, 08/03, 08/05, 09/01, 09/02, 09/04, 09/05, 10/01, 10/04, 10/11, 10/12, 10/13, 11/01, 11/02, 11/03, 11/04, 11/06, 11/07, 11/10, 11/12, 11/13, 11/15, 11/16, 12/01, 12/03, 12/04, 12/06, 12/07, 12/08, 12/09, 12/10, 12/11, 12/16, 12/17, 12/21, 12/22, 12/24, 12/26, 13/01, 13/07, 13/11, 13/13, 13/14, 13/15, 13/16, 13/17, 13/21, 13/22, 13/23, 13/24, 15/01, 15/02, 15/04, 15/06, 15/07, 15/11, 15/15, 15/16, 15/17, 15/18, 15/19, 16/01, 16/02, 16/03, 16/05, 16/07, 16/09, 16/11, 16/12, 16/14, 16/15, 16/16, 16/17, 16/20, 16/21, 16/22, 16/23, 16/25, 17/01, 17/02, 17/03, 17/06, 17/07, 17/10, 17/11, 17/12, 17/14, 17/16, 17/17, 17/19, 17/20, 18/01, 18/03, 18/05, 18/07, 18/08, 18/13, 18/14, 18/16, 18/17, 18/18, 18/19, 19/01, 19/04, 19/05, 19/06, 19/08, 19/09, 20/01, 20/02, 20/04, 20/05, 20/06, 20/07, 20/08, 20/10, 20/15, 20/16, 20/17, 21/01, 21/07, 21/09, 22/01, 22/02, 22/05, 22/10, 22/14, 22/15, 22/18, 22/20, 22/21, 22/22, 22/25, 24/01, 24/02, 24/03, 24/05, 24/08, 24/09, 24/10, 24/11, 24/12, 24/13, 25/01, 25/02, 25/03, 25/05, 25/06, 25/07, 25/10, 25/11, 25/12, 25/13, 25/14, 25/15, 25/16, 25/17, 25/18, 25/19, 25/20, 25/22, 25/23, 25/24, 26/01, 26/03, 26/06, 26/07, 26/09, 27/01, 27/06, 27/07, 27/09, 27/11, 27/13, 28/01, 28/02, 28/04, 28/05, 28/08, 28/11, 29/03, 29/04, 29/05, 29/06, 29/07, 29/08, 29/09, 29/12, 29/17, 29/18, 29/19, 29/21, 29/22, 29/23, 30/01, 30/02, 30/07, 30/08, 30/09, 30/10, 30/13, 30/14, 30/15, 30/17, 30/18, 31/01, 31/03, 31/04, 31/05, 31/06, 31/07, 31/08, 31/09, 31/10, 31/11, 31/13, 32/01, 32/03, 32/08, 32/09, 32/10, 32/11, 32/14, 33/01, 33/02, 33/04, 33/05, 33/10, 33/12, 33/13, 33/15, 33/16, 34/01, 34/03, 34/04, 34/07, 34/08, 34/09, 34/12, 34/13, 34/15, 34/16, 35/01, 35/02, 35/03, 35/06, 35/07,</p>	<ul style="list-style-type: none"> <li>(a) lay down, install, adjust, alter, construct, operate, erect, use, maintain, repair, renew, upgrade, inspect, remove and replace the electricity cables (including the removal of materials including spoil) in, under, over and/or on the land, together with such telemetry and fibre-optic lines, ducting, jointing bays and other apparatus, protection measures and other equipment which is ancillary to the purposes of transmitting electricity along such electricity cables (collectively referred to as the “cables”);</li> <li>(b) enter, be on, and break up the surface of, the land and remain with or without plant, vehicles, machinery, apparatus and equipment which is ancillary to the purposes of transmitting electricity along the cables;</li> <li>(c) retain and use or permit the cables to transmit and distribute any matters or thing the transmission of which is for the time being not prohibited by law through, to and from the land;</li> <li>(d) pass and re-pass with or without vehicles, plant, machinery, apparatus, equipment and materials for the purposes of laying down, installing, adjusting, altering, constructing, using, maintaining, repairing, renewing, inspecting, removing and replacing the cables;</li> <li>(e) construct and install and thereafter use the land for all necessary purposes for the commissioning, construction, repair, testing and maintenance of the cables and any electric cables in, on or under other land including (but not limited to) the following— <ul style="list-style-type: none"> <li>(i) facilities and activities in connection with the cables or other work carried out in accordance with the rights;</li> <li>(ii) portakabins/portaloos;</li> <li>(iii) storage of plant and equipment; and</li> <li>(iv) additional service lines or cables (in emergency only);</li> </ul> </li> <li>(f) place and use plant, machinery, structures and temporary structures within the land for the purposes of the installation, construction, maintenance, repairing, renewing, upgrading, inspecting, removal and replacing of the cables;</li> <li>(g) erect fencing and create secure works compounds;</li> <li>(h) construct, lay down, use and remove temporary access roads including any necessary temporary bridging, culverting or diversion of water courses and drains during any period during which construction, maintenance, repair or renewal is being carried out;</li> <li>(i) effect access to the highway;</li> </ul>
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35/08, 36/01, 36/06, 36/07, 36/09, 37/01, 37/06, 37/11, 37/13, 37/17, 37/18, 37/19, 37/20.

- (j) make such investigations in or on the land as required;
- (k) install and maintain cable marker posts to identify the location of the cables (subject to an obligation to minimise interference with future use and operations within the land);
- (l) fell, lop or cut, coppice wood, uproot trees or hedges or shrubs which now or hereafter may be standing on the land or other land which would if not felled, lopped, cut or removed obstruct or interfere with the working of the cables;
- (m) install, use, inspect, maintain, adjust, alter, renew, repair, test or cleanse pre- and post-development drainage schemes on the land or reinstate the existing drainage scheme on the land and thereafter cleanse and maintain, alter, adjust, replace, improve or extend culverts;
- (n) install, alter, re-lay, maintain, protect, adjust or remove pipes, cables or conduits or apparatus (including the pipes, cables or conduits or apparatus of statutory undertakers);
- (o) remove fences within the land during any period during which construction, maintenance, repair or renewal is being carried out (subject to erection of any temporary stock-proof fencing as is reasonably required and the re-instating of the original fences following the exercise of the rights);
- (p) store and stockpile materials (including excavated material);
- (q) use or resort to trenchless construction techniques including (but not limited to) directional drilling;
- (r) lay out temporary paths for public use;
- (s) carry out environmental or ecological mitigation or enhancement works;
- (t) locate, install and inspect chambers or manholes within or on the land;
- (u) carry out such works (together with associated fencing) required by a planning permission and/or consent now or to be granted over the land in accordance with any necessary licences relating to protected species and/or wildlife (which for the avoidance of doubt includes newts); and
- (v) (in an emergency only when the cables are temporarily unusable) lay down, install, use maintain and inspect underground cables, telephone signalling and fibre-optic cables and ancillary equipment, associated works and other conducting media together with conduits or pipes for containing the same in and under the land.

<p>02/02, 02/04, 02/08, 02/09, 02/11, 02/13, 02/16, 02/19, 03/02, 03/05, 03/06, 03/08, 04/02, 04/03, 04/04, 04/06, 04/07, 04/08, 04/12, 04/14, 04/15, 05/02, 05/04, 05/05, 05/07, 05/11, 05/12, 05/13, 05/14, 05/15, 05/27, 05/31, 05/32, 06/04, 06/06, 06/09, 07/03, 07/04, 07/09, 07/10, 07/15, 07/16, 07/17, 07/19, 08/02, 08/04, 08/06, 09/03, 09/06, 09/07, 10/02, 10/03, 10/05, 11/05, 11/08, 11/09, 11/11, 12/02, 12/05, 12/12, 12/13, 12/14, 12/15, 12/18, 12/20, 12/25, 13/02, 13/04, 13/09, 13/12, 13/18, 13/19, 13/20, 13/25, 13/26, 14/01, 14/02, 14/03, 14/04, 15/03, 15/05, 15/08, 15/09, 15/10, 15/12, 15/13, 16/04, 16/06, 16/08, 16/10, 16/13, 16/18, 16/19, 16/24, 17/04, 17/05, 17/08, 17/09, 17/13, 17/15, 17/18, 18/02, 18/04, 18/09, 18/12, 18/15, 19/02, 19/07, 20/03, 20/09, 20/12, 20/18, 20/19, 21/02, 21/03, 21/04, 21/05, 21/06, 21/08, 22/03, 22/04, 22/06, 22/07, 22/08, 22/09, 22/11, 22/12, 22/13, 22/16, 22/17, 22/19, 22/23, 22/24, 23/01, 24/04, 24/06, 24/07, 25/04, 25/08, 25/09, 25/21, 26/02, 26/10, 27/03, 27/04, 27/08, 27/10, 27/12, 27/14, 28/03, 28/06, 28/07, 28/09, 28/10, 28/12, 29/01, 29/02, 29/11, 29/14, 29/20, 30/03, 30/04, 30/05, 30/06, 30/11, 30/12, 30/16, 31/02, 32/02, 32/04, 32/05, 32/06, 32/07, 32/12, 32/13, 33/06, 33/07, 33/11, 33/14, 34/02, 34/05, 34/06, 34/10, 34/11, 34/14, 35/04, 35/05, 36/04, 36/05, 36/08, 36/10, 37/02, 37/04, 37/05, 37/08, 37/09, 37/12, 37/14, 37/15, 37/16.</p>	<p>Rights for the purposes of the construction, installation, operation, maintenance and decommissioning of the authorised project to—</p> <ul style="list-style-type: none"> <li>(a) pass and re-pass with or without vehicles, plant, machinery, apparatus, equipment and materials for the purposes of the unlicensed works and the drainage works, the inspection, testing, maintenance, renewal, upgrading, replacement and removal of the cables and connection into any adjacent cables and associated works, plant and equipment on adjoining land and make such investigations in or on the land which is ancillary for the purposes of exercise of the rights;</li> <li>(b) lay down, use, repair, alter and remove steel plates for the purpose of access to adjoining land;</li> <li>(c) erect temporary bridges and supporting or protective structures for the purposes of access to adjoining land;</li> <li>(d) fell, lop, cut, coppice, uproot trees or hedges or shrubs which now or hereafter may be present on the land for the purpose of enabling the right to pass and re-pass to adjoining land; and</li> <li>(e) erect and remove temporary fencing.</li> </ul>
<p>01/05, 01/06, 01/07</p>	<p>Rights for the purposes of the construction, installation, operation, maintenance and decommissioning of the authorised project to—</p> <ul style="list-style-type: none"> <li>(a) pass and re-pass with or without vehicles, plant, machinery, apparatus, equipment and materials for the inspection, testing, maintenance, renewal, upgrading, replacement and removal of the cables and connection into any adjacent cables and associated works, plant and equipment on adjoining land and make such investigations in or on the land which is ancillary for the purposes of exercise of the rights;</li> <li>(b) upgrade, surface, resurface, use and repair the land for the purposes of enabling the right to pass and re-pass to adjoining land;</li> </ul>

	<ul style="list-style-type: none"> <li>(c) erect temporary bridges and supporting or protective structures for the purposes of access to adjoining land;</li> <li>(d) fell, lop, cut, coppice, uproot trees or hedges or shrubs which now or hereafter may be present on the land for the purpose of enabling the right to pass and re-pass to adjoining land; and</li> <li>(e) erect and remove temporary fencing.</li> </ul>
10/08, 10/09	<p>Rights for the purposes of the construction, installation, operation, maintenance and decommissioning of the authorised project to—</p> <ul style="list-style-type: none"> <li>(a) lay down, install, adjust, alter, construct, create, use, maintain, repair, renew, upgrade, inspect, remove and replace a drainage scheme on the land (the “drainage works”);</li> <li>(b) inspect, use mechanical excavation (including directional drilling and/or digging), reinstate, remove, move or alter such part or parts of the drainage system on the land for the purposes of the drainage works (including connecting the drainage works to any land drain as at the date of the drainage works);</li> <li>(c) enter and be on the land and remain with or without plant, vehicles, machinery, apparatus and equipment, for the purposes of the drainage works;</li> <li>(d) pass and re-pass with or without vehicles, plant, machinery, apparatus, equipment and materials for the purposes of the drainage works;</li> <li>(e) place and use machinery, structures and temporary structures within the land for the purposes of the drainage works;</li> <li>(f) erect, create and remove fencing and secure works compounds including temporary drilling and tunnelling compounds and working areas for the purposes of the drainage works;</li> <li>(g) make such investigations in or on the land as required for the purposes of the drainage works;</li> <li>(h) use or resort to trenchless construction techniques including (but not limited to) directional drilling in connection with the drainage works;</li> <li>(i) install, alter, re-lay, maintain, protect, adjust or remove pipes, cables or conduits or apparatus (including the pipes, cables or conduits or apparatus of statutory undertakers) for the purposes of the drainage works; and</li> <li>(j) construct, use and remove any necessary temporary access roads including any necessary temporary bridging, culverting or diversion of water courses and drains during any period during which construction, maintenance, repair</li> </ul>

<p>01/01, 01/02, 01/05, 01/06, 01/07, 01/08, 02/01, 02/03, 02/05, 02/06, 02/07, 02/10, 02/12, 02/14, 02/15, 02/17, 02/18, 03/01, 03/03, 03/04, 04/01, 04/05, 04/09, 04/10, 04/11, 04/13, 04/16, 04/17, 04/18, 05/01, 05/03, 05/06, 05/08, 05/09, 05/10, 05/16, 05/21, 05/30, 05/33, 06/01, 06/02, 06/03, 06/05, 06/07, 06/08, 06/10, 06/11, 06/12, 06/13, 06/14, 07/01, 07/02, 07/05, 07/06, 07/08, 07/11, 07/12, 07/13, 07/14, 07/18, 08/01, 08/03, 08/05, 09/01, 09/02, 09/04, 09/05, 10/01, 10/04, 10/11, 10/12, 10/13, 11/01, 11/02, 11/03, 11/04, 11/06, 11/07, 11/10, 11/12, 11/13, 11/15, 11/16, 12/01, 12/03, 12/04, 12/06, 12/07, 12/08, 12/09, 12/10, 12/11, 12/16, 12/17, 12/21, 12/22, 12/24, 12/26, 13/01, 13/07, 13/11, 13/13, 13/14, 13/15, 13/16, 13/17, 13/21, 13/22, 13/23, 13/24, 15/01, 15/02, 15/04, 15/06, 15/07, 15/11, 15/15, 15/16, 15/17, 15/18, 15/19, 16/01, 16/02, 16/03, 16/05, 16/07, 16/09, 16/11, 16/12, 16/14, 16/15, 16/16, 16/17, 16/20, 16/21, 16/22, 16/23, 16/25, 17/01, 17/02, 17/03, 17/06, 17/07, 17/10, 17/11, 17/12, 17/14, 17/16, 17/17, 17/19, 17/20, 18/01, 18/03, 18/05, 18/07, 18/08, 18/13, 18/14, 18/16, 18/17, 18/18, 18/19, 19/01, 19/04, 19/05, 19/06, 19/08, 19/09, 20/01, 20/02, 20/04, 20/05, 20/06, 20/07, 20/08, 20/10, 20/15, 20/16, 20/17, 21/01, 21/07, 21/09, 22/01, 22/02, 22/05, 22/10, 22/14, 22/15, 22/18, 22/20, 22/21, 22/22, 22/25, 24/01, 24/02, 24/03, 24/05, 24/08, 24/09, 24/10, 24/11, 24/12, 24/13, 25/01, 25/02, 25/03, 25/05, 25/06, 25/07, 25/10, 25/11, 25/12, 25/13, 25/14, 25/15, 25/16, 25/18, 25/19, 25/20, 25/22, 25/23, 25/24, 26/01, 26/03, 26/06, 26/07, 26/09, 27/01, 27/06, 27/07, 27/09, 27/11, 27/13, 28/01, 28/02, 28/04, 28/05, 28/08, 28/11, 29/03, 29/04, 29/05, 29/06, 29/07, 29/08, 29/09, 29/12, 29/17, 29/18, 29/19, 29/21, 29/22, 29/23, 30/01, 30/02, 30/07, 30/08, 30/09, 30/10, 30/13, 30/14, 30/15, 30/17, 30/18, 31/01, 31/03, 31/04, 31/05, 31/06, 31/07, 31/08, 31/09, 31/10, 31/11, 31/13, 32/01, 32/03, 32/08, 32/09, 32/10,</p>	<p>or renewal is being carried out.</p> <p>Rights for the purposes of the construction, installation, operation, maintenance and decommissioning of the authorised project to—</p> <ul style="list-style-type: none"> <li>(a) lay down, install, adjust, alter, construct, create, use, maintain, repair, renew, upgrade, inspect, remove and replace ramps, means of access and footpaths, bunds, embankments, swales, landscaping and boundary treatments, habitat, jointing bays, manholes and link boxes;</li> <li>(b) install, use, inspect, maintain, adjust, alter, renew, repair, test or cleanse pre- and post-development water supply, surface water management and drainage schemes on the land or reinstate the existing scheme on the land and thereafter cleanse and maintain, alter, adjust, replace, improve or extend culverts;</li> <li>(c) create boreholes;</li> <li>(d) erect, create and remove fencing and secure works compounds including temporary drilling and tunnelling compounds and working areas;</li> <li>(e) store and stockpile materials (including excavated material);</li> <li>(f) use or resort to trenchless construction techniques including (but not limited to) directional drilling beneath sea defences, watercourses, roads and railways;</li> <li>(g) remove, reconstruct, or alter the position of apparatus including mains, sewers, drains, cables and pipelines of statutory undertakers;</li> <li>(h) enter and be on the land and remain with or without plant, vehicles, machinery, apparatus and equipment, and break up the surface of the land;</li> <li>(i) pass and re-pass with or without vehicles, plant, machinery, apparatus, equipment and materials;</li> <li>(j) place, construct, use and remove plant, machinery and temporary structures in, on or over the land including any necessary temporary bridging of water courses including bailey bridges;</li> <li>(k) remove fences within the land during any period during which construction, maintenance, repair or renewal is being carried out (subject to erection of any temporary stock-proof fencing as is reasonably required and the re-instating of the original fences following the exercise of the rights); and</li> <li>(l) carry out such works (together with associated fencing) required by a planning permission and/or consent now or to be granted over the land in accordance with any necessary licences relating to protected species and/or wildlife</li> </ul>
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32/11, 32/14, 33/01, 33/02, 33/04, 33/05, 33/10, 33/12, 33/13, 33/15, 33/16, 34/01, 34/03, 34/04, 34/07, 34/08, 34/09, 34/12, 34/13, 34/15, 34/16, 35/01, 35/02, 35/03, 35/06, 35/07, 35/08, 36/01, 36/06, 36/07, 36/09, 37/01, 37/06, 37/11, 37/13, 37/17, 37/18, 37/19, 37/20.	(which for the avoidance of doubt includes newts).
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Boston Borough

(1) <i>Number of plot shown on land plans</i>	(2) <i>Purpose for which rights may be acquired</i>
37/21, 37/22, 37/23, 38/01, 38/03, 38/06, 38/07, 38/08, 38/11, 39/01, 39/02, 39/06, 39/07, 39/09, 39/10, 39/11, 39/12, 39/14, 40/01, 40/02, 40/03, 40/04, 40/06, 40/09, 40/10, 40/11, 40/12, 40/15, 41/01, 41/02, 41/10, 42/01, 42/02, 42/03, 42/04, 42/05, 42/06, 42/07, 42/09, 42/10, 42/12, 42/15, 43/01, 43/04, 43/08, 43/11, 43/12, 43/13, 43/14, 43/15, 43/16, 45/02, 45/15, 45/16, 45/20, 45/21, 45/23, 45/25, 46/02, 46/05, 46/08, 47/01, 47/13, 47/14, 47/17, 47/18, 47/21, 47/22, 47/23, 48/01, 48/05, 48/07, 48/08, 48/09, 48/12, 48/13, 48/14, 48/16, 48/17A, 48/17B.	<p>A restrictive covenant over the land for the benefit of the remainder of the Order land to—</p> <ul style="list-style-type: none"> <li>(a) prevent anything being done in or on the land or any part thereof for the purpose of— <ul style="list-style-type: none"> <li>(i) the erection of any buildings; or</li> <li>(ii) the construction, erection or works of any kind requiring foundations, footings or other supporting structures,</li> </ul> <p>without the consent in writing of the undertaker (such consent not to be unreasonably withheld or delayed if the proposed building, erection, construction or works would not cause damage to the relevant part of the authorised project nor make it materially more difficult to access or maintain the authorised project);</p> </li> <li>(b) prevent anything to be done by way of hard surfacing of the land with concrete of any kind or with any other material or surface whatsoever without the consent in writing of the undertaker (such consent not to be unreasonably withheld or delayed if the proposed surfacing would not cause damage to the relevant part of the authorised project nor make it materially more difficult to access or maintain the authorised project) provided that the undertaker acknowledges that— <ul style="list-style-type: none"> <li>(i) the laying of new hard core access tracks does not require the consent of the undertaker where no manhole, access chamber or other access point serving the authorised project is located on the surface of the land; and</li> <li>(ii) the maintenance or repair of pre-existing hard surfacing, hard core surfaces or tracks with the same or equivalent surface or material does not require the consent of the undertaker where no manhole, access chamber or other access point serving the authorised project is located on the surface of the land;</li> </ul> </li> <li>(c) prevent—</li> </ul>



	<ul style="list-style-type: none"> <li>(i) mole draining;</li> <li>(ii) anything to be done by way of excavation of any kind or agricultural practices exceeding 0.6 metres in depth from— <ul style="list-style-type: none"> <li>(aa) the surface of the land; or</li> <li>(bb) the bed of the open drain, ditch, watercourse or river; or</li> </ul> </li> <li>(iii) any activities which increase or decrease ground cover or soil levels or change the composition of the land in any manner whatsoever, <p>without the consent in writing of the undertaker (such consent not to be unreasonably withheld or delayed if the proposed activity would not cause damage to the relevant part of the authorised project nor make it materially more difficult to access or maintain the authorised project, with such consent being subject to such reasonable conditions as the undertaker may require) provided that—</p> <ul style="list-style-type: none"> <li>(iv) acts of cultivation including soil preparation, ploughing and sub-soiling not exceeding 0.6 metres in depth from the surface of the land do not require the consent of the undertaker; and</li> <li>(v) flushing of land drainage systems, maintenance of outfalls and culverts of land drainage systems, clearance of vegetation (by use of machinery or by hand) and the operation of existing land drainage systems do not require the consent of the undertaker;</li> </ul> </li> <li>(d) prevent the planting or growing within the land of any trees, shrubs or underwood without the consent in writing of the undertaker (such consent not to be unreasonably withheld or delayed provided that the proposed trees, shrubs or underwood would not cause damage to the relevant part of the authorised project nor make it materially more difficult to maintain or to access the relevant part of the authorised project) provided that the growing within the land of any pre-existing trees, shrubs or underwood does not require the consent of the undertaker; and</li> <li>(e) prevent anything being done in or on the land or any part thereof which will, or which the owner can reasonably foresee may, interfere with the exercise of the other rights set out in this Schedule or the use of the authorised project or in any way render the authorised project or any part thereof in breach of any statute or regulation for the time being in force and applicable thereto,</li> </ul> <p>provided that nothing in the preceding restrictions in</p>
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	<p>paragraphs (a) to (e) restricts National Grid Electricity Transmission plc, the Environment Agency or any other body from exercising their respective statutory functions, statutory powers, statutory rights, statutory duties, statutory responsibilities or statutory obligations.</p>
<p>37/21, 37/22, 37/23, 38/01, 38/03, 38/06, 38/07, 38/08, 38/11, 39/01, 39/02, 39/06, 39/07, 39/09, 39/10, 39/11, 39/12, 39/14, 40/01, 40/02, 40/03, 40/04, 40/06, 40/09, 40/10, 40/11, 40/12, 40/15, 41/01, 41/02, 41/10, 42/01, 42/02, 42/03, 42/04, 42/05, 42/06, 42/07, 42/09, 42/10, 42/12, 42/15, 43/01, 43/04, 43/08, 43/11, 43/12, 43/13, 43/14, 43/15, 43/16, 45/02, 45/15, 45/16, 45/20, 45/21, 45/23, 45/25, 46/02, 46/05, 46/08, 47/01, 47/13, 47/14, 47/17, 47/18, 47/21, 47/22, 47/23, 48/01, 48/05, 48/07, 48/08, 48/09, 48/12, 48/13, 48/14, 48/16, 48/17A, 48/17B.</p>	<p>Rights for the purposes of the construction, installation, operation, maintenance and decommissioning of the authorised project to—</p> <ul style="list-style-type: none"> <li>(a) lay down, install, adjust, alter, construct, operate, erect, use, maintain, repair, renew, upgrade, inspect, remove and replace the electricity cables (including the removal of materials including spoil) in, under, over and/or on the land, together with such telemetry and fibre-optic lines, ducting, jointing bays and other apparatus, protection measures and other equipment which is ancillary to the purposes of transmitting electricity along such electricity cables (collectively referred to as the “cables”);</li> <li>(b) enter, be on, and break up the surface of, the land and remain with or without plant, vehicles, machinery, apparatus and equipment which is ancillary to the purposes of transmitting electricity along the cables;</li> <li>(c) retain and use or permit the cables to transmit and distribute any matters or thing the transmission of which is for the time being not prohibited by law through, to and from the land;</li> <li>(d) pass and re-pass with or without vehicles, plant, machinery, apparatus, equipment and materials for the purposes of laying down, installing, adjusting, altering, constructing, using, maintaining, repairing, renewing, inspecting, removing and replacing the cables;</li> <li>(e) construct and install and thereafter use the land for all necessary purposes for the commissioning, construction, repair, testing and maintenance of the cables and any electric cables in, on or under other land including (but not limited to) the following— <ul style="list-style-type: none"> <li>(i) facilities and activities in connection with the cables or other work carried out in accordance with the rights;</li> <li>(ii) portakabins/portaloos;</li> <li>(iii) storage of plant and equipment; and</li> <li>(iv) additional service lines or cables (in emergency only);</li> </ul> </li> <li>(f) place and use plant, machinery, structures and temporary structures within the land for the purposes of the installation, construction, maintenance, repairing, renewing, upgrading, inspecting, removal and replacing of the cables;</li> </ul>

	<ul style="list-style-type: none"> <li>(g) erect fencing and create secure works compounds;</li> <li>(h) construct, lay down, use and remove temporary access roads including any necessary temporary bridging, culverting or diversion of water courses and drains during any period during which construction, maintenance, repair or renewal is being carried out;</li> <li>(i) effect access to the highway;</li> <li>(j) make such investigations in or on the land as required;</li> <li>(k) install and maintain cable marker posts to identify the location of the cables (subject to an obligation to minimise interference with future use and operations within the land);</li> <li>(l) fell, lop or cut, coppice wood, uproot trees or hedges or shrubs which now or hereafter may be standing on the land or other land which would if not felled, lopped, cut or removed obstruct or interfere with the working of the cables;</li> <li>(m) install, use, inspect, maintain, adjust, alter, renew, repair, test or cleanse pre- and post-development drainage schemes on the land or reinstate the existing drainage scheme on the land and thereafter cleanse and maintain, alter, adjust, replace, improve or extend culverts;</li> <li>(n) install, alter, re-lay, maintain, protect, adjust or remove pipes, cables or conduits or apparatus (including the pipes, cables or conduits or apparatus of statutory undertakers);</li> <li>(o) remove fences within the land during any period during which construction, maintenance, repair or renewal is being carried out (subject to erection of any temporary stock-proof fencing as is reasonably required and the re-instating of the original fences following the exercise of the rights);</li> <li>(p) store and stockpile materials (including excavated material);</li> <li>(q) use or resort to trenchless construction techniques including (but not limited to) directional drilling;</li> <li>(r) lay out temporary paths for public use;</li> <li>(s) carry out environmental or ecological mitigation or enhancement works;</li> <li>(t) locate, install and inspect chambers or manholes within or on the land;</li> <li>(u) carry out such works (together with associated fencing) required by a planning permission and/or consent now or to be granted over the land in accordance with any necessary licences relating to protected species and/or wildlife</li> </ul>
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	<p>(which for the avoidance of doubt includes newts); and</p> <p>(v) (in an emergency only when the cables are temporarily unusable) to lay down, install, use, maintain and inspect underground cables, telephone signalling and fibre-optic cables and ancillary equipment, associated works and other conducting media together with conduits or pipes for containing the same in and under the land.</p>
<p>37/24, 38/02, 38/04, 38/05, 38/09, 38/10, 39/03, 39/08, 39/13, 40/07, 40/08, 40/13, 40/14, 41/03, 41/06, 41/08, 41/09, 42/08, 42/11, 42/13, 42/14, 42/16, 43/02, 43/09, 43/10, 43/17, 45/01, 45/03, 45/05, 45/06, 45/08, 45/09, 45/11, 47/11, 47/12, 47/15, 47/16, 47/19, 47/20, 48/02, 48/03, 48/04, 48/06, 48/10, 48/11, 48/15, 48/18.</p>	<p>Rights for the purposes of the construction, installation, operation, maintenance and decommissioning of the authorised project to—</p> <p>(a) pass and re-pass with or without vehicles, plant, machinery, apparatus, equipment and materials for the purposes of the unlicensed works and the drainage works, the inspection, testing, maintenance, renewal, upgrading, replacement and removal of the cables and connection into any adjacent cables and associated works, plant and equipment on adjoining land and make such investigations in or on the land which is ancillary for the purposes of exercise of the rights;</p> <p>(b) lay down, use, repair, alter and remove steel plates for the purpose of access to adjoining land;</p> <p>(c) erect temporary bridges and supporting or protective structures for the purposes of access to adjoining land;</p> <p>(d) fell, lop, cut, coppice, uproot trees or hedges or shrubs which now or hereafter may be present on the land for the purpose of enabling the right to pass and re-pass to adjoining land; and</p> <p>(e) erect and remove temporary fencing.</p>
<p>48/17B, 48/19.</p>	<p>Rights to—</p> <p>(a) lay down, install, adjust, alter, construct, create, operate, erect, use, maintain, repair, renew, upgrade, inspect, test, remove and replace electrical equipment comprising the unlicensed works;</p> <p>(b) enter and be on the land and remain with or without plant, vehicles, machinery, apparatus and equipment, and break up the surface of the land for the purposes of the unlicensed works;</p> <p>(c) pass and re-pass with or without vehicles, plant, machinery, apparatus, equipment and materials for the purposes of the unlicensed works;</p> <p>(d) place and use plant, machinery, structures and temporary structures within the land for the purposes of the unlicensed works;</p> <p>(e) erect, create and remove fencing and secure works compounds including temporary drilling</p>

	<p>and tunnelling compounds and working areas for the purposes of the unlicensed works;</p> <p>(f) make such investigations in or on the land as required for the purposes of the unlicensed works;</p> <p>(g) install and maintain cable marker posts to identify the location of the cabling comprising the unlicensed works (subject to an obligation to minimise interference with future use and operations within the land);</p> <p>(h) fell, lop or cut, coppice wood, uproot trees or hedges or shrubs which now or hereafter may be standing on the land which would if not felled, lopped, cut or removed obstruct or interfere with the unlicensed works;</p> <p>(i) install, alter, re-lay, maintain, protect, adjust or remove pipes, cables or conduits or apparatus (including the pipes, cables or conduits or apparatus of statutory undertakers) for the purposes of the unlicensed works;</p> <p>(j) remove fences within the land during any period during which construction, maintenance, repair or renewal is being carried out (subject to erection of any temporary stock-proof fencing as is reasonably required and the re-instating of the original fences following the exercise of the rights);</p> <p>(k) store and stockpile materials (including excavated material) required for the purposes of the unlicensed works;</p> <p>(l) use or resort to trenchless construction techniques including (but not limited to) directional drilling in connection with the unlicensed works;</p> <p>(m) locate, install and inspect chambers or manholes within or on the land for the purposes of the unlicensed works; and</p> <p>(n) carry out such works (together with associated fencing) required by a planning permission and/or consent now or to be granted over the land in accordance with any necessary licences relating to protected species and/or wildlife (which for the avoidance of doubt includes newts).</p>
47/05, 47/06, 47/07	<p>Rights for the purposes of the construction, installation, operation, maintenance and decommissioning of the authorised project to—</p> <p>(a) lay down, install, adjust, alter, construct, create, use, maintain, repair, renew, upgrade, inspect, remove and replace a drainage scheme on the land (the “drainage works”);</p> <p>(b) inspect, use mechanical excavation (including directional drilling and/or digging), reinstate,</p>

	<p>remove, move or alter such part or parts of the drainage system on the land for the purposes of the drainage works (including connecting the drainage works to any land drain as at the date of the drainage works);</p> <p>(c) enter and be on the land and remain with or without plant, vehicles, machinery, apparatus and equipment, for the purposes of the drainage works;</p> <p>(d) pass and re-pass with or without vehicles, plant, machinery, apparatus, equipment and materials for the purposes of the drainage works;</p> <p>(e) place and use machinery, structures and temporary structures within the land for the purposes of the drainage works;</p> <p>(f) erect, create and remove fencing and secure works compounds including temporary drilling and tunnelling compounds and working areas for the purposes of the drainage works;</p> <p>(g) make such investigations in or on the land as required for the purposes of the drainage works;</p> <p>(h) use or resort to trenchless construction techniques including (but not limited to) directional drilling in connection with the drainage works;</p> <p>(i) install, alter, re-lay, maintain, protect, adjust or remove pipes, cables or conduits or apparatus (including the pipes, cables or conduits or apparatus of statutory undertakers) for the purposes of the drainage works; and</p> <p>(j) construct, use and remove any necessary temporary access roads including any necessary temporary bridging, culverting or diversion of water courses and drains during any period during which construction, maintenance, repair or renewal is being carried out.</p>
<p>37/21, 37/22, 37/23, 38/01, 38/03,38/06, 38/07, 38/08, 38/11, 39/01, 39/02, 39/06, 39/07, 39/09, 39/10, 39/11, 39/12, 39/14, 40/01, 40/02, 40/03, 40/04, 40/06, 40/09, 40/10, 40/11, 40/12, 40/15, 41/01, 41/02, 41/10, 42/01, 42/02, 42/03, 42/04, 42/05, 42/06, 42/07, 42/09, 42/10, 42/12, 42/15, 43/01, 43/04, 43/08, 43/11, 43/12, 43/13, 43/14, 43/15, 43/16, 45/02, 45/15, 45/16, 45/20, 45/21, 45/23, 45/25, 46/02, 46/05, 46/08, 47/01, 47/13, 47/14, 47/17, 47/18, 47/21, 47/22, 47/23, 48/01, 48/05, 48/07, 48/08, 48/09, 48/12, 48/13, 48/14, 48/16, 48/17A, 48/17B, 48/19.</p>	<p>Rights for the purposes of the construction, installation, operation, maintenance and decommissioning of the authorised project to—</p> <p>(a) lay down, install, adjust, alter, construct, create, use, maintain, repair, renew, upgrade, inspect, remove and replace ramps, means of access and footpaths, bunds, embankments, swales, landscaping and boundary treatments, habitat, jointing bays, manholes and link boxes;</p> <p>(b) install, use, inspect, maintain, adjust, alter, renew, repair, test or cleanse pre- and post-development water supply, surface water management and drainage schemes on the land or reinstate the existing scheme on the land and thereafter cleanse and maintain, alter, adjust, replace, improve or extend culverts;</p> <p>(c) create boreholes;</p>

	<ul style="list-style-type: none"> <li>(d) erect, create and remove fencing and secure works compounds including temporary drilling and tunnelling compounds and working areas;</li> <li>(e) store and stockpile materials (including excavated material);</li> <li>(f) use or resort to trenchless construction techniques including (but not limited to) directional drilling beneath sea defences, watercourses, roads and railways;</li> <li>(g) remove, reconstruct, or alter the position of apparatus including mains, sewers, drains, cables and pipelines of statutory undertakers;</li> <li>(h) enter and be on the land and remain with or without plant, vehicles, machinery, apparatus and equipment, and break up the surface of the land;</li> <li>(i) pass and re-pass with or without vehicles, plant, machinery, apparatus, equipment and materials;</li> <li>(j) place, construct, use and remove plant, machinery and temporary structures in, on or over the land including any necessary temporary bridging of water courses including bailey bridges;</li> <li>(k) remove fences within the land during any period during which construction, maintenance, repair or renewal is being carried out (subject to erection of any temporary stock-proof fencing as is reasonably required and the re-instating of the original fences following the exercise of the rights); and</li> <li>(l) carry out such works (together with associated fencing) required by a planning permission and/or consent now or to be granted over the land in accordance with any necessary licences relating to protected species and/or wildlife (which for the avoidance of doubt includes newts).</li> </ul>
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## SCHEDULE 6

Article 18

### Modification of compensation and compulsory purchase enactments for creation of new rights and restrictive covenants

#### **Compensation enactments modified**

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

### **Land Compensation Act 1973 modified**

**2.**—(1) Without limiting paragraph 1, the Land Compensation Act 1973(a) has effect subject to the modifications set out in sub-paragraphs (2) and (3).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 of the 1965 Act as substituted by paragraph 4,—

- (a) for “land is acquired or taken from” substitute “a right or restrictive covenant over land is purchased from or imposed on the land of”; and
- (b) for “acquired or taken from him” substitute “over which the right is exercisable or the restrictive covenant is enforceable”.

(3) In section 58(1) (determination of material detriment where part of house etc. proposed for compulsory acquisition), as it applies to determinations under section 8 of the 1965 Act as substituted by paragraph 5,—

- (a) for “part” in paragraphs (a) and (b) substitute “a right over or restrictive covenant affecting land consisting”;
- (b) for “severance” substitute “right or restrictive covenant over or affecting the whole of the house, building or manufactory or of the house and the park or garden;
- (c) for “part proposed” substitute “right or restrictive covenant proposed”; and
- (d) for “part is” substitute “right or restrictive covenant is”.

### **Compulsory Purchase Act 1965 modified**

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

- (a) the right acquired or to be acquired or the restrictive covenant imposed or to be imposed; or
- (b) the land over which the right is or is to be exercisable or the restrictive covenant is or is to be enforceable.

(2) Without limiting sub-paragraph (1), Part 1 of the 1965 Act applies in relation to the compulsory acquisition under this Order of a right by the creation of a new right, or in relation to the imposition of a restrictive covenant, with the modifications specified in the following provisions of this Schedule.

**4.** For section 7 of the 1965 Act (measure of compensation in case of severance) substitute the following section—

“**7.** In assessing the compensation to be paid by the acquiring authority under this Act, regard must be had not only to the extent (if any) to which the value of the land over which the right is to be acquired or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or the imposition of the restrictive covenant but also to the damage (if any) to be sustained thereby by the owner of the land in relation to other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”.

**5.** For section 8 of the 1965 Act (other provisions as to divided land) substitute the following section—

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(a) 1973 c.26



**“8.—(1)** Where in consequence of the service on a person under section 5 of this Act of a notice to treat in respect of a right over, or a restrictive covenant affecting, land consisting of a house, building or manufactory or of a park or garden belonging to a house (the “relevant land”)—

- (a) a question of disputed compensation in respect of the purchase of the right or the imposition of the restrictive covenant would apart from this section fall to be determined by the Upper Tribunal (the “tribunal”); and
- (b) before the tribunal has determined that question, the tribunal is satisfied that the person has an interest in the whole of the relevant land and is able and willing to sell that land and—
  - (i) where that land consists of a house, building or manufactory, that the right cannot be purchased or the restrictive covenant imposed without material detriment to that land; or
  - (ii) where that land consists of such a park or garden, that the right cannot be purchased or the restrictive covenant imposed without seriously affecting the amenity or convenience of the house to which that land belongs,

the Triton Knoll Electrical System Order 2016 (the “Order”), in relation to that person, ceases to authorise the purchase of the right or the imposition of the restrictive covenant and is deemed to authorise the purchase of that person’s interest in the whole of the relevant land including, where the land consists of such a park or garden, the house to which it belongs, and the notice is deemed to have been served in respect of that interest on such date as the tribunal directs.

(2) Any question as to the extent of the land in which the Order is deemed to authorise the purchase of an interest by virtue of subsection (1) must be determined by the tribunal.

(3) Where, in consequence of a determination of the tribunal that it is satisfied as mentioned in subsection (1), the Order is deemed by virtue of that subsection to authorise the purchase of an interest in land, the acquiring authority may, at any time within the period of 6 weeks beginning with the date of the determination, withdraw the notice to treat in consequence of which the determination was made; but nothing in this subsection prejudices any other power of the authority to withdraw the notice.”.

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

- (a) section 9(4) (refusal to convey, failure to make title, etc.);
- (b) paragraph 10(3) of Schedule 1 (persons without power to sell their interests);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

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

**7.** Section 11 of the 1965 Act (powers of entry) is modified so as to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right or restrictive covenant, it has power, exercisable in equivalent circumstances and subject to equivalent conditions to those provided for in that section, to enter for the purpose of exercising that right or enforcing that restrictive covenant (which is deemed for this purpose to have been created on the date of service of the notice); and sections 12 (unauthorised entry) and 13 (refusal to give possession to acquiring authority) of the 1965 Act are modified correspondingly.

8. Section 20 of the 1965 Act(a) (tenants at will, etc.) applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right or the enforcement of the restrictive covenant in question.

9. Section 22 of the 1965 Act (interests omitted from purchase) is modified so as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired or to enforce the restrictive covenant imposed, subject to compliance with that section as respects compensation.

## SCHEDULE 7

Article 24

### Land of which temporary possession may be taken

<i>(1) District</i>	<i>(2) Number of land shown on land plans</i>	<i>(3) Purpose for which temporary possession may be taken</i>	<i>(4) Relevant part of authorised project</i>
East Lindsey	01/04	Construction and storage compound	Work No. 3B
East Lindsey	05/17, 05/18	Construction and storage compound	Work No. 6
East Lindsey	05/19, 05/20	<p>(a) Access with or without vehicles, plant, machinery, apparatus, equipment and materials for construction and carrying out of the authorised project</p> <p>(b) Laying and use of temporary vehicular access tracks, improvement to access tracks and roads, and erection of associated temporary structures including fencing and signage</p>	Work No. 6
East Lindsey	05/22, 05/23, 05/24, 05/25	<p>(a) Access with or without vehicles, plant, machinery, apparatus, equipment and materials for construction and carrying out of the authorised project</p> <p>(b) Laying and use of temporary vehicular access tracks, improvement to access tracks and roads, and erection of associated temporary structures including fencing and signage</p>	Work No. 7
East Lindsey	05/26, 05/27, 05/28, 05/29	Construction and storage compound	Work No. 7
East Lindsey	10/10	Construction and storage compound	Work No. 10

(a) Section 20 was amended by paragraph 4 of Schedule 15 to the Planning and Compensation Act 1991 (c.34) and paragraph 70 of Schedule 1 to S.I. 2009/1307.

East Lindsey	13/03, 13/04, 13/05	Construction and storage compound	Work No. 12
East Lindsey	13/06	<p>(a) Access with or without vehicles, plant, machinery, apparatus, equipment and materials for construction and carrying out of the authorised project</p> <p>(b) Laying and use of temporary vehicular access tracks and improvement to access tracks and roads, and erection of associated temporary structures including fencing and signage</p>	Work No. 12
East Lindsey	13/08, 13/26	<p>(a) Access with or without vehicles, plant, machinery, apparatus, equipment and materials for construction and carrying out of the authorised project</p> <p>(b) Laying and use of temporary vehicular access tracks and improvement to access tracks and roads, and erection of associated temporary structures including fencing and signage</p>	Work No. 13
East Lindsey	13/10	Construction and storage compound	Work No. 13
East Lindsey	18/06	<p>(a) Access with or without vehicles, plant, machinery, apparatus, equipment and materials for construction and carrying out of the authorised project</p> <p>(b) Laying and use of temporary vehicular access tracks and improvement to access tracks and roads, and erection of associated temporary structures including fencing and signage</p> <p>(c) Construction and storage compound</p>	Work No. 15
East Lindsey	18/09, 18/10, 18/11	<p>(a) Access with or without vehicles, plant, machinery, apparatus, equipment and materials for construction and carrying out of the authorised project</p> <p>(b) Laying and use of temporary</p>	Work No. 16

		vehicular access tracks and improvement to access tracks and roads, and erection of associated temporary structures including fencing and signage	
East Lindsey	18/20	Construction and storage compound	Work No. 18
East Lindsey	19/03	(a) Access with or without vehicles, plant, machinery, apparatus, equipment and materials for construction and carrying out of the authorised project  (b) Laying and use of temporary vehicular access tracks and improvement to access tracks and roads, and erection of associated temporary structures including fencing and signage	Work No. 18
East Lindsey	20/11, 20/12, 20/14	Construction and storage compound	Work No. 20
East Lindsey	20/13	(a) Access with or without vehicles, plant, machinery, apparatus, equipment and materials for construction and carrying out of the authorised project  (b) Laying and use of temporary vehicular access tracks and improvement to access tracks and roads, and erection of associated temporary structures including fencing and signage	Work No. 20
East Lindsey	26/04, 26/05,	Construction and storage compound	Work No. 23
East Lindsey	26/08	(a) Access with or without vehicles, plant, machinery, apparatus, equipment and materials for construction and carrying out of the authorised project  (b) Laying and use of temporary vehicular access tracks and improvement to access tracks and roads, and erection of associated temporary structures including fencing and signage	Work No. 23
East Lindsey	27/02	Construction and storage compound	Work No. 25
East Lindsey	27/05	(a) Access with or without vehicles, plant, machinery, apparatus, equipment and materials for construction and	Work No. 25

		<p>carrying out of the authorised project</p> <p>(b) Laying and use of temporary vehicular access tracks and improvement to access tracks and roads, and erection of associated temporary structures including fencing and signage</p>	
East Lindsey	29/10, 29/11,	Construction and storage compound	Work No. 27
East Lindsey	29/13	<p>(a) Access with or without vehicles, plant, machinery, apparatus, equipment and materials for construction and carrying out of the authorised project</p> <p>(b) Laying and use of temporary vehicular access tracks and improvement to access tracks and roads, and erection of associated temporary structures including fencing and signage</p>	Work No. 27
East Lindsey	29/16	Construction and storage compound	Work No. 28
East Lindsey	29/15	<p>(a) Access with or without vehicles, plant, machinery, apparatus, equipment and materials for construction and carrying out of the authorised project</p> <p>(b) Laying and use of temporary vehicular access tracks and improvement to access tracks and roads, and erection of associated temporary structures including fencing and signage</p>	Work No. 28
East Lindsey	31/12	<p>(a) Access with or without vehicles, plant, machinery, apparatus, equipment and materials for construction and carrying out of the authorised project</p> <p>(b) Laying and use of temporary vehicular access tracks and improvement to access tracks and roads, and erection of associated temporary structures including fencing and signage</p> <p>(c) Construction and storage compound</p>	Work No. 30
East Lindsey	33/03	Construction and storage compound	Work No. 32
East Lindsey	36/02, 36/03	Construction and storage compound	Work No. 34

East Lindsey	37/03, 37/04, 37/05	Construction and storage compound	Work No. 35
East Lindsey	37/07 37/08, 37/10	Construction and storage compound	Work No. 36
Boston	39/04	Construction and storage compound	Work No. 38
Boston	39/05	<p>(a) Access with or without vehicles, plant, machinery, apparatus, equipment and materials for construction and carrying out of the authorised project</p> <p>(b) Laying and use of temporary vehicular access tracks and improvement to access tracks and roads, and erection of associated temporary structures including fencing and signage</p>	Work No. 38
Boston	40/05	Construction and storage compound	Work No. 40
Boston	41/05, 41/06, 41/07	Construction and storage compound	Work No. 41
Boston	41/04	<p>(a) Access with or without vehicles, plant, machinery, apparatus, equipment and materials for construction and carrying out of the authorised project</p> <p>(b) Laying and use of temporary vehicular access tracks and improvement to access tracks and roads, and erection of associated temporary structures including fencing and signage</p>	Work No. 41
Boston	43/03	Construction and storage compound	Work No. 43
Boston	43/05	<p>(a) Access with or without vehicles, plant, machinery, apparatus, equipment and materials for construction and carrying out of the authorised project</p> <p>(b) Laying and use of temporary vehicular access tracks and improvement to access tracks and roads, and erection of associated temporary structures including fencing and signage</p>	Work No. 43
Boston	43/06	<p>(a) Access with or without vehicles, plant, machinery, apparatus, equipment and materials for construction and carrying out of the authorised project</p>	Work No. 45

		(b) Laying and use of temporary vehicular access tracks and improvement to access tracks and roads, and erection of associated temporary structures including fencing and signage	
Boston	43/07	Construction and storage compound	Work No.45
Boston	44/03b	Construction and storage compound	Work No. 47A
Boston	44/04	(a) Access with or without vehicles, plant, machinery, apparatus, equipment and materials for construction and carrying out of the authorised project  (b) Laying and use of temporary vehicular access tracks and improvement to access tracks and roads, and erection of associated temporary structures including fencing and signage	Work Nos. 47A, 48 and 49
Boston	44/01	(a) Access with or without vehicles, plant, machinery, apparatus, equipment and materials for construction and carrying out of the authorised project  (b) Laying and use of temporary vehicular access tracks and improvement to access tracks and roads, and erection of associated temporary structures including fencing and signage	Work No. 49
Boston	45/04, 45/05, 45/07, 45/08, 45/10, 45/11, 45/13, 46/04, 46/07	(a) Access with or without vehicles, plant, machinery, apparatus, equipment and materials for construction and carrying out of the authorised project  (b) Laying and use of temporary vehicular access tracks and improvement to access tracks and roads, and erection of associated temporary structures including fencing and signage	Work No. 49
Boston	47/07, 47/08	Construction and storage compound	Work No. 51

## Protective provisions

## PART 1

## Protection for Environment Agency and drainage authorities

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

2. In this Part—

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

“drainage authority” means—

(a) in relation to an ordinary watercourse, the drainage board concerned within the meaning of section 23 of the Land Drainage Act 1991; and

(b) in relation to a main river or sea defence work, the Environment Agency;

“drainage work” means any watercourse and includes any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage, flood defence, sea defence or tidal monitoring which is the responsibility of the drainage authority as identified in the crossings schedule subject to such changes as notified to the undertaker;

“ordinary watercourse” has the meaning given by section 72 of the Land Drainage Act 1991;

“plans” includes any information reasonably required by the drainage authority including location details, grid references, sections, drawings, specifications, assessments and method statements;

“specified work” means so much of any work or operation authorised by this Order as is in, on, under, over or within 9 metres of a drainage work or is otherwise likely to—

(a) affect any drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work;

(b) affect the flow, purity or quality of water in any watercourse; or

(c) affect the conservation, distribution or use of water resources.

3.—(1) Before commencing construction of a specified work, the undertaker must submit to the drainage authority plans of the specified work and such further particulars available to it as the drainage authority may within 28 days of the submission of the plans reasonably require.

(2) The undertaker must not commence construction of the specified work until approval, unconditionally or conditionally, has been given as provided in this paragraph.

(3) A specified work must not be constructed except in accordance with such plans as may be approved in writing by the drainage authority or determined under paragraph 11.

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

(a) must not be unreasonably withheld or delayed;

(b) is deemed to have been given if it is neither given nor refused within 2 months of the submission of the plans for approval, or submission of further particulars (where required by the drainage authority under sub-paragraph (1)) whichever is the later; and

(c) may be given subject to such reasonable requirements as the drainage authority may make for the protection of any drainage work, for the protection of any navigation work, for the protection of water resources, for the prevention of pollution or in the discharge of its environmental functions.

(5) Any refusal under this paragraph must be accompanied by a statement of the reasons for refusal.



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

- (a) to safeguard any drainage work against damage by reason of any specified work; or
- (b) to secure that the efficiency of any drainage work for flood defence and land drainage purposes is not impaired, and that the risk of flooding is not otherwise increased, by reason of any specified work.

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

- (a) without unreasonable delay in accordance with the plans approved or deemed to have been approved or settled under this Part; and
- (b) to the reasonable satisfaction of the drainage authority,

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

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

- (a) not less than 14 days' notice in writing of its intention to commence construction of any specified work; and
- (b) notice in writing of its completion not later than 7 days after the date of completion.

(3) If the drainage authority reasonably requires, the undertaker must construct all or part of the protective works so that they are in place before the construction of the specified work.

(4) If any part of a specified work or any protective work required by the drainage authority is constructed otherwise than in accordance with the requirements of this Part, the drainage authority may by notice in writing require the undertaker at the undertaker's expense to comply with the requirements of this Part or (if the undertaker so elects and the drainage authority in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is agreed, to restore the site to its former condition to such extent and within such limits as the drainage authority reasonably requires.

(5) Subject to sub-paragraph (6), if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (4) is served on the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and subsequently to make reasonably expeditious progress towards their implementation, the drainage authority may execute the works specified in the notice and any expenditure incurred by it in so doing is recoverable from the undertaker.

(6) In the event of any dispute as to whether sub-paragraph (4) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the drainage authority must not except in an emergency exercise the powers conferred by sub-paragraph (5) until the dispute has been finally determined.

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

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

(3) If, within a reasonable period being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2) on the undertaker, the undertaker has failed to begin taking steps to comply with the reasonable requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the drainage authority may do what is necessary for such compliance and may recover any expenditure reasonably incurred by it in so doing from the undertaker.

(4) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the drainage authority must not except in a case of emergency exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined.

(5) This paragraph does not apply to—

- (a) drainage works which are vested in the drainage authority, or which the drainage authority or another person is liable to maintain and is not prevented by this Order from so doing; and
- (b) any obstruction of a drainage work for the purpose of a work or operation authorised by this Order and carried out in accordance with the provisions of this Part provided that any obstruction is removed as soon as reasonably practicable.

7. If by reason of the construction of a specified work or of the failure of any such work the efficiency of any drainage work for flood defence purposes or land drainage is impaired, or that drainage work is otherwise damaged, the impairment or damage must be made good by the undertaker as soon as reasonably practicable to the reasonable satisfaction of the drainage authority and, if the undertaker fails to do so, the drainage authority may make good the impairment or damage and recover from the undertaker the expense reasonably incurred by it in doing so.

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

- (a) in the examination or approval of plans under this Part; and
- (b) in inspecting the construction of the specified work or any protective works required by the drainage authority under this Part; and
- (c) in carrying out any surveys or tests by the drainage authority which are reasonably required in connection with the construction of the specified work.

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

- (a) any damage to any drainage work;
- (b) any raising or lowering of the water table in land adjoining the authorised project or any sewers, drains and watercourses; or
- (c) any flooding or increased flooding of any such lands and, where the drainage authority is the Environment Agency, inadequate water quality in any watercourse or other surface waters or in any groundwater,

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

(2) The drainage authority must give to the undertaker reasonable notice of any such claim or demand, and no settlement or compromise may be made without the agreement of the undertaker which agreement must not be unreasonably withheld or delayed.

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

11. Any dispute arising between the undertaker and the drainage authority under this Part, if the parties agree, is to be determined by arbitration under article 36 (arbitration), but otherwise is to be determined by the Secretary of State for Environment, Food and Rural Affairs and the Secretary of State for Business, Energy and Industrial Strategy acting jointly on a reference to them by the undertaker or the drainage authority, after notice in writing by one to the other.

## PART 2

### Protection for Network Rail Infrastructure Limited, etc.

1. The provisions of this Part have effect unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 15, any other person on whom rights or obligations are conferred by that paragraph.

2. In this Part—

“construction” includes execution, placing, alteration and reconstruction; and “construct” must be construed accordingly;

“engineer” means an engineer appointed by Network Rail for the purposes of this Order;

“network licence” means the network licence, as amended from time to time, granted to Network Rail Infrastructure Limited by the Secretary of State in exercise of the powers under section 8 of the Railways Act 1993(a);

“Network Rail” means—

- (a) Network Rail Infrastructure Limited (company number 2904597); and
- (b) any associated company of Network Rail Infrastructure Limited which holds property for railway purposes,

and for the purpose of paragraph (b) “associated company” means any company which is (within the meaning of section 1159 of the Companies Act 2006(b)) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

“plans” includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

“railway operational procedures” means procedures specified under any access agreement (as defined in the Railways Act 1993(c)) or station lease;

“railway property” means—

- (a) any railway belonging to Network Rail;
- (b) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and
- (c) any easement or other property interest held or used by Network Rail for the purposes of such railway or works, apparatus or equipment;

“specified work” means so much of any of the authorised development as is situated on, across, under, over or within 15 metres of, or may in any way adversely affect, railway property.

3.—(1) Where under this Part Network Rail is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that Network Rail complies with

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(a) 1993 c.43. Section 8 was amended by paragraph 4 of Schedule 17 and Part 4 of Schedule 31 to the Transport Act 2000 (c.38), paragraphs 3 and 5 of Schedule 2 to the Railways and Transport Safety Act 2003 (c.20), paragraph 3 of Schedule 1 and Part 1 of Schedule 13 to the Railways Act 2005 (c.14) and Part 1 of Schedule 1 to S.I. 2015/1682.

(b) 2006 c.46

(c) “Access agreement” is defined in section 83. The definition was amended by section 230 of the Transport Act 2000.

any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail must—

- (a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and
- (b) use its reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development under this Order.

**4.—**(1) The undertaker must not exercise the powers conferred by—

- (a) article 12 (discharge of water);
- (b) article 13 (authority to survey and investigate land);
- (c) article 15 (compulsory acquisition of land);
- (d) article 18 (compulsory acquisition of rights);
- (e) article 19 (private rights);
- (f) article 21 (acquisition of subsoil only);
- (g) article 24 (temporary use of land for carrying out authorised project);
- (h) article 25 (temporary use of land for maintaining the authorised project);
- (i) article 27 (statutory undertakers);
- (j) article 34 (felling or lopping of trees and removal of hedgerows); or
- (k) section 11(3) of the 1965 Act,

in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property unless preventing such access is with the consent of Network Rail.

(3) The undertaker must not exercise the powers conferred by sections 271 (extinguishment of rights of statutory undertakers: preliminary notices) or 272 (extinguishment of rights of electronic code communications operators: preliminary notices) of the 1990 Act<sup>(a)</sup> or by article 27 (statutory undertakers) in relation to any right of access of Network Rail to railway property, but the right of access may be diverted with the consent of Network Rail.

(4) The undertaker must not under the powers conferred by this Order acquire or use or acquire new rights over any railway property except with the consent of Network Rail.

(5) Where Network Rail is asked to give its consent under this paragraph, its consent must not be unreasonably withheld but may be given subject to reasonable conditions.

**5.—**(1) The undertaker must before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer, and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if, by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail, the engineer has not intimated disapproval of those plans and the grounds of disapproval—

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(a) Section 272 was amended by paragraph 103 of Schedule 17 to the Communications Act 2003.

- (a) the undertaker may serve on the engineer written notice requiring the engineer to intimate approval or disapproval within a further period of 28 days beginning with the date on which the engineer receives written notice from the undertaker; and
- (b) if by the expiry of the further 28 days the engineer has not intimated approval or disapproval, the engineer is deemed to have approved the plans as submitted.

(3) If, by the end of the period of 28 days beginning with the date on which written notice was served on the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail must construct it with all reasonable dispatch on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph and under the supervision (where appropriate and if given) of the undertaker.

(4) When signifying approval of the plans, the engineer may specify any protective works (whether temporary or permanent) which in the engineer's opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using them (including any relocation, de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified work), and—

- (a) such protective works as may be reasonably necessary for those purposes must be constructed by Network Rail or by the undertaker, if Network Rail so desires, and at the expense of the undertaker in either case, with all reasonable dispatch; and
- (b) the undertaker must not commence the construction of the specified work until the engineer has notified the undertaker that the protective works have been completed to the engineer's reasonable satisfaction.

**6.—**(1) Any specified work and any protective works to be constructed by virtue of paragraph 5(4) must, when commenced, be constructed—

- (a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled under paragraph 5;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage as is possible to railway property; and
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic on it and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction is caused by the carrying out, or in consequence of the construction, of a specified work, the undertaker must, notwithstanding any such approval, make good the damage and must pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Part imposes—

- (a) any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents; or
- (b) any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

**7.** The undertaker must—

- (a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and

- (b) supply the engineer with such information as the engineer may reasonably require with regard to a specified work or the method of constructing it.

**8.** Network Rail must at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by Network Rail under this Part during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

**9.—(1)** If any permanent or temporary alterations or additions to railway property are reasonably necessary in consequence of the construction of a specified work, or during a period of 24 months after the completion of that work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail.

(2) If Network Rail gives to the undertaker reasonable notice of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(3) If during the construction of a specified work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail, then, if the undertaker decides that that part of the specified work is to be constructed,—

- (a) Network Rail must assume construction of that part of the specified work; and
- (b) the undertaker must, notwithstanding any such approval of a specified work under paragraph 5(1), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that part of the specified work.

(4) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 10(a) provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

(5) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions, a capitalised sum representing the saving must be set off against any sum payable by the undertaker to Network Rail under this paragraph.

**10.** The undertaker must repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

- (a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 5(3) or in constructing any protective works under paragraph 5(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work;
- (c) in respect of the employment or procurement of the services of any inspectors, signallers, guards and other persons whom it is reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;
- (d) in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the engineer require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and

- (e) in respect of any additional temporary lighting of railway property in the vicinity of the specified work, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

**11.—(1) In this paragraph—**

“EMI” means, subject to sub-paragraph (2), electromagnetic interference with Network Rail’s apparatus generated by the operation of the authorised development, where such interference is of a level which adversely affects the safe operation of Network Rail’s apparatus;

“Network Rail’s apparatus” means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised development) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) This paragraph applies to EMI only to the extent that the EMI is not attributable to any change to Network Rail’s apparatus carried out after approval of plans under paragraph 5(1) for the relevant part of the authorised development giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the undertaker must in the design and construction of the authorised development take all measures necessary to prevent EMI and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) In order to facilitate the undertaker’s compliance with sub-paragraph (3)—

- (a) the undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail’s apparatus which may be at risk of EMI, and thereafter must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 5(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;
- (b) Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail’s apparatus identified under paragraph (a); and
- (c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail’s apparatus identified under paragraph (a).

(5) In any case where it is established that EMI can reasonably be prevented only by modifications to Network Rail’s apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail’s apparatus, but the means of prevention and the method of their execution are in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 5(1) have effect subject to the sub-paragraph.

(6) If, at any time before the commencement of regular revenue-earning operations of the authorised development and notwithstanding any measures adopted under sub-paragraph (3), the testing or commissioning of the authorised development causes EMI, then the undertaker must immediately on receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) immediately cease to use (or procure the cessation of use of) the undertaker’s apparatus causing the EMI until all measures necessary have been taken to remedy the EMI by way of modification to the source of the EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail’s apparatus.

(7) In the event of EMI having occurred —

- (a) the undertaker must afford reasonable facilities to Network Rail for access to the undertaker’s apparatus in the investigation of the EMI;
- (b) Network Rail must afford reasonable facilities to the undertaker for access to Network Rail’s apparatus in the investigation of the EMI; and

- (c) Network Rail must make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail's apparatus or the EMI.

(8) Where Network Rail approves modifications to Network Rail's apparatus under sub-paragraphs (5) or (6)—

- (a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus; and
- (b) any modifications to Network Rail's apparatus approved under those sub-paragraphs must be carried out and completed by the undertaker in accordance with paragraph 6.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 15(1) applies to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.

(10) For the purpose of paragraph 10(a), any modifications to Network Rail's apparatus under this paragraph are deemed to be protective works referred to in that sub-paragraph.

(11) In relation to any dispute arising under this paragraph, the reference in article 36 (arbitration) to the Secretary of State must be read as a reference to the President of the Institution of Engineering and Technology.

**12.** If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, the undertaker must, on receipt of the notice, take such steps as may be reasonably necessary to put the specified work in such state of maintenance as not adversely to affect railway property.

**13.** The undertaker—

- (a) must not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail unless it has first consulted Network Rail; and
- (b) must comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

**14.** Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work must, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to Network Rail.

**15.—(1)** The undertaker must—

- (a) pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part which may be occasioned to or reasonably incurred by Network Rail by reason of—
  - (i) the construction, maintenance or failure of a specified work; or
  - (ii) any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged on a specified work; and
- (b) indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission.

(2) The fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the supervision of the engineer does not (if it was done



without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(3) Network Rail must give the undertaker reasonable notice of any such claim or demand, and no settlement or compromise of such a claim or demand may be made without the prior consent of the undertaker.

(4) The sums payable by the undertaker under sub-paragraph (1) must include a sum equivalent to the relevant costs.

(5) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (4) which relates to the relevant costs of that train operator.

(6) The obligation under sub-paragraph (4) to pay Network Rail the relevant costs is, in the event of default, enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator under sub-paragraph (5).

(7) In this paragraph—

“relevant costs” means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any restriction of the use of Network Rail’s railway network as a result of the construction, maintenance or failure of a specified work or any act or omission referred to in sub-paragraph (1);

“train operator” means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

**16.** Network Rail must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part (including the amount of the relevant costs referred to in paragraph 15) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made under this Part (including any claim relating to the relevant costs).

**17.** In the assessment of any sums payable to Network Rail under this Part, no account must be taken of any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part or increasing the sums so payable.

**18.** The undertaker and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the undertaker of—

- (a) any railway property shown on the works plans and land plans and described in the book of reference;
- (b) any lands, works or other property held in connection with any such railway property; and
- (c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

**19.** Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part 1 of the Railways Act 1993.

**20.** The undertaker must give written notice to Network Rail if any application is proposed to be made by the undertaker for the Secretary of State’s consent, under article 5 (transfer of benefit of Order) and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

- (a) the nature of the application to be made;
- (b) the extent of the geographical area to which the application relates; and
- (c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

21. The undertaker must no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 35 (certification of plans, etc.) are certified by the Secretary of State, provide a set of those plans to Network Rail in the form of a computer disc with read-only memory.

## PART 3

### Protection for National Grid Gas plc and National Grid Electricity Transmission plc

#### Part to have effect unless otherwise agreed

1. The provisions of this Part have effect for the protection of the statutory undertakers referred to in this Part unless otherwise agreed in writing between the undertaker and the statutory undertaker.

#### Interpretation

2. In this Part—

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of the statutory undertaker to enable the statutory undertaker to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means—

- (a) electric lines or electrical plant as defined in the 1989 Act, belonging to or maintained by National Grid Electricity as a licence holder within the meaning of Part 1 of the 1989 Act;
- (b) any mains, pipes or other apparatus belonging to or maintained by National Grid Gas as a gas transporter within the meaning of Part 1 of the Gas Act 1986(a);

“authorised development” includes the use and maintenance of the authorised development;

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the provisions of this Part;

“functions” includes powers and duties;

“in”, in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over, across, along or on such land;

“maintain”, in relation to any apparatus or alternative apparatus of the statutory undertaker, includes the ability and right to construct, use, repair, alter, inspect, renew or remove; and “maintenance” must be construed accordingly;

“National Grid Electricity” means National Grid Electricity Transmission plc (company number 02366977);

“National Grid Gas” means National Grid Gas plc (company number 02006000);

“plans” includes designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

“statutory undertaker” means—

- (a) National Grid Electricity as a licence holder within the meaning of Part 1 of the 1989 Act; and
- (b) National Grid Gas as a gas transporter within the meaning of Part 1 of the Gas Act 1986.

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(a) 1986 c.44.

## **Application**

3. Except for paragraphs 4, 9, 10 and 11, this Part does not apply to apparatus in respect of which the relations between the undertaker and the statutory undertaker are regulated by Part 3 of the 1991 Act (street works in England and Wales).

## **Apparatus of statutory undertakers in temporarily stopped up streets**

4. Despite the temporary stopping up or diversion of any highway under article 9 (temporary stopping up of streets), a statutory undertaker may at all times take all necessary access across any such highway and execute and do all such works and things in, on or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

## **Acquisition of land, etc.**

5.—(1) Despite any provision in this Order or anything shown on the land plans or contained in the book of reference, the undertaker must not acquire any land interest or apparatus or override any easement or other interest of the statutory undertaker otherwise than by agreement.

(2) As a condition of agreement between the parties under sub-paragraph (1), before carrying out any part of the authorised development (or in such other timeframe as may be agreed between the undertaker and the statutory undertaker) that is subject to the requirements of this Part that—

- (a) will cause any conflict with or breach of the terms of any easement or other legal or land interest of the statutory undertaker; or
- (b) affects the provisions of any enactment or agreement regulating the relations between the undertaker and the statutory undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker,

the undertaker must, as the statutory undertaker reasonably requires, enter into such deeds of consent on such terms and conditions as may be agreed between the statutory undertaker, the undertaker acting reasonably, which must be no less favourable on the whole to the statutory undertaker unless otherwise agreed by the statutory undertaker; and it is the responsibility of the undertaker to procure or secure the consent and entering into of such deeds and variations by all third parties with an interest in the land at that time who are affected by the part of the authorised development.

(3) Where there is any inconsistency or duplication between a provisions of this Part relating to the relocation or removal of apparatus including (but not limited to) the payment of costs and expenses relating to the such relocation or removal and a provisions of any existing easement, right, agreement or licence granted, used, enjoyed or exercised by the statutory undertaker, other enactments relied on by the statutory undertaker as of right or other use in relation to the apparatus, the provisions of this Part prevails.

(4) Any agreement or consent by the statutory undertaker under paragraph 8 or any other paragraph of this Part must not be taken to constitute agreement under sub-paragraph (1).

## **Removal of apparatus**

6.—(1) If, in the exercise of an agreement reached under paragraph 5 or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus is placed—

- (a) the apparatus must not be removed under this Part; and
- (b) any right of a statutory undertaker to maintain the apparatus in the land must not be extinguished,

until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the statutory undertaker in accordance with sub-paragraphs (2) to (5).

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed

in the land, it must give to the statutory undertaker 56 days' advance written notice of that requirement, together with a plan of the work proposed and of the proposed position of the alternative apparatus to be provided or constructed; and in that case (or if, in consequence of the exercise of any of the powers conferred by this Order, the statutory undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the statutory undertaker to its satisfaction (taking into account paragraph 7(1)) the necessary facilities and rights for—

- (a) the construction of alternative apparatus in other land of the undertaker; and
- (b) subsequently, the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford the facilities and rights referred to in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, the statutory undertaker must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances to endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed, except that this obligation does not require the statutory undertaker to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part must be constructed in such manner and in such line or situation as may be agreed between the statutory undertaker and the undertaker.

(5) The statutory undertaker must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the grant to the statutory undertaker of any facilities and rights referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under this Part.

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

7.—(1) Where, in accordance with this Part, the undertaker affords to a statutory undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted on such terms and conditions as may be agreed between the undertaker and the statutory undertaker and must be no less favourable on the whole to the statutory undertaker than the facilities and rights enjoyed by it in respect of the apparatus to be removed, unless agreed by the statutory undertaker.

(2) If the facilities and rights to be afforded by the undertaker and agreed with the statutory undertaker under sub-paragraph (1) in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to the statutory undertaker than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject—

- (a) the matter must be referred to arbitration; and
- (b) the arbitrator must make such provision for the payment of compensation by the undertaker to the statutory undertaker as appears to the arbitrator to be reasonable, having regard to all the circumstances of the particular case.

#### **Retained apparatus: National Grid Gas plc**

8.—(1) Not less than 56 days before the commencement of any works authorised by this Order that are near to, or will or may affect, any apparatus belonging to or maintained by National Grid Gas (the “statutory undertaker”), the removal of which has not been required by the undertaker under paragraph 6(2) or otherwise, the undertaker must submit a plan to the statutory undertaker.

(2) In relation to works which will or may—

- (a) be situated on, over, under or within 15 metres measured in any direction of any apparatus;
- (b) (wherever situated) impose any load directly on any apparatus; or
- (c) involve embankment works within 15 metres of any apparatus,

the plan to be submitted to the statutory undertaker under sub-paragraph (1) must be detailed, include a method statement and describe—

- (d) the exact position of the works;
- (e) the level at which the works are proposed to be constructed or renewed;
- (f) the manner of their construction or renewal including details of excavation and the positioning of plant;
- (g) the position of all apparatus;
- (h) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and
- (i) intended maintenance regimes.

(3) The undertaker must not commence any works to which sub-paragraph (2) applies until the statutory undertaker has given written approval of the plan submitted.

(4) Any approval of the statutory undertaker required under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose referred to in sub-paragraph (5) or (7); and
- (b) must not be unreasonably withheld or delayed.

(5) In relation to works to which sub-paragraph (2) applies, the statutory undertaker may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its system against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works authorised by this Order must be executed only in accordance with the plan submitted under sub-paragraph (1), as amended from time to time by agreement between the undertaker and the statutory undertaker, and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (5) or (7) by the statutory undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it; and the statutory undertaker is entitled to watch and inspect the execution of the works.

(7) Where the statutory undertaker requires any protective works to be carried out either by itself or by the undertaker (whether of a temporary or permanent nature)—

- (a) the statutory undertaker must give at least 56 days' notice of the protective works from the date of submission of a plan under sub-paragraph (1) (except in an emergency); and
- (b) the protective works must be carried out to the statutory undertaker's satisfaction before the commencement of any works authorised by this Order (or any relevant part of them).

(8) If the statutory undertaker, in accordance with sub-paragraph (5) or (7) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 6 and 7 apply as if the removal of the apparatus had been required by the undertaker under paragraph 6(2).

(9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of any works, a new plan, instead of the plan previously submitted, and the undertaker having done so the provisions of this paragraph apply to and in respect of the new plan.

(10) The undertaker is not required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act, but in that case the undertaker must—

- (a) give to the statutory undertaker notice and as soon as is reasonably practicable a plan of those works;
- (b) comply with sub-paragraph (5), (6) and (7) insofar as is reasonably practicable in the circumstances; and

(c) comply with sub-paragraph (11) at all times.

(11) Within 28 days of receipt of a request from the statutory undertaker, the undertaker must submit a scheme for monitoring ground subsidence for approval by the statutory undertaker, such approval not to be unreasonably withheld or delayed, for works which are capable of interfering with or risking damage to the statutory undertaker's apparatus.

(12) At all times when carrying out any works authorised by this Order the undertaker must comply with National Grid Gas's policies for safe working in proximity to gas apparatus (Specification for safe working in the vicinity of National Grid, high pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22) and the Health and Safety Executive's guidance HSG47 (Avoiding danger from underground services).

### **Retained apparatus: National Grid Electricity Transmission plc**

**9.**—(1) Not less than 56 days before the commencement of any authorised works authorised by this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 6(2) or otherwise, the undertaker must submit to National Grid Electricity (the "statutory undertaker") a plan and seek from National Grid Electricity details of the underground extent of its electricity tower foundations.

(2) In relation to works which will or may—

(a) be situated on, over, under or within 15 metres measured in any direction of any apparatus; or

(b) involve embankment works within 15 metres of any apparatus,

the plan to be submitted to the statutory undertaker under sub-paragraph (1) must be detailed, include a method statement and describe—

(c) the exact position of the works;

(d) the level at which the works are proposed to be constructed or renewed;

(e) the manner of their construction or renewal including details of excavation and positioning of plant;

(f) the position of all apparatus; and

(g) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus.

(3) In relation to any works which will or may be situated on, over, under or within 15 metres of any part of the foundations of an electricity tower or between any 2 or more electricity towers, the plan to be submitted to the statutory undertaker under sub-paragraph (1) must be detailed, include a method statement and describe in addition to the matters set out in sub-paragraph (2)—

(a) details of any cable trench design including route, dimensions and clearance to pylon foundations;

(b) how pylon foundations will not be affected before, during and post-construction;

(c) details of load-bearing capacities of trenches;

(d) details of cable installation methodology including access arrangements, jointing bays and backfill methodology;

(e) a written management plan for high voltage hazard during construction and ongoing maintenance of the cable route;

(f) written details of the operations and maintenance regime for the cable including frequency and method of access;

(g) assessment of earth rise potential if reasonably required by National Grid Electricity's engineers; and

(h) evidence that trench-bearing capacity is to be designed to 26 tonnes to take the weight of overhead line construction traffic.

(4) The undertaker must not commence any works to which sub-paragraph (2) or (3) applies until the statutory undertaker has given written approval of the plan submitted.

(5) Any approval of the statutory undertaker required under sub-paragraph (2) or (3)—

- (a) may be given subject to reasonable conditions for any purpose referred to in sub-paragraph (6) or (8); and
- (b) must not be unreasonably withheld.

(6) In relation to a work to which sub-paragraph (2) or (3) applies, the statutory undertaker may require such modifications to be made to the plan as may be reasonably necessary for the purpose of securing its system against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(7) Works executed under this Order must be executed only in accordance with the plan submitted under sub-paragraph (1), as amended from time to time by agreement between the undertaker and the statutory undertaker, and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (6) or (8) by the statutory undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the statutory undertaker is entitled to watch and inspect the execution of the works.

(8) Where the statutory undertaker requires any protective works to be carried out either itself or by the undertaker (whether of a temporary or permanent nature)—

- (a) the statutory undertaker must give at least 56 days' notice of the protective works from the date of submission of a plan under sub-paragraph (1) (except in an emergency); and
- (b) the protective works must be carried out to the statutory undertaker's reasonable satisfaction before the commencement of any works authorised by this Order (or any relevant part of them).

(9) If the statutory undertaker, in accordance with sub-paragraph (6) or (8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 6 and 7 apply as if the removal of the apparatus had been required by the undertaker under paragraph 6(2).

(10) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of any works, a new plan, instead of the plan previously submitted, and the undertaker having done so the provisions of this paragraph apply to and in respect of the new plan.

(11) The undertaker is not required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act, but in that case the undertaker must—

- (a) give to the statutory undertaker notice as soon as is reasonably practicable and a plan of the works;
- (b) comply with sub-paragraph (6), (7) and (8) insofar as is reasonably practicable in the circumstances; and
- (c) comply with sub-paragraph (12) at all times.

(12) Within 28 days of receipt of a request from the statutory undertaker, the undertaker must submit a scheme for monitoring ground subsidence for approval by the statutory undertaker, such approval not to be unreasonably withheld or delayed, for works which are capable of interfering with or risking damage to the statutory undertaker's apparatus.

(13) At all times when carrying out any works authorised under this Order comply with National Grid Electricity's policies for development near overhead lines (EN43-8) and the Health and Safety Executive's guidance note GS6 "Avoiding danger from overhead power lines".

## **Expenses**

**10.—**(1) Subject to the following provisions of this paragraph, the undertaker must pay to the statutory undertaker on demand all charges, costs and expenses reasonably anticipated or incurred by the statutory undertaker in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new apparatus which

may be required in consequence of the execution of any works referred to in this Part including without limitation any costs reasonably incurred or compensation properly paid in connection with—

- (a) the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation if the statutory undertaker elects to use compulsory purchase powers to acquire any necessary rights under paragraph 6(3) all costs incurred as a result of such action;
- (b) the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works; and
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part.

(2) There must be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under this Part and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with this Part—

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or in default of agreement settled by arbitration in accordance with article 36 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the statutory undertaker by virtue of sub-paragraph (1) must be reduced by the amount of that excess except where it is not possible in the circumstances to obtain the existing type of operations, capacity or dimensions or to place at the existing depth in which case full costs must be borne by the undertaker.

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

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

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

## **Indemnity**

11.—(1) Subject to sub-paragraphs (2) and (3), if—



- (a) by reason or in consequence of the construction of any works authorised by this Part;
- (b) in consequence of the construction, use, maintenance or failure of any of the authorised development by or on behalf of the undertaker; or
- (c) in consequence of any act or default of the undertaker (or any person employed or authorised by the undertaker) in the course of carrying out such works including without limitation works carried out by the undertaker under this Part or any subsidence resulting from any of the works),

any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the works) or property of a statutory undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any statutory undertaker, or the statutory undertaker becomes liable to pay any amount to any third party, the undertaker must—

- (d) bear and pay on demand the cost reasonably incurred by the statutory undertaker in making good such damage or restoring the supply; and
- (e) indemnify that statutory undertaker for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from the statutory undertaker, by reason or in consequence of any such damage or interruption or the statutory undertaker becoming liable to any third party as aforesaid.

(2) The fact that any act or thing may have been done by a statutory undertaker on behalf of the undertaker, in accordance with a plan approved by a statutory undertaker, in accordance with any requirement of a statutory undertaker or under the supervision of the statutory undertaker does not, subject to sub-paragraph (3), excuse the undertaker from liability under sub-paragraph (1).

(3) Nothing in sub-paragraph (1) impose any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the neglect or default of a statutory undertaker, its officers, servants, contractors or agents.

(4) A statutory undertaker must give the undertaker reasonable notice of any claim or demand, and no settlement or compromise may be made without first consulting the undertaker and considering its representations.

### **Apparatus laid, etc. on date of Order**

12. Nothing in this Part affects the provisions of any enactment or agreement regulating the relations between the undertaker and a statutory undertaker in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

### **Co-operation**

13. Where in consequence of the proposed construction of any of the authorised development, the undertaker or a statutory undertaker requires the removal of apparatus under paragraph 6(2) or a statutory undertaker makes requirements for the protection or alteration of apparatus under paragraph 8 or 9, the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of the statutory undertaker's undertaking, and the statutory undertaker must use its best endeavours to co-operate with the undertaker for that purpose.

### **Access**

14. If in consequence of the agreement reached in accordance with paragraph 5(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to the apparatus as will enable the statutory undertaker to maintain or use the apparatus no less effectively than was possible before the obstruction.

## Arbitration

15. Except for differences or disputes arising under paragraph 6(2) and (4), 7(1) and 8, any difference or dispute arising between the undertaker and a statutory undertaker under this Part must, unless otherwise agreed in writing between the undertaker and the statutory undertaker, be determined by arbitration in accordance with article 36.

## PART 4

### Protection for Anglian Water Services Limited

1. The provisions of this Part have effect for the protection of Anglian Water unless otherwise agreed in writing between the undertaker and Anglian Water.

2. In this Part—

“alternative apparatus” means alternative apparatus adequate to enable Anglian Water to fulfil its statutory functions in no less efficient a manner than previously;

“Anglian Water” means Anglian Water Services Limited (company number 02366656);

“apparatus” means—

- (a) any works, mains, pipes or other apparatus belonging to or maintained by Anglian Water for the purposes of water supply and sewerage;
- (b) any drain or works vested in Anglian Water under the Water Industry Act 1991; and
- (c) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,

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

“emergency” means the immediate threat of death or injury to persons, of damage to property or of damage to the environment and the risk that drinking water supply or quality will fall below the Drinking Water Inspectorate standards;

“functions” includes powers and duties;

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

“plan” includes section, drawing, specification and method statement.

3. This Part does not apply to apparatus in respect of which the relations between the undertaker and Anglian Water are regulated by Part 3 of the 1991 Act (street works in England and Wales).

4.—(1) The undertaker must not—

- (a) interfere with, build over or near to, any apparatus within the Order land;
- (b) execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus; or
- (c) where the apparatus is laid in a trench, execute any filling around the apparatus within the standard protection strips, which are the strips of land falling the following distances to either side of the medial line of any apparatus—
  - (i) 2.25 metres, where the diameter of the pipe is less than 150 millimetres;
  - (ii) 3 metres, where the diameter of the pipe is 150 millimetres or more but less than 450 millimetres;
  - (iii) 4.5 metres, where the diameter of the pipe is 450 or more but less than 750 millimetres; and
  - (iv) 6 metres, where the diameter of the pipe is 750 millimetres or more,

unless otherwise agreed in writing by Anglian Water, following a request from the undertaker (including a description and plan of the works), such agreement not to be unreasonably withheld or delayed; and this provision must be brought to the attention of any agent or contractor responsible for carrying out any works on behalf of the undertaker.

(2) The works may be executed only in accordance with the plan and description submitted under sub-paragraph (1) and such reasonable requirements as may be made in accordance with sub-paragraph (3) by Anglian Water for the alteration or otherwise for the protection of the apparatus, or for securing access to it; and an officer of Anglian Water is entitled to watch and inspect the execution of the works at the undertaker's cost.

(3) Any requirements made by Anglian Water under sub-paragraph (2) must be made within a period of 28 days beginning with the date on which a plan and description under sub-paragraph (1) are submitted to it.

(4) Anglian Water may extend the period up to 42 days with the consent of the undertaker, such consent not to be unreasonably withheld.

(5) If by the expiry of the further 42 days Anglian Water has not intimated agreement or refusal, Anglian Water is deemed to have agreed the plans as submitted.

(6) Any refusal must be accompanied by a statement of the grounds of refusal.

(7) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan and description instead of the plan and description previously submitted, and once the undertaker has done so the provisions of this paragraph apply to and in respect of the new plan and description.

(8) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency, but in that case the undertaker must—

- (a) give to Anglian Water notice as soon as is reasonably practicable and a plan and description of the works as soon as reasonably practicable subsequently; and
- (b) comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

(9) It is reasonable for Anglian Water to require that the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or the filling around the apparatus (where the apparatus is laid in a trench), be executed by Anglian Water at the expense of the undertaker.

(10) Anglian Water must execute any requirement made under sub-paragraph (9) in a timely manner.

**5.** Except in an emergency, the alteration, extension, removal or relocation of any apparatus must not be implemented until—

- (a) any requirement for permits under the Environmental Permitting (England and Wales) Regulations 2010 or other legislation and any other associated consents are obtained, and any approval or agreement required from Anglian Water on alternative outfall locations as a result of such relocation are approved, such approvals from Anglian Water not to be unreasonably withheld or delayed; and
- (b) the undertaker has made the appropriate application required under the Water Industry Act 1991 together with a plan and section of the works proposed and Anglian Water has agreed all of the contractual documentation required under the Water Industry Act 1991, such agreement not to be unreasonably withheld or delayed,

and the works must be executed only in accordance with the plan and description submitted and with such reasonable requirements as may be made by Anglian Water for the alteration or otherwise for the protection of the apparatus or for securing access to it.

**6.** Where—

- (a) in exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which apparatus is placed; and
- (b) the apparatus is to be relocated, extended, removed or altered in any way,

except in an emergency, no alteration or extension may take place until Anglian Water has established to its reasonable satisfaction contingency arrangements in order to conduct its functions for the duration of the works to relocate, extend, remove or alter the apparatus; and Anglian Water must use reasonable endeavours to establish contingency arrangements in a timely manner.

**7.** Despite any provision in this Order or anything shown on any plan, the undertaker must not acquire any apparatus otherwise than by agreement; and before extinguishing any existing rights for Anglian Water to use, keep, inspect, renew and maintain its apparatus in the Order land, the undertaker must, except in an emergency, with the agreement of Anglian Water, create a new right to use, keep, inspect, renew and maintain the apparatus that is reasonably convenient for Anglian Water, such agreement not to be unreasonably withheld or delayed, and to be subject to arbitration under article 36 (arbitration).

**8.** If, in consequence of the exercise of the powers conferred by this Order, the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to the apparatus as will enable Anglian Water to maintain or use the apparatus no less effectively than was possible before the obstruction.

**9.** If, in consequence of the exercise of the powers conferred by this Order, previously unmapped sewers, lateral drains or other apparatus are identified by the undertaker, notification of the location of such assets must immediately be given to Anglian Water and must be afforded the same protection as other Anglian Water assets.

**10.—(1)** If, for any reason or in consequence of the construction of any of the works referred to in paragraphs 4 to 7 and 9, any damage is caused to any apparatus (other than apparatus, the repair of which is not reasonably necessary in view of its intended removal for the purposes of the works) or property of Anglian Water, or there is any interruption in any service provided, or in the supply of any goods, by Anglian Water, the undertaker must—

- (a) bear and pay the cost reasonably incurred and documented by Anglian Water in making good any damage or restoring the supply; and
- (b) make reasonable compensation to Anglian Water for any other expenses, loss, damages, penalty or costs incurred by Anglian Water,

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

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

**11.** Any difference or dispute arising between the undertaker and Anglian Water under this Part must unless otherwise agreed in writing between the undertaker and Anglian Water be determined by arbitration in accordance with article 36.

## PART 5

### Protection for Canal & River Trust

**1.** The provisions of this Part have effect for the protection of Canal & River Trust unless otherwise agreed in writing between the undertaker and Canal & River Trust.

**2.** In this Part—

“construction” includes execution, placing, alteration and reconstruction; and “construct” must be construed accordingly;

“engineer” means an engineer appointed by Canal & River Trust for the purpose of this Order;

“Canal & River Trust” means the Canal & River Trust or any successor body performing the same functions in relation to any waterways;

“Canal & River Trust property” means any land owned by Canal & River Trust within the Order limits and includes land covered with water, subsoil, air space and waterways;

“code of practice” means the code of practice<sup>(a)</sup> for works affecting Canal & River Trust (April 2015) as amended from time to time;

“plans” includes sections, designs, design data, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), programmes and details of the extent, timing and duration of any proposed use or occupation of any Canal & River Trust property;

“specified work” means so much of any of the authorised development to be situated on, across, under, over or within the waterway or that may in any way adversely affect the waterway;

“waterway” means the River Witham and includes any pond or other waterway or course situated on Canal & River Trust property, any works, services, apparatus, equipment, lands (including subsoil) or premises belonging to or under the control of Canal & River Trust and held or used by it in connection with its statutory functions in relation to the River Witham.

**3.—**(1) Where, under this Part or anywhere else under this Order, Canal & River Trust (or the engineer) is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that the undertaker must observe the provisions of the code of practice for works affecting waterways and, where the code of practice is adhered to and its provisions observed, such consent must not be unreasonably withheld.

(2) To avoid doubt, any consent may be given subject to reasonable conditions including a condition which requires compliance with the code of practice or any applicable part of it and, in respect of article 12 (discharge of water), it is reasonable to impose a condition requiring the payment of such charges as are typically charged by the owner of the waterway.

(3) In so far as any specified work or the acquisition of rights under or over, or the use of, Canal & River Trust property is or may be subject to the code of practice, Canal & River Trust must—

- (a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from that code; and
- (b) use its reasonable endeavours to avoid any conflict arising between the application of that code and the proper implementation of the authorised development under this Order.

**4.—**(1) The undertaker must not in the exercise of the powers conferred by this Order prevent, obstruct or interfere with pedestrian or vehicular access to any Canal & River Trust property, unless preventing, obstructing or interfering with such access is with the consent of Canal & River Trust.

(2) The undertaker must not exercise the powers conferred by sections 271 or 272 of the 1990 Act in relation to any right of access of Canal & River Trust to Canal & River Trust property, but such right of access may be diverted with the consent of Canal & River Trust.

**5.—**(1) The undertaker must, before commencing construction of any specified work or carrying out any works on Canal & River Trust property, supply to Canal & River Trust proper and sufficient plans of that work (and such further information as Canal & River Trust may reasonably require) for the approval (having regard to the undertaker’s timetable for the construction of the authorised development) of the engineer; and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration in accordance with article 36 (arbitration).

(2) If by the end of the period of 28 days beginning with the date on which the plans have been supplied to Canal & River Trust the engineer has not provided, in writing, disapproval of the plans and the grounds of disapproval, the undertaker may serve on the engineer written notice requiring the engineer to intimate approval or disapproval within a period of 14 days beginning with the

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(a) Canal & River Trust (April 2015).

date on which the engineer receives written notice from the undertaker; and if by the expiry of the 14 days the engineer has not intimated approval or disapproval, the engineer is deemed to have approved the plans as submitted.

(3) When signifying approval of the plans, the engineer may specify any protective works (whether temporary or permanent) that in the engineer's opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of the waterway or the continued safe and efficient use of the waterway or any Canal & River Trust property, and—

- (a) such protective works (which for the avoidance of doubt may include requirements to fence any proposed works in order to separate them from the waterways, ponds or watercourses situated on Canal & River Trust property either on a permanent or temporary basis) as may be reasonably necessary for those purposes must be constructed by the undertaker, as agreed between the parties or settled by arbitration in accordance with article 36;
- (b) the protective works must be carried out at the expense of the undertaker with all reasonable dispatch; and
- (c) the undertaker must not commence the construction of the specified work until the engineer has notified the undertaker that the protective works have been completed to the engineer's reasonable satisfaction.

(4) If the undertaker fails to complete the construction of, or part of, any specified work or any protective work, Canal & River Trust may, if reasonably necessary to ensure the safety or stability of the waterway or the continued safe and efficient use of the waterway, construct any specified work or protective or part of such work in order to complete the construction of, or part of, the work.

**6.—**(1) Any specified work and any protective work to be constructed by virtue of paragraph 5(3) must, when commenced, be constructed —

- (a) with all reasonable dispatch (having regard to the undertaker's timetable for construction of the authorised development) in accordance with the plans approved or deemed to have been approved or settled under paragraph 5;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage or disturbance as is possible to the waterway;
- (d) in such a manner to ensure that no materials are discharged or deposited into any stream, watercourse, waterway, pond or any other water feature on or forming part of Canal & River Trust property; and
- (e) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of the waterway.

(2) If any damage to the waterway is caused by the carrying out of, or in consequence of, the construction of a specified work or a protective work, the undertaker must make good such damage and must pay to Canal & River Trust all reasonable and proper expenses that Canal & River Trust may incur or may be put to and reasonable and proper compensation for any loss which it may sustain in making good or otherwise by reason of such damage, interference or obstruction.

(3) Nothing in this Part imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligent act or default of Canal & River Trust or its servants, contractors or agents or any liability on Canal & River Trust with respect to any damage, costs, expenses or loss attributable to the negligent act or default of the undertaker or its servants, contractors or agents.

**7.** The undertaker must—

- (a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and

- (b) supply the engineer with all such information as the engineer may reasonably require with regard to a specified work or the method of constructing it.

**8.** Canal & River Trust must at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by Canal & River Trust under this Part during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

**9.** The undertaker must repay to Canal & River Trust in accordance with the code of practice all costs, charges and expenses reasonably incurred by Canal & River Trust in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work.

**10.** If, at any time during or after the completion of a specified work or a protective work, Canal & River Trust gives notice to the undertaker informing it that the state of maintenance of any part of the specified work or protective work appears to be such as adversely affects the operation of the waterway, the undertaker must, on receipt of the notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect the operation of the waterway.

**11.—(1)** The undertaker must pay to Canal & River Trust all reasonable and proper costs, charges, damages, losses and expenses not otherwise provided for in this Part that may be reasonably incurred by Canal & River Trust by reason of—

- (a) the existence, construction or maintenance of a specified work or a protective work or the failure of such a work; or
- (b) any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged on a specified work or a protective work,

and the undertaker must indemnify and keep indemnified Canal & River Trust from and against all reasonable and proper claims and demands arising out of or in connection with a specified work or a protective work or any such act or omission within 12 months of completion of the specified work or a protective work.

(2) The fact that any act or thing may have been done by Canal & River Trust on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision does not (if it was done without negligence on the part of Canal & River Trust or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under this paragraph.

(3) Canal & River Trust must give the undertaker reasonable notice of any such claim or demand, and except as such conduct would be contrary to law no settlement or compromise of such a claim or demand may be made without the prior written consent of the undertaker, such consent not to be unreasonably withheld or delayed.

**12.** Canal & River Trust must, on receipt of a written request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made under this Part.

**13.** In the assessment of any sums payable to Canal & River Trust under this Part, no account must be taken of any increase in the sums claimed that are attributable to any action taken by or any agreement entered into by Canal & River Trust if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part or increasing the sums so payable.

**14.** The undertaker and Canal & River Trust may enter into, and carry into effect, agreements for the transfer to the undertaker of—

- (a) any Canal & River Trust property shown on the works or land plans and described in the book of reference;

- (b) any lands, works or other property held in connection with any such Canal & River Trust property; and
- (c) any rights and obligations (whether or not statutory) of Canal & River Trust relating to any Canal & River Trust property or any lands, works or other property referred to in this paragraph.

**15.** The undertaker must repay to Canal & River Trust in accordance with the code of practice all fees, costs, charges and expenses reasonably incurred by Canal & River Trust—

- (a) in constructing any part of a specified work or protective work on behalf of the undertaker as provided by paragraph 5(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing the works;
- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work;
- (c) in respect of the employment or procurement of the services of any persons whom it must be reasonably necessary to appoint for inspecting, signalling, watching and lighting Canal & River Trust property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or incident arising from the construction or failure of a specified work; and
- (d) in respect of any additional temporary lighting of Canal & River Trust property in the vicinity of the specified work, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

**16.—(1)** If any permanent or temporary alterations or additions to Canal & River Trust property are reasonably necessary in consequence of the construction of a specified work or a protective work during construction, or during a period of 24 months after the completion, of that work in order to ensure the safety of Canal & River Trust property or the continued safe operation of the waterway, such alterations and additions may be carried out by Canal & River Trust.

(2) If Canal & River Trust gives to the undertaker reasonable notice of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to Canal & River Trust the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Canal & River Trust in maintaining, working and, when necessary, renewing the alterations or additions.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 15, provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

(4) If the cost of maintaining, working or renewing Canal & River Trust property is reduced in consequence of any such alterations or additions, a capitalised sum representing the saving must be set off against any sum payable by the undertaker to Canal & River Trust under this paragraph.

**17.** Any difference arising between the undertaker and Canal & River Trust under this Part (other than a difference as to the meaning or construction of this Part) must be referred to and settled by arbitration in accordance with article 36.

## PART 6

### Protection for electricity, gas and sewerage undertakers

**1.** The provisions of this Part have effect for the protection of affected undertakers unless otherwise agreed in writing between the undertaker and the affected undertaker in question.

**2.** In this Part—

“affected undertaker” means—

- (a) a licence holder within the meaning of Part 1 of the 1989 Act;



- (b) a gas transporter within the meaning of Part 1 of the Gas Act 1986<sup>(a)</sup>;
- (c) a water undertaker<sup>(b)</sup>; and
- (d) a sewerage undertaker,

for the area of the authorised development, and in relation to any apparatus, means the affected undertaker to whom it belongs or by whom it is maintained;

“alternative apparatus” means alternative apparatus adequate to enable the affected undertaker in question to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus”—

- (a) in the case of an affected undertaker that is a licence holder within the meaning of Part 1 of the 1989 Act, means electric lines or electrical plant (as defined in the 1989 Act) belonging to or maintained by the affected undertaker;
- (b) in the case of an affected undertaker that is a gas transporter within the meaning of Part 1 of the Gas Act 1986, means any mains, pipes or other apparatus belonging to or maintained by the affected undertaker for the purposes of gas supply;
- (c) in the case of an affected undertaker that is a water undertaker, means mains, pipes or other apparatus belonging to or maintained by the affected undertaker for the purposes of water supply; and
- (d) in the case of an affected undertaker that is a sewerage undertaker—
  - (i) means—
    - (aa) any drain or works vested in the affected undertaker under the Water Industry Act 1991; and
    - (bb) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act; and
  - (ii) includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works,

and in each case includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

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

**3.** This Part does not apply to apparatus in respect of which the relations between the undertaker and the affected undertaker are regulated by Part 3 of the 1991 Act (street works in England and Wales).

**4.** Despite any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

**5.—(1)** If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed, the apparatus must not be removed under this Part, and any right of an affected undertaker to maintain that apparatus in the land must not be extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the affected undertaker in question.

**(2)** If, for the purpose of executing any works in, on or under any land purchased, held or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to the affected undertaker in question written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be

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(a) 1986 c.44

(b) “Water undertaker” is defined in Schedule 1 to the Interpretation Act 1978.

provided or constructed; and in that case (or if in consequence of the exercise of any of the powers conferred by this Order an affected undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the affected undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford the facilities and rights referred to in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, the affected undertaker in question must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably practicable use all reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part must be constructed in such manner and in such line or situation as may be agreed between the affected undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 36 (arbitration).

(5) The affected undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 36, and after the grant to the affected undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under this Part.

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

(7) Nothing in sub-paragraph (6) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

**6.—**(1) Where, in accordance with this Part, the undertaker affords to an affected undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted on such terms and conditions as may be agreed between the undertaker and the affected undertaker in question or in default of agreement settled by arbitration in accordance with article 36.

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

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

(2) The works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the affected undertaker for the alteration or otherwise for

the protection of the apparatus, or for securing access to it; and the affected undertaker is entitled to watch and inspect the execution of the works.

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

(4) If an affected undertaker, in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 5 and 6 apply as if the removal of the apparatus had been required by the undertaker under paragraph 5(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and the undertaker having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency, but in that case it must give to the affected undertaker in question notice as soon as is reasonably practicable and a plan, section and description of the works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

**8.—**(1) Subject to the following provisions of this paragraph, the undertaker must repay to an affected undertaker the reasonable expenses incurred by the affected undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus (including costs or compensation payable in connection with the acquisition of land for that purpose) which may be required in consequence of the execution of any works referred to in paragraph 5(2).

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

(3) If in accordance with this Part—

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 36 to be necessary, then, if such placing involves cost in the construction of works under this Part exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the affected undertaker in question by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

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

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

(5) An amount which, apart from this sub-paragraph, would be payable to an affected undertaker in respect of works by virtue of sub-paragraph (1) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so

as to confer on the affected undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

**9.**—(1) Subject to sub-paragraphs (2) and (3), if, by reason or in consequence of the construction of any works referred to in paragraph 5(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the works) or property of an affected undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any affected undertaker, the undertaker must—

- (a) bear and pay the cost reasonably incurred by the affected undertaker in making good the damage or restoring the service or supply; and
- (b) make reasonable compensation to the affected undertaker for any other expenses, loss, damages, penalty or costs incurred by the affected undertaker by reason or in consequence of the damage or interruption.

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

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

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

## PART 7

### Protection for operators of electronic communications code networks

**1.** The provisions of this Part have effect for the protection of an operator unless otherwise agreed in writing between the undertaker and the operator.

**2.** In this Part—

“2003 Act” means the Communications Act 2003;

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

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

“electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act<sup>(a)</sup>;

“electronic communications code network” means—

- (a) so much of an electronic communications network or conduit system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the 2003 Act; and
- (b) an electronic communications network which the Secretary of State is providing or proposing to provide;

“electronic communications code operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act;

“operator” means the operator of an electronic communications code network.

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(a) See section 106

**3.** The exercise of the powers referred to in article 27 (statutory undertakers) is subject to paragraph 23 of Schedule 2 to the Telecommunications Act 1984(a).

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

- (a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or other property of an operator; or
- (b) there is any interruption in the supply of the service provided by an operator,

the undertaker must—

- (c) bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply;
- (d) make reasonable compensation to an operator for loss sustained by it; and
- (e) indemnify an operator against claims, demands, proceedings, costs, damages and expenses which may be made or taken against, or recovered from, or incurred by, an operator by reason, or in consequence of, any such damage or interruption.

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

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

(4) Any difference arising between the undertaker and the operator under this paragraph must be referred to and settled by arbitration under article 36 (arbitration).

**5.** This Part does not apply to—

- (a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by Part 3 of the 1991 Act (street works in England and Wales); or
- (b) any damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised development.

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

## PART 8

### Protection for Western Power Distribution (East Midlands) plc

**1.** The provisions of this Part have effect for the protection of WPD unless otherwise agreed in writing between the undertaker and WPD.

**2.** In this Part—

“alternative apparatus” means alternative apparatus adequate to enable WPD to fulfil its statutory functions in a manner no less efficient than previously;

“alternative rights” means all necessary legal easements, consents, or permissions required by WPD to permit or authorise a diversion;

“apparatus” means electric lines or electrical plant (in both cases, as defined in the 1989 Act) belonging to or maintained by WPD;

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(a) 1984 c.12

“emergency” means the immediate threat of death or injury to persons or of damage to property;

“functions” includes powers and duties;

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

“WPD” means Western Power Distribution (East Midlands) plc (company number 02366923).

**3.** This Part does not apply to apparatus in respect of which the relations between the undertaker and WPD are regulated by Part 3 of the 1991 Act (street works in England and Wales).

**4.** Despite any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

**5.** If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed, except in an emergency—

- (a) the apparatus must not be removed under this Part; and
- (b) any right of WPD to maintain that apparatus in that land must not be extinguished,

until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of WPD.

**6.—(1)** Unless required as a result of an emergency, the undertaker must not interfere with, build over, under or near to any apparatus within the Order land unless otherwise approved in writing by WPD, following a request from the undertaker (including a description and plan of the works), such approval not to be unreasonably withheld or delayed.

(2) If—

- (a) for the purpose of executing any works, the undertaker requires to remove or divert any apparatus placed within the Order land; and
- (b) alternative apparatus or any part of alternative apparatus is to be constructed in land other than the Order land as a consequence of the removal or diversion of apparatus,

the undertaker must use its reasonable endeavours to obtain any alternative rights in other land in which the alternative apparatus is to be constructed.

(3) If the undertaker is not able to obtain the alternative rights required under sub-paragraph (2), the undertaker and WPD must use reasonable endeavours to agree a reasonably practicable and mutually agreeable alternative engineering solution which does not require to be constructed in land other than Order land and does not require alternative rights.

(4) If—

- (a) alternative apparatus or any part of alternative apparatus is to be constructed elsewhere than in other land of the undertaker; or
- (b) the undertaker is unable to afford the alternative rights referred to in sub-paragraph (2) and an alternative engineering solution cannot be agreed in accordance with sub-paragraph (3) in the land in which the alternative apparatus or part of alternative apparatus is to be constructed,

WPD must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed, except that this obligation does not extend to the requirement for WPD to use its compulsory purchase powers to this end unless WPD elects to do so.

(5) The works must be executed only in accordance with the plans or drawings submitted under sub-paragraph (1) (or sub-paragraph (3), where relevant) and with such reasonable requirements as may be made in accordance with sub-paragraph (6) by WPD for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and WPD is entitled to watch and inspect the execution of the works.

(6) Any requirements made by WPD under sub-paragraph (5) must be made within 21 days beginning with the date on which the plans or drawings under sub-paragraph (1) are submitted to WPD.

(7) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan and description instead of the plan and description previously submitted, and the undertaker having done so the provisions of this paragraph apply to and in respect of the new plan and description.

(8) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency, but in that case it must give to WPD notice as soon as is reasonably practicable and a plan and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (5) in so far as is reasonably practicable in the circumstances.

**7.—**(1) Subject to the following provisions of this paragraph, the undertaker must pay to WPD on demand all charges, costs and expenses reasonably anticipated or incurred by WPD in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any works referred to in this Part including without limitation any costs reasonably incurred or compensation properly paid in connection with—

- (a) the acquisition of rights or the exercise of statutory powers for the apparatus including without limitation, if WPD elects to use compulsory acquisition powers to acquire any necessary rights under paragraph 6(4), all costs incurred as a result of such action; and
- (b) the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any works referred to in this Part.

(2) WPD must dispose of any apparatus removed under paragraph 6 on receipt of written notice from the undertaker.

(3) If in accordance with this Part and at the request of WPD apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions where it is not necessary as a direct replacement of existing apparatus or to meet the current industry standards and best practice then, if such placing involves cost in the construction of works under this Part exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, as the case may be, the amount which apart from this sub-paragraph would be payable to WPD by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

**8.—**(1) Subject to sub-paragraphs (2) and (3), if—

- (a) by reason or in consequence of the construction of any works referred to in this Part;
- (b) in consequence of the construction use, maintenance, or failure of any of the authorised development by or on behalf of the undertaker; or
- (c) in consequence of any act or default of the undertaker (or any person employed or authorised by the undertaker) in the course of carrying out the works including without limitation works carried out by the undertaker under this Part (or any subsidence resulting from any of the works),

any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the works) or property of WPD, or

there is any interruption in any service provided, or in the supply of any goods, by WPD, the undertaker must—

- (d) bear and pay the documented cost reasonably incurred by WPD in making good the damage or restoring the supply; and
- (e) indemnify WPD for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from WPD by reason or in consequence of the damage or interruption or WPD becoming liable to any third party.

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

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

9.—(1) Any difference or dispute arising between the undertaker and WPD under this Part must, unless otherwise agreed in writing between the undertaker and WPD, be determined by arbitration in accordance with article 36 (arbitration).

## SCHEDULE 9

Articles 2 and 31

### Deemed licence under Marine and Coastal Access Act 2009

#### PART 1

##### Licensed marine activities

##### **Interpretation**

1.—(1) In this licence—

“2009 Act” means the Marine and Coastal Access Act 2009;

“Annex 1 habitat” means a habitat set out in Annex 1 to Council Directive 92/43/EEC of 21st May 1992 on the conservation of natural habitats and of wild fauna and flora;

“authorised deposits” means the substances and articles specified in clause 2(3);

“authorised scheme” means Work Nos. 1 and 2 described in clause 2;

“cable” includes fibre-optic cables either within the cable or laid alongside it;

“cable ducts” means conduits for the installation of electrical cables;

“cable protection” means measures to protect cables from physical damage and exposure due to loss of sea bed sediment including (but not limited to) the use of bagged solutions filled with gravel or other materials as approved by the MMO, protective aprons or covering mattresses, flow energy dissipation devices or rock and gravel placement;

“collector substations” means the collector substations authorised by the Triton Knoll Offshore Wind Farm Order 2013;

“commence” means begin to carry out the licensed marine activities other than pre-construction surveys or monitoring; and “commencement” must be construed accordingly;

“Condition” means a condition in Part 2;

“enforcement officer” means a person authorised to carry out enforcement duties under Part 4 of the 2009 Act;

“environmental statement” means the document certified as the environmental statement by the Secretary of State under article 35 of the Order;



“Historic England” means the Historic Buildings and Monuments Commission for England or any replacement body;

“horizontal directional drilling works” means works for the laying of cables by means of horizontal directional drilling and includes exit for horizontal directional drilling and related works;

“Kingfisher Fortnightly Bulletin” means the bulletin published by the Humber Seafood Institute or such other alternative publication approved in writing by the MMO;

“licensed marine activities” means the activities specified in Part 1;

“maintain” includes—

- (a) inspect, upkeep, repair, adjust and alter; and
- (b) in relation to any of the ancillary works in Part 2 of Schedule 1 to the Order, remove, reconstruct and replace,

to the extent assessed in the environmental statement; and “maintenance” must be construed accordingly;

“MCA” means the Maritime and Coastguard Agency;

“MHWS” (mean high water springs) means the average throughout a year of the heights of 2 successive high waters during the periods of 24 hours when the range of the tide is greatest as defined by the MMO and shown on the Order limits plans;

“MMO” means the Marine Management Organisation;

“notice to mariners” includes any notice to mariners which may be issued by the Admiralty, Trinity House, Queen’s harbour masters, government departments and harbour and pilotage authorities;

“offshore Order limits” means the limits shown on the Order limits plans within which the authorised scheme may be carried out, whose grid co-ordinates are set out in clause 2(4);

“Order” means the Triton Knoll Electrical System Order 2016;

“Order limits plans” means the plans certified as the Order limits plans by the Secretary of State under article 35 of the Order;

“outline offshore written scheme of investigation” means the document certified as the outline offshore written scheme of investigation by the Secretary of State under article 35 of the Order;

“outline offshore operations and maintenance plan” means the document certified as the outline offshore operations and maintenance plan by the Secretary of State under article 35 of the Order;

“statutory nature conservation body” means the Government’s advisor on the natural environment;

“Trinity House” means the Corporation of Trinity House of Deptford Strond;

“UKHO” means the United Kingdom Hydrographic Office;

“undertaker” means Triton Knoll Offshore Wind Farm Limited (company number 03696654);

“vessel” means every description of vessel, however propelled or moved, and includes a non-displacement craft, a personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel, a hovercraft or any other amphibious vehicle and any other thing constructed or adapted for movement through, in, on or over water and which is at the time in, on or over water;

“Work No. 3” means Work No. 3 as set out in Part 1 of Schedule 1 to the Order.

(2) A reference to any statute, order, regulation or similar instrument must be construed as a reference to the statute, order, regulation or instrument as amended by any subsequent statute, order, regulation or instrument or as contained in any subsequent re-enactment.

(3) Unless otherwise indicated—

- (a) all times are Greenwich Mean Time (GMT);

(b) all co-ordinates are latitude and longitude degrees, minutes and seconds to 3 decimal places.

(4) Except where otherwise notified in writing by the relevant organisation, the primary point of contact with the organisations listed below and the address for returns and correspondence is—

- (a) Marine Management Organisation  
Offshore Marine Licensing  
Lancaster House  
Hampshire Court  
Newcastle-upon-Tyne NE4 7YH  
Tel: 0300 123 1032
- (b) Marine Management Organisation (coastal office)  
Estuary House  
Wharnccliffe Road  
Grimsby  
Lincolnshire DN31 3QL  
Tel: 01472 355 112
- (c) Trinity House  
Tower Hill  
London EC3N 4DH  
Tel: 0207 481 6900
- (d) The United Kingdom Hydrographic Office  
Admiralty Way  
Taunton  
Somerset TA1 2DN  
Tel: 01823 337 900
- (e) Maritime and Coastguard Agency  
Navigation Safety Branch  
Bay 2/20  
Spring Place  
105 Commercial Road  
Southampton S015 1EG  
Tel: 023 8032 9448
- (f) Centre for Environment, Fisheries and Aquaculture Science  
Pakefield Road  
Lowestoft  
Suffolk NR33 0HT  
Tel: 01502 562 244
- (g) Natural England  
Foss House  
Kings Pool  
1-2 Peasholme Green  
York Y01 7PX  
Tel: 0300 060 4911
- (h) The Historic Buildings and Monuments Commission for England

Eastgate Court  
195-205 High Street  
Guildford GU1 3EH  
Tel: 01483 252 057

- (i) Joint Nature Conservation Committee  
Inverdee House  
Baxter Street  
Aberdeen AB11 9QA

### **Details of licensed marine activities**

2.—(1) This licence authorises the undertaker (and any agent or contractor acting on its behalf) to carry out seaward of MHWS the following licensable marine activities under section 66(1) of the 2009 Act, subject to the Conditions—

- (a) the deposit at sea of the substances and articles specified in paragraph (3);
  - (b) the construction of works in or over the sea and/or on or under the sea bed; and
  - (c) the removal of sediment samples for the purposes of informing environmental monitoring under this licence during pre-construction, construction and operation.
- (2) The activities are authorised in relation to the construction, maintenance and operation of—
- (a) Work No. 1 – up to 6 cables for the transmission of high voltage alternating current electricity together with fibre-optic cables for the transmission of electronic communications laid on or beneath the seabed between the collector substations and Work No. 2 including pipeline crossings and cable protection;
  - (b) Work No. 2 – up to 6 cables for the transmission of high voltage alternating current electricity together with fibre-optic cables for the transmission of electronic communications laid in cable ducts from mean low water connecting Work No. 1 and Work No. 3;
  - (c) in connection with Work Nos. 1 and 2, ancillary works within the offshore Order limits seaward of MHWS which have been subject to an environmental impact assessment recorded in the environmental statement comprising—
    - (i) temporary landing places, moorings or other means of accommodating vessels in the construction and/or maintenance of the authorised scheme;
    - (ii) temporary or permanent buoys, beacons, fenders and other navigational warning or ship impact protection works;
    - (iii) cable route preparation works;
    - (iv) the removal, reconstruction or alteration of the position of subsea cables existing at the date of commencement of the licensed marine activities; and
    - (v) horizontal directional drilling exit pits.
- (3) The substances or articles authorised for deposit at sea are—
- (a) iron/steel;
  - (b) stone and rock;
  - (c) concrete;
  - (d) sand and gravel;
  - (e) plastic/synthetic; and
  - (f) marine coatings, other chemicals and timber.

(4) The grid co-ordinates for the offshore Order limits seaward of MHWS are specified below and more particularly shown on the Order limits plans—

### **Co-ordinates for offshore Order limits seaward of MHWS**

<i>Point</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>	<i>Point</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>
AI	53° 32' 16.234" N	0° 51' 40.692" E	G	53° 17' 0.671" N	0° 23' 40.084" E
AJ	53° 24' 31.248" N	0° 59' 39.385" E	H	53° 17' 20.885" N	0° 24' 5.700" E
AS	53° 22' 56.159" N	0° 46' 8.201" E	I	53° 17' 25.462" N	0° 24' 16.736" E
AT	53° 22' 35.877" N	0° 45' 39.771" E	J	53° 19' 9.809" N	0° 25' 20.599" E
AU	53° 20' 58.870" N	0° 45' 30.470" E	K	53° 19' 38.094" N	0° 25' 44.472" E
AV	53° 20' 18.829" N	0° 44' 23.598" E	L	53° 20' 27.460" N	0° 26' 42.541" E
AW	53° 20' 2.612" N	0° 43' 18.260" E	M	53° 20' 43.520" N	0° 27' 29.635" E
AX	53° 20' 1.822" N	0° 41' 58.661" E	N	53° 20' 46.705" N	0° 28' 38.086" E
AY	53° 20' 4.107" N	0° 41' 22.273" E	O	53° 20' 39.043" N	0° 34' 13.401" E
AZ	53° 20' 1.898" N	0° 40' 30.850" E	P	53° 20' 31.962" N	0° 35' 58.445" E
BA	53° 19' 58.395" N	0° 39' 51.749" E	Q	53° 20' 32.022" N	0° 36' 28.081" E
BB	53° 19' 59.805" N	0° 37' 16.544" E	R	53° 20' 35.314" N	0° 37' 11.880" E
BC	53° 19' 56.528" N	0° 36' 32.931" E	S	53° 20' 33.895" N	0° 39' 46.605" E
BD	53° 19' 56.382" N	0° 35' 55.878" E	T	53° 20' 37.303" N	0° 40' 24.656" E
BE	53° 20' 3.584" N	0° 34' 8.235" E	U	53° 20' 39.751" N	0° 41' 23.781" E
BF	53° 20' 11.127" N	0° 28' 36.545" E	V	53° 20' 37.410" N	0° 42' 1.047" E
BG	53° 20' 7.964" N	0° 27' 43.904" E	W	53° 20' 37.931" N	0° 43' 9.122" E
BH	53° 20' 1.938" N	0° 27' 23.706" E	X	53° 20' 47.002" N	0° 43' 46.826" E
BI	53° 19' 17.721" N	0° 26' 33.517" E	Y	53° 21' 11.473" N	0° 44' 32.598" E
BJ	53° 18' 55.345" N	0° 26' 14.927" E	Z	53° 22' 14.571" N	0° 44' 36.340" E
BK	53° 17' 2.447" N	0° 25' 4.201" E	AA	53° 22' 50.453" N	0° 44' 45.224" E
BL	53° 16' 54.685" N	0° 24' 46.623" E	AB	53° 23' 37.771" N	0° 45' 8.186" E
BM	53° 16' 37.940" N	0° 24' 25.834" E	AC	53° 24' 10.968" N	0° 45' 42.526" E
BN	53° 16' 4.626" N	0° 23' 15.114" E	AD	53° 25' 2.619" N	0° 44' 32.111" E
BO	53° 15' 55.271" N	0° 21' 40.714" E	AE	53° 28' 4.193" N	0° 44' 10.434" E
BP	53° 15' 52.991" N	0° 20' 45.646" E	AF	53° 28' 19.752" N	0° 44' 13.790" E
BQ	53° 15' 51.994" N	0° 20' 34.705" E	AG	53° 29' 12.732" N	0° 41' 28.840" E
BR	53° 15' 51.249" N	0° 19' 42.683" E	AH	53° 31' 42.626" N	0° 42' 58.368" E
BS	53° 15' 58.542" N	0° 19' 24.827" E	AR	53° 24' 6.378" N	0° 48' 43.578" E
BT	53° 16' 0.730" N	0° 19' 19.467" E	AQ	53° 24' 46.233" N	0° 49' 44.994" E
A	53° 16' 6.688" N	0° 19' 15.877" E	AP	53° 25' 38.625" N	0° 52' 49.002" E
B	53° 16' 23.419" N	0° 19' 35.327" E	AO	53° 25' 38.029" N	0° 53' 0.402" E
C	53° 16' 27.466" N	0° 20' 29.534" E	AN	53° 25' 21.824" N	0° 53' 25.522" E
D	53° 16' 28.433" N	0° 20' 40.181" E	AM	53° 24' 38.801" N	0° 55' 38.414" E
E	53° 16' 30.664" N	0° 21' 34.324" E	AL	53° 24' 39.002" N	0° 56' 17.146" E
F	53° 16' 38.211" N	0° 22' 53.464" E	AK	53° 24' 31.246" N	0° 56' 45.454" E

### **Decommissioning**

3.—(1) This licence does not permit the decommissioning of the authorised scheme.

(2) No decommissioning activity may commence until a decommissioning programme has been approved by the Secretary of State under section 106 of the Energy Act 2004.

(3) At least 4 months before carrying out any decommissioning activity, the undertaker must notify the MMO of the proposed activity to establish whether a marine licence is required for the activity.

## **Application of section 72 of Marine and Coastal Access Act 2009**

4. Section 72 of the 2009 Act applies to this licence, except that subsection (7) relating to the transfer of the licence applies only to a transfer not falling within article 5 of the Order.

## **Agreement to variations**

5. Where the words “unless otherwise agreed” appear in the Conditions, any agreement may be given only where it has been demonstrated to the satisfaction of the MMO (or the MCA, as the case may be) that such agreement is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

# **PART 2**

## **Conditions**

### **Design parameters**

- 1.—(1) The total number of cables comprising Work No. 1 must not exceed 6.
- (2) The total length of the cables comprising Work No. 1 must not exceed 396 kilometres.
- (3) The total amount of cable protection for the cables comprising Work No. 1 must not exceed 367,200 square metres and 320,760 cubic metres.
- (4) The finished height of any cable protection must not exceed 10% of the navigable water depth existing before works commence unless otherwise agreed in writing in advance with the MMO and the MCA.

### **Notifications and inspections**

- 2.—(1) The undertaker must ensure that—
  - (a) a copy of this licence and any subsequent amendments or revisions to it is provided to—
    - (i) all agents and contractors notified to the MMO in accordance with Condition 11; and
    - (ii) the masters and transport managers responsible for the vessels notified to the MMO in accordance with that Condition;
  - (b) within 28 days of receipt of a copy of this licence the persons referred to in sub-paragraph (a) provide a completed form to the MMO confirming their understanding of the terms and conditions of this licence.
- (2) Only the persons and vessels notified to the MMO in accordance with Condition 11 are permitted to carry out the licensed marine activities.
- (3) Copies of this licence must also be available for inspection at the following locations—
  - (a) the undertaker’s registered address;
  - (b) any site office located at or adjacent to the construction site and used by the undertaker or its agents and contractors responsible for the loading, transportation or deposit of the authorised deposits; and
  - (c) on board each vessel and at the office of any transport manager with responsibility for vessels from which authorised deposits or removals are to be made.
- (4) The document referred to in paragraph (1)(a) must be available for inspection by an authorised enforcement officer at all times at the locations set out in paragraph (3).
- (5) The undertaker must provide access, and if necessary appropriate transportation, to the offshore construction site or any other associated works or vessels to facilitate any inspection that the MMO considers necessary to inspect the works during construction and operation of the authorised scheme.

(6) The undertaker must inform the local MMO coastal office in writing at least 5 working days before the commencement of the licensed marine activities or any part of them.

(7) The Kingfisher Information Service of Seafish must be informed by email to kingfisher@seafish.co.uk of details of the vessel routes, timings and locations relating to the construction of the authorised scheme or relevant part—

- (a) at least 2 weeks before the commencement of offshore activities, for inclusion in the Kingfisher Fortnightly Bulletin and offshore hazard awareness data; and
- (b) on completion of all offshore activities,

and confirmation of notification must be provided to the MMO.

(8) The undertaker must ensure that a notice to mariners is issued at least 10 working days before the commencement of the licensed marine activities or any part of them advising of the start date of Work No. 1 and Work No. 2 and the expected vessel routes from the local construction ports to the relevant locations.

(9) The undertaker must ensure that the notices to mariners are updated and reissued at weekly intervals during construction activities and within 5 days of any planned operations and maintenance works and supplemented with VHF radio broadcasts agreed with the MCA in accordance with the construction and monitoring programme approved under Condition 7(b). Copies of all notices must be provided to the MMO.

(10) The undertaker must notify the UKHO of the commencement (within 2 weeks), progress and completion (within 2 weeks) of the authorised scheme in order that all necessary amendments to nautical charts are made. Copies of all notices must be provided to the MMO.

(11) In case of damage to, or the destruction or decay of, the authorised scheme or any part of it, the undertaker must, as soon as possible and no later than 24 hours following the identification of damage, destruction or decay, notify Trinity House, the MMO, the MCA and the UKHO.

### **Offshore safety management**

3.—(1) No part of the authorised scheme may be commenced until the MMO, in consultation with the MCA, has given written approval for an emergency response co-operation plan which includes full details of the emergency response co-operation plans for the construction, operation and decommissioning phases of that part of the authorised scheme in accordance with the MCA recommendations as appropriate contained within MCA Marine Guidance Note 543 “Safety of Navigation: Offshore Renewable Energy Installations (OREIs) - Guidance on UK Navigational Practice, Safety and Emergency Response Issues”.

(2) The emergency response co-operation plan must be implemented as approved, unless otherwise agreed in writing by the MMO in consultation with the MCA.

(3) No part of the authorised scheme may commence until the MMO in consultation with the MCA, has confirmed in writing that the undertaker has taken into account and, so far as is applicable to that stage of the development, adequately addressed all MCA recommendations as appropriate to the authorised scheme contained within MCA Marine Guidance Note 543 “Safety of Navigation: Offshore Renewable Energy Installations (OREIs) - Guidance on UK Navigational Practice, Safety and Emergency Response Issues” and its annexes.

### **Aids to navigation**

4.—(1) The undertaker must during the whole period of the construction, operation, alteration, replacement or decommissioning of the authorised scheme exhibit such lights, marks, sounds, signals and other aids to navigation, and take such other steps for the prevention of danger to navigation, as Trinity House directs.

(2) The undertaker must keep Trinity House and the MMO informed of progress of the authorised scheme including—

- (a) a notice of commencement of construction of the authorised scheme within 24 hours of commencement having occurred;

- (b) notice within 24 hours of any aids to navigation being established by the undertaker; and
- (c) notice within 5 working days of completion of construction of the authorised scheme.

(3) The undertaker must submit reports to Trinity House detailing the working condition of aids to navigation quarterly or at more frequent intervals as specified by Trinity House.

(4) The undertaker must notify Trinity House and the MMO of any failure of the aids to navigation including timescales and plans for remedying the failure, as soon as possible and no later than 24 hours following the detection of the failure.

(5) Where Condition 2(11) applies, the undertaker must lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as Trinity House directs.

### **Chemicals, drilling and debris**

**5.**—(1) Unless otherwise agreed in writing by the MMO, all chemicals used in the construction of the authorised scheme must be selected from the list of notified chemicals approved for use by the offshore oil and gas industry under the Offshore Chemicals Regulations 2002(a).

(2) Unless otherwise agreed in writing by the MMO, the undertaker must ensure that any coatings and any treatments are suitable for use in the marine environment and are used in accordance with Pollution Prevention Guidelines or guidelines approved by the Health and Safety Executive.

(3) The storage, handling, transport and use of fuels, lubricants, chemicals and other substances must be undertaken so as to prevent releases into the marine environment including bunding of a minimum of 110% of the total volume of all reservoirs and containers.

(4) The undertaker must ensure that no waste concrete slurry or wash water from concrete or cement works is discharged into the marine environment. Concrete and cement mixing and washing areas must be contained to prevent run off entering the water through the freeing ports.

(5) The undertaker must ensure that any oil, fuel or chemical spill within the marine environment is reported to the MMO Marine Pollution Response Team within 24 hours.

(6) The undertaker must ensure that any debris arising from the construction of the authorised scheme or from equipment or temporary works placed seaward of MHWS is removed within 4 weeks of completion of the authorised scheme unless otherwise agreed with the MMO.

(7) Subject to paragraph (10), at least 10 days before the commencement of licensed marine activities, the undertaker must submit to the MMO an audit sheet covering all aspects of the construction of the authorised scheme or any phase of it. The audit sheet must include details of—

- (a) loading facilities;
- (b) vessels;
- (c) equipment;
- (d) shipment routes;
- (e) transport;
- (f) working schedules; and
- (g) all components and materials to be used in the construction of the authorised scheme.

(8) The audit sheet must be maintained throughout the construction of the authorised scheme (or relevant phase) and must be submitted to the MMO for review at fortnightly intervals during periods of active offshore construction.

(9) If the undertaker discovers that any materials on the audit sheet are unaccounted for, the undertaker must inform the MMO within 6 hours of the discovery. The notification must include a description of the materials unaccounted for and, where known, provide the co-ordinates where they may be located. Where the MMO thinks it is appropriate to do so, the MMO may require the undertaker to carry out a side-scan survey to plot all the potential obstructions within the relevant

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(a) S.I. 2002/1355, amended by S.I. 2011/982.

area of the offshore Order limits (and this area may be extended at the reasonable discretion of the MMO). Where practicable, the undertaker must remove any obstruction that the MMO believes to be associated with the licensed marine activities at the undertaker's expense.

(10) As an alternative to the completion of an audit sheet, with written approval from the MMO, the undertaker may introduce a dropped object procedure. If a dropped object procedure is introduced, any dropped objects must be reported to the MMO using the dropped object procedure form within 6 hours of the undertaker becoming aware of an incident. On receipt of the dropped object procedure form, the MMO may require relevant surveys to be carried out by the undertaker (such as side-scan sonar) and may require obstructions to be removed from the seabed at the undertaker's expense.

(11) The undertaker must agree with the MMO, before commencement of works, whether the dropped object procedure or audit sheet is to be used.

(12) The undertaker must ensure that any rock material used in the construction of the authorised scheme is from a recognised source free from contaminants and containing minimal fines.

(13) If any rock material used in the construction of the authorised scheme is misplaced or lost seaward of MHWS, the undertaker must report the loss to the MMO, Trinity House, the MCA and the UKHO as soon as possible and in any event within 6 hours and, if the MMO reasonably considers such material to constitute a navigation or environmental hazard (dependent on the size and nature of the material), the undertaker must endeavour to locate the material and recover it.

### **Force majeure**

6.—(1) If, due to stress of weather or any other cause, the master of a vessel determines that it is necessary to deposit the authorised deposits otherwise than in accordance with this licence because the safety of human life or of the vessel is threatened, full details of the circumstances of the deposit must be notified to the MMO within 48 hours.

(2) The unauthorised deposits must be removed at the expense of the undertaker unless written approval is obtained from the MMO.

### **Pre-construction plans and documentation**

7. The licensed marine activities or any part of those activities except for horizontal directional drilling works within Work No. 2 must not be commenced until the following (as far as relevant to that part) have been submitted to and approved in writing by the MMO—

- (a) a plan (to be approved after consultation with Trinity House, the MCA and the statutory nature conservation body) which shows the length and arrangement of the cables comprising Work Nos. 1 and 2 to ensure conformity with the description of Work Nos. 1 and 2 and compliance with Condition 1;
- (b) a construction and monitoring programme to include details of—
  - (i) the proposed construction start date;
  - (ii) proposed timings for mobilisation of plant, delivery of materials and installation works;
  - (iii) proposed pre-construction surveys, baseline report format and content, post-construction monitoring and related reporting in accordance with paragraph (g) and Conditions 12 and 13; and
  - (iv) an indicative written construction programme (insofar as not shown in accordance with sub-paragraph (ii)),

with details in accordance with sub-paragraph (iii) to be submitted to the MMO at least 4 months before the first survey unless otherwise agreed in writing with the MMO;

- (c) a construction method statement (to be approved after consultation with the statutory nature conservation body) in accordance with the construction methods assessed in the environmental statement and including details of—



- (i) cable installation including cable landfall, cable protection and pipeline crossings;
  - (ii) contractors;
  - (iii) vessels and vessels transit corridors; and
  - (iv) associated and ancillary works;
- (d) a project environmental management plan to include details of—
- (i) a marine pollution contingency plan to address the risks, methods and procedures to deal with any spills and collision incidents during the construction and operation of the authorised scheme in relation to all activities carried out;
  - (ii) a chemical risk assessment to include information regarding how and when chemicals are to be used, stored and transported in accordance with recognised best practice guidance;
  - (iii) waste management and disposal arrangements; and
  - (iv) the appointment and responsibilities of a fisheries liaison officer and an environmental liaison officer;
- (e) a cable protection plan (to be approved after consultation with the statutory nature conservation body) providing details of the need, type, sources, quantity and installation methods for cable armouring and a statement of the total area and volume of cable armouring material to be installed, to be within the scope of the environmental impact assessment recorded in the environmental statement;
- (f) a cable specification and installation plan for the offshore Order limits (to be approved after consultation with Trinity House, the MCA and the statutory nature conservation body) to include—
- (i) technical specification of the cables including a desk-based assessment of attenuation of electro-magnetic field strengths, shielding and cable burial depth in accordance with industry good practice; and
  - (ii) a detailed cable-laying plan incorporating a burial risk assessment to ascertain suitable burial depths and cable-laying techniques including cable protection;
- (g) a written scheme of archaeological investigation in relation to the offshore Order limits seaward of mean low water (to be approved after consultation with Historic England) in accordance with the outline offshore written scheme of investigation and industry good practice to include—
- (i) details of responsibilities of the undertaker, archaeological consultant and contractor inclusive of a programme for the production of reports and publication of results;
  - (ii) a methodology for any further site investigation including any specifications for geophysical, geotechnical and diver- or remotely-operated vehicle investigations;
  - (iii) archaeological analysis and reporting of survey data, and a timetable, which must be submitted to the MMO within 4 months of any survey being completed;
  - (iv) delivery of any mitigation including, where necessary, identification and modification of archaeological exclusion zones;
  - (v) monitoring during and post-construction including a conservation programme for finds;
  - (vi) archiving of archaeological material inclusive of any completed and agreed archaeological reports produced through the written scheme of archaeological investigation that are to be deposited by the undertaker within a public archive in accordance with the OASIS (outline access to the index of archaeological investigations) system; and
  - (vii) a reporting and recording protocol including reporting of any wreck or wreck material during construction, operation and decommissioning of the authorised scheme;

- (h) a mitigation scheme (to be approved after consultation with the statutory nature conservation body) for Annex 1 habitat biogenic reef (*Mytilus edulis* and/or *Sabellaria spinulosa*) features (or biogenic reef outside the Inner Dowsing, Race Bank and North Ridge Site of Community Importance) identified by the survey referred to in Condition 12(4)(a); and
- (i) an offshore operations and maintenance plan (to be approved after consultation with the statutory nature conservation body) in accordance with the outline offshore operations and maintenance plan to be submitted to the MMO at least 4 months before commencement of operation of the authorised scheme and to provide for review and resubmission every 3 years during the operational phase.

### **Archaeological reports**

**8.**—(1) Any archaeological reports produced in accordance with Condition 7(g)(iii) must be agreed with Historic England.

(2) The undertaker must ensure that a copy of any agreed archaeological report is deposited with the National Record of the Historic Environment by submitting a Historic England OASIS form with a digital copy of the report within 6 months of the completion of construction of the authorised scheme.

(3) If the report relates to the intertidal area, the undertaker must notify the MMO and Lincolnshire County Council that the OASIS report has been submitted to the National Record of the Historic Environment within 2 weeks of the submission.

### **Pre-construction plans and documentation: horizontal directional drilling works within Work No. 2**

**9.**—(1) Horizontal directional drilling works within Work No. 2 must not be commenced until the following have been submitted to and approved in writing by the MMO (as far as relevant to those works)—

- (a) a construction method statement in accordance with the construction methods assessed in the environmental statement and including details of contractors, vessels and vessel transit corridors;
- (b) a written scheme of archaeological investigation (to be approved after consultation with Historic England) in accordance with the outline offshore written scheme of investigation and industry good practice; and
- (c) a marine pollution contingency plan to address the risks, methods and procedures to deal with any spills and collision incidents.

(2) The undertaker must also comply with Condition 2(6) to (9) before horizontal directional drilling works are commenced.

### **Pre-construction plans and documentation: time for submission, etc.**

**10.**—(1) Each plan, programme, scheme or statement required to be approved under Condition 7 or 9 must be submitted for approval at least 4 months before the intended start of construction, except where otherwise stated or unless otherwise agreed in writing by the MMO.

(2) No licensed marine activities may be commenced until the MMO has approved in writing each plan, programme, scheme or statement required to be approved under Condition 7 or 9; and the licensed marine activities must, where relevant, be carried out in accordance with the approved plan, programme, scheme or statement unless otherwise agreed in writing by the MMO (after consultation with every person required to be consulted before approval of the original plan, programme, scheme or statement).

### **Reporting of engaged agents, contractors and vessels**

**11.**—(1) The undertaker must notify the MMO in writing of any agents, contractors, sub-contractors or vessels that will carry out any licensed marine activity.

(2) Notification must be received by the MMO no less than 24 hours before the commencement of the licensed marine activity.

(3) The undertaker must submit a movement sheet weekly thereafter.

### **Pre-construction monitoring and surveys**

**12.**—(1) The undertaker must submit details for written approval by the MMO after consultation with the statutory nature conservation body of—

(a) proposed pre-construction surveys including methodologies and timings; and

(b) a proposed format and content for a pre-construction baseline report.

(2) The survey proposals must specify the objectives of each survey and explain how the survey will assist in either informing a useful and valid comparison with the post-construction position and/or will enable the validation or otherwise of key predictions in the environmental statement.

(3) The baseline report proposals must ensure that the outcome of the agreed surveys together with existing data and reports are drawn together to present a valid statement of the pre-construction position, with any limitations, and must make clear what post-construction comparison is intended and the justification for this being required.

(4) The pre-construction surveys referred to in paragraph (1) must, unless otherwise agreed with the MMO, have due regard to, but not be limited to, the need to undertake—

(a) appropriate surveys to determine the location, extent and composition of any Annex 1 habitat biogenic reef features (*Mytilus edulis* and/or *Sabellaria spinulosa*) within the Inner Dowsing, Race Bank and North Ridge Site of Community Importance or biogenic reef features in whole or in part inside the areas within the offshore Order limits in which it is proposed to carry out construction works;

(b) swath bathymetric surveys, to International Hydrographic Organization Order IA standard, and side-scan sonar surveys of the areas within the offshore Order limits in which it is proposed to carry out construction works, the data and survey reports to be provided to the UKHO; and

(c) 1 high-resolution bathymetric and side-scan sonar survey of the areas within the offshore Order limits in which it is proposed to carry out construction works including a 500-metre buffer area around the site of each works. This should include the identification of sites of historic or archaeological interest in accordance with the written scheme of archaeological investigation.

(5) The undertaker must carry out the surveys agreed under paragraph (1) and provide the baseline report to the MMO in the agreed format in accordance with the agreed timetable, unless otherwise agreed in writing by the MMO after consultation with the statutory nature conservation body.

### **Post-construction**

**13.**—(1) The undertaker must submit details for approval by the MMO after consultation with the statutory nature conservation body of—

(a) proposed post-construction surveys including methodologies and timings; and

(b) a proposed format, content and timings for providing reports on the results.

(2) The survey proposals must specify the objectives of each survey and explain how the survey will assist in either informing a useful and valid comparison with the pre-construction position and/or will enable the validation or otherwise of key predictions in the environmental statement.

(3) The post-construction surveys referred to in paragraph (1) must, unless otherwise agreed with the MMO, have due regard to, but not be limited to, the need to undertake—

- (a) dependent on the outcome of the survey undertaken in Condition 12(4)(a), a survey to determine the effects of construction activity on the location, extent and composition of Annex 1 habitats or potential Annex 1 habitat qualifying biogenic features in whole or in part inside the areas within the offshore Order limits in which construction works have been carried out;
- (b) a swath bathymetric survey to International Hydrographic Organization Order IA standard within 12 months of the completion of the licensed marine activities across the areas within the offshore Order limits in which licensed marine activities have been carried out to—
  - (i) ensure the cables have been buried and located within the offshore Order limits; and
  - (ii) provide information on bedform morphology,
 and the data and survey reports must be provided to the UKHO. The results of the post-cable lay survey must be submitted to the MMO as part of a cable burial risk assessment which must include detail of cable burial management including surveys and notification of cable exposure over the lifetime of the project; and
- (c) a subsequent swath bathymetric survey focused on agreed locations to demonstrate that any changes to bedforms or sediment movement are within the ranges predicted in the environmental statement.

(4) The undertaker must carry out the surveys agreed under paragraph (1) and provide the agreed reports in the agreed format in accordance with the agreed timetable, unless otherwise agreed in writing with the MMO after consultation with the statutory nature conservation body.

### Bathing water quality

14.—(1) Work No. 2 must not be undertaken between 15th May and 30th September (the “bathing season”) in any year unless a scheme to protect the status of bathing water quality under Directive 2006/7/EC of the European Parliament and of the Council of 15th February 2006 concerning the management of bathing water quality, as determined by a review of Environment Agency baseline data before construction, has been submitted to and approved in writing by the MMO after consultation with the Environment Agency and East Lindsey District Council.

- (2) The scheme must—
  - (a) include an assessment of the impact of any works in the intertidal area (with a particular focus on the potential bacti issues that may be caused by disturbed sediment) which will be undertaken during the bathing season; and
  - (b) identify measures to be implemented to mitigate any identified risks to ensure the status of bathing water quality under the Directive is not impacted.

## SCHEDULE 10

Article 34

### Removal of hedgerows

(1) <i>District</i>	(2) <i>Hedgerow number</i>	(3) <i>Grid co-ordinates</i>		(4) <i>Ident -ifier</i>	(5) <i>Grid co-ordinates</i>		(6) <i>Ident -ifier</i>
		<i>Easting</i>	<i>Northing</i>		<i>Easting</i>	<i>Northing</i>	
East Lindsey	1	553997	376099	1a	553983	376164	1b
East Lindsey	2	553755	375881	2a	553693	375822	2b
East Lindsey	3	553755	375881	3a	553769	375868	3b
East Lindsey	5	553731	375741	5a	553654	375689	5b
East Lindsey	6	553652	375684	6a	553722	375708	6b
East Lindsey	7	553532	375209	7a	553454	375181	7b
East Lindsey	8	553440	375148	8a	553510	375159	8b

East Lindsey	11	553274	374342	11a	553275	374329	11b
East Lindsey	12	553078	374106	12a	553072	374186	12b
East Lindsey	13	552962	373969	13a	552879	373951	13b
East Lindsey	14	552962	373970	14a	552963	373964	14b
East Lindsey	14	552886	373853	14c	552820	373851	14d
East Lindsey	15	552816	373841	15a	552882	373843	15b
East Lindsey	16	552714	372936	16a	552745	373090	16b
East Lindsey	18	552693	372651	18a	552799	372631	18b
East Lindsey	19	552690	372637	19a	552699	372633	19b
East Lindsey	20	552698	372632	20a	552699	372634	20b
East Lindsey	21	552679	372539	21a	552702	372633	21b
East Lindsey	22	552738	371241	22a	552798	371265	22b
East Lindsey	23	552738	371213	23a	552798	371237	23b
East Lindsey	24	552837	369888	24a	552843	369901	24b
East Lindsey	25	552738	369522	25a	552797	369512	25b
East Lindsey	26	552488	368519	26a	552470	368628	26b
East Lindsey	28	552386	367336	28a	552293	367598	28b
East Lindsey	29	552399	366950	29a	552425	366865	29b
East Lindsey	30	552206	366674	30a	552302	366700	30b
East Lindsey	31	552198	366663	31a	552300	366690	31b
East Lindsey	32	551800	365700	32a	551875	365707	32b
East Lindsey	33	551858	365395	33a	551791	365395	33b
East Lindsey	34	551919	365026	34a	551851	365033	34b
East Lindsey	36	551801	364690	36a	551929	364661	36b
East Lindsey	37	551376	364390	37a	551449	364363	37b
East Lindsey	38	551256	364319	38a	551330	364293	38b
East Lindsey	41	549711	363950	41a	549746	363899	41b
East Lindsey	44	548855	363251	44a	548907	363230	44b
East Lindsey	45	548755	363139	45a	548797	363108	45b
East Lindsey	46	548788	363100	46a	548784	363103	46b
East Lindsey	47	548357	362821	47a	548424	362801	47b
East Lindsey	48	548138	362537	48a	548111	362594	48b
East Lindsey	49	548083	362456	49a	548026	362479	49b
East Lindsey	51	547963	362272	51a	547898	362282	51b
East Lindsey	52	547956	362262	52a	547959	362271	52b
East Lindsey	53	547739	362059	53a	547733	362023	53b
East Lindsey	54	547566	361840	54a	547570	361888	54b
East Lindsey	55	546019	360824	55a	546040	360835	55b
East Lindsey	55	546197	360916	55c	546200	360917	55d
East Lindsey	56	546209	360866	56a	546107	360802	56b
East Lindsey	57	545949	360803	57a	545972	360741	57b
East Lindsey	58	545445	360909	58a	545291	360855	58b
East Lindsey	59	545226	360857	59a	545236	360916	59b
East Lindsey	60	545226	360917	60a	545216	360857	60b
East Lindsey	61	544187	360593	61a	544223	360545	61b
East Lindsey	62	542665	359323	62a	542651	359382	62b
East Lindsey	63	538634	357478	63a	538759	357475	63b
East Lindsey	64	536940	356341	64a	536955	356490	64b
East Lindsey	65	534897	354293	65a	534903	354374	65b
East Lindsey	66	534398	353937	66a	534421	353874	66b
East Lindsey	67	531481	351344	67a	531486	351286	67b

East Lindsey	68	530930	350498	68a	530930	350498	68b
East Lindsey	70	529751	349067	70a	529854	349093	70b
East Lindsey	71	529532	348618	71a	529581	348656	71b
East Lindsey	72	528924	348472	72a	528982	348534	72b
East Lindsey	73	528833	348459	73a	528782	348495	73b
Boston	74	526744	347295	74a	526776	347244	74b
Boston	75	526678	347182	75a	526623	347218	75b
Boston	76	525936	346731	76a	525891	346774	76b
Boston	77	525126	346225	77a	524799	345952	77b
Boston	78	523430	345442	78a	523501	345353	78b
Boston	80	520608	342294	80a	520712	342304	80b
Boston	82	519597	339666	82a	519621	339718	82b
Boston	83	519651	338400	83a	519820	338574	83b

## SCHEDULE 11

Article 38

### Procedure for discharge of Requirements

#### Interpretation

**1.** In this Schedule—

“appeal parties” means the relevant planning authority, the requirement consultee and the undertaker;

“business day” means a day other than Saturday or Sunday which is not Christmas Day, Good Friday or a bank holiday under section 1 of the Banking and Financial Dealings Act 1971(a);

“requirement consultee” means a person named in a Requirement as a person to be consulted by the relevant planning authority in discharging the Requirement;

#### Applications made under Requirements

**2.** Where an application has been made to the relevant planning authority for any consent, agreement or approval required under a Requirement, the relevant planning authority must give notice to the undertaker of its decision on the application including the reasons within a period of 8 weeks beginning with—

- (a) the day immediately following that on which the application is received by the authority; or
- (b) such longer period as may be agreed by the undertaker and the relevant planning authority.

#### Further information

**3.—(1)** Where an application has been made under paragraph 2, the relevant planning authority may request such reasonable further information from the undertaker as is necessary to enable it to consider the application.

**(2)** If—

- (a) the Requirement to which the application relates does not specify that consultation with a requirement consultee is required; and
- (b) the relevant planning authority considers that further information is needed,

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(a) 1971 c.80.

the relevant planning authority must, notify the undertaker in writing specifying the further information required within 14 business days of receipt of the application.

(3) If the Requirement to which the application relates specifies that consultation with a requirement consultee is required, the relevant planning authority must—

- (a) issue the consultation within 5 business days of receipt of the application; and
- (b) notify the undertaker in writing specifying any further information required within 3 business days of receipt of any request from a requirement consultee and in any event within 21 business days of receipt of the application.

(4) If the relevant planning authority does not give the notifications specified in sub-paragraph (2) or (3), it is deemed to have sufficient information to consider the application and is not thereafter entitled to request further information without the prior agreement of the undertaker.

## **Appeals**

**4.**—(1) The undertaker may appeal if the relevant planning authority—

- (a) refuses an application for any consent, agreement or approval required by a Requirement or grants it subject to conditions; or
- (b) does not give notice of its decision to the undertaker within the time period specified in paragraph 2.

(2) An appeal must be made within 42 business days following the occurrence of any of the events in sub-paragraph (1)(a) and (b).

## **Appeal process**

**5.**—(1) Any appeal under this Schedule must take place by written representations only, and the appeal process is as follows—

- (a) the undertaker must—
  - (i) submit to the Secretary of State a copy of the application submitted to the relevant planning authority and any supporting documents which the undertaker may wish to provide (the “appeal documentation”); and
  - (ii) on the same day provide copies of the appeal documentation to the relevant planning authority and any requirement consultee;
- (b) as soon as is practicable after receiving the appeal documentation, the Secretary of State must—
  - (i) appoint a person to determine the appeal (the “appointed person”); and
  - (ii) notify the appeal parties of the identity of the appointed person and the address to which all correspondence for that person’s attention must be sent;
- (c) the relevant planning authority and the requirement consultee (if any) must—
  - (i) submit written representations to the appointed person in respect of the appeal within 10 business days of the date on which the appeal parties are notified of the appointed person under paragraph (b)(i); and
  - (ii) ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;
- (d) the appeal parties must make any counter-submissions to the appointed person within 10 business days of receipt of written representations made under paragraph (c); and
- (e) the appointed person must make a decision and notify it to the appeal parties, with reasons, as soon as practicable.

(2) The appointment of the person under sub-paragraph (1)(b)(i) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(3) If the appointed person considers that further information is necessary to consider the appeal, the appointed person must, as soon as practicable, notify the appeal parties in writing specifying

the further information required, the party from whom the information is sought and the date by which the information is to be submitted (the “specified date”).

(4) Any further information required under sub-paragraph (3) must be provided to the appointed person and the other appeal parties on or before the specified date.

(5) Any written representations concerning matters contained in the further information must be submitted to the appointed person and the other appeal parties within 10 business days of the specified date.

(6) On an appeal under this paragraph, the appointed person may deal with the application as if it had been made to the appointed person in the first instance and may—

- (a) allow or dismiss the appeal; or
- (b) reverse or vary any part of the decision of the relevant planning authority (whether the appeal relates to that part of it or not).

(7) The appointed person must state in writing the reasons for the decision.

(8) The appointed person must decide an appeal taking into account only such written representations as have been submitted within the relevant time limits.

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

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

(11) If a consent, agreement or approval is given by the appointed person under this Schedule, it is deemed to be a consent, agreement or approval for the purpose of Schedule 1 as if it had been given by the relevant planning authority.

(12) Except where a direction is given under sub-paragraph (13) requiring the costs of the appointed person to be paid by the relevant planning authority, the reasonable costs of the appointed person must be paid by the undertaker.

(13) On the application by the relevant planning authority or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid.

(14) In considering whether to give a direction under sub-paragraph (13) and the terms on which to give it, the appointed person must have regard to the Planning Practice Guidance issued by the Department for Communities and Local Government or any circular or guidance which may from time to time replace it.

## **Fees**

**6.—**(1) Where an application is made to the relevant planning authority for agreement or approval in respect of a Requirement or any defined stage within that Requirement, a fee of £97 must be paid to it.

(2) Any fee under this Schedule must be refunded to the undertaker within 4 weeks of—

- (a) the application being rejected as invalidly made; or
- (b) the relevant planning authority failing to determine the application within the time period specified in paragraph 2,

unless within the period of 4 weeks the undertaker agrees in writing that the fee may be retained by the relevant planning authority and credited in respect of a future application.

## **EXPLANATORY NOTE**

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

This Order grants development consent for, and authorises the construction, operation and maintenance of, the electrical system works required for the Triton Knoll Offshore Wind Farm



from approximately 33 kilometres from the coast of Lincolnshire, 46 kilometres from the coast of Norfolk and 48 kilometres from the coast of the East Riding of Yorkshire to the coast, and within the districts of East Lindsey and Boston in the County of Lincolnshire, together with associated development. This Order also authorises the compulsory purchase of land and rights in land and the right to use land and to override easements and other rights. This Order imposes requirements in connection with the development for which it grants development consent.

The Order also grants a deemed marine licence under Part 4 of the Marine and Coastal Access Act 2009 in connection with the electrical system. The deemed marine licence imposes conditions in connection with the works and deposits for which it grants consent.

A copy of the plans and book of reference referred to in this Order and certified in accordance with article 35 (certification of plans, etc.) may be inspected free of charge at Boston Library, County Hall, Boston, Lincolnshire PE21 6DY; at Skegness Library, 23 Roman Bank, Skegness, Lincolnshire PE25 2SA; and at the offices of Lincolnshire County Council, County Offices, Newland, Lincoln LN1 1YL.

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