

SP MANWEB

Reinforcement to the North Shropshire Electricity Distribution Network



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201[] No. []

INFRASTRUCTURE PLANNING

**The Reinforcement to the North Shropshire Electricity
Distribution Network Order 201[]**

Made - - - - ***

Coming into force - - ***

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An application has been made to the Secretary of State under section 37 of the Planning Act 2008^(a) in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009^(b) for an Order granting development consent.

The application has been examined by the Examining Authority, which has made a report to the Secretary of State under section [83(1) – if single person] [74(2) – if Panel] of the 2008 Act.

The Secretary of State has considered the report and recommendation of the Examining Authority, has taken into account the environmental information in accordance with regulation 3 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009^(c) and has had regard to the documents and matters referred to in section 104(2) of the 2008 Act.

The Secretary of State is satisfied that the special category land within the order limits (as defined in article 28(3) of this Order), when burdened with the rights imposed by this Order, 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 in section 114, 115 and 120 of the 2008 Act, makes the following Order:

(a) 2008 c. 29.
(b) S.I. 2009/2264, amended by S.I. 2010/439, S.I. 2010/602, S.I. 2012/635, S.I. 2012/2654, S.I. 2012/2732, S.I. 2013/522, S.I. 2013/755, 2014/469, 2014/2381, 2015/277, 2015/1682, 2017/524, 2017/572 and S.I. 2018/378.
(c) S.I. 2009/2263, amended by S.I. 2012/635 and 2012/787

PART 1

PRELIMINARY

Citation and commencement

1. This order may be cited as the Reinforcement to the North Shropshire Electricity Distribution Network Order 201[] and comes into force on [].

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);

“1984 Act” means the Road Traffic Regulation Act 1984(e);

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

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

“2003 Act” means the Communications Act 2003(h);

“2008 Act” means the Planning Act 2008(i);

“access and rights of way plans” means the plans certified as the access and rights of way plans by the Secretary of State under article 35 for the purposes of this Order;

“address” includes any number or address used for the purposes of electronic transmission;

“apparatus” has the same meaning as in Part 3 of the 1991 Act;

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

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

“carriageway” has the same meaning as in the 1980 Act;

“compulsory acquisition notice” means a notice served in accordance with section 134 of the 2008 Act (notice of authorisation of compulsory acquisition);

“construction report” means the construction report certified as the construction report by the Secretary of State under article 35 for the purposes of this Order;

“date of final commissioning” means the date on which the authorised development first comes into use by distributing electricity at 132kV on a commercial basis;

“electronic transmission” means a communication transmitted—

(a) by means of an electronic communications network, or

(b) by other means in electronic form;

(a) 1961 c. 33.
(b) 1965 c. 56.
(c) 1980 c. 66.
(d) 1981 c. 66.
(e) 1984 c. 27.
(f) 1990 c. 8.
(g) 1991 c. 22.
(h) 2003 c. 21.
(i) 2008 c. 29.

“the environmental statement” means the documents of that description set out at Schedule 9 certified by the Secretary of State under article 35 as the environmental statement for the purposes of this Order;

“footpath” and “footway” have the same meaning as in the 1980 Act;

“highway” and “highway authority” have the same meaning as in the 1980 Act;

“Highways England” means Highways England Company Limited (company registration number 9346363) of Bridge House, 1 Walnut Tree Close, Guildford, GU1 4LZ;

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

“limits of deviation” means the limits of deviation referred to in article 4 (limits of deviation);

“maintain” includes inspect, repair, adjust, alter, remove, reconstruct or replace the authorised development, provided such works do not give rise to any materially new or materially different environmental effects to those identified in the environmental statement and any derivative of “maintain” must be construed accordingly;

“Order land” means the land required for, or required to facilitate or is incidental to, or affected by, the authorised development shown on the land plans and described in the book of reference;

“the Order limits” means the limits shown on the land plans and works plans within which the authorised development may be carried out;

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

“plans of important hedgerows affected” means the plans certified as the plans of important hedgerows affected by the Secretary of State under article 35 for the purposes of this Order;

“relevant highway authority” means Shropshire County Council and/or Highways England;

“relevant planning authority” means Shropshire County Council;

“requirements” means those matters set out in Schedule 2 to this Order and any numbered requirement must be construed accordingly;

“SP Manweb PLC” means SP Manweb PLC (company registration number 02366937) whose registered office is at 3 Prenton Way, Prenton, CH43 3ET;

“statutory undertaker” means any person falling within section 127(8) of the 2008 Act (statutory undertakers’ land) and a public communications provider as defined in section 151 of the 2003 Act (interpretation of chapter 1);

“street” means a street within the meaning of section 48 of the 1991 Act (streets, street works and undertakers), together with land on the verge of a street or between two carriageways, and includes any footpath and “street” includes any part of a street;

“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

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

“traffic authority” has the same meaning as in section 121A of the 1984 Act (traffic authorities);

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

“undertaker” means SP Manweb PLC or any other person who has the benefit of this Order in accordance with article 7 (benefit of the Order) or article 8 (consent to transfer benefit of the Order);

“watercourse” includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices sewers and passages through which water flows except a public sewer or drain; and

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

(a) 1981 c. 67.

(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 and references in this Order to the imposition of restrictions are references to restrictions over land which interfere with the interests or rights of another and are for the benefit of land over which rights are acquired and created under this Order.

(3) All distances, directions and lengths referred to in this Order are approximate and distances between points are taken to be measured between the referenced points.

(4) All areas described in square metres in the book of reference are approximate.

(5) References in this Order to numbered works are references to the works comprising the authorised development as numbered in Schedule 1 and shown on the works plans.

PART 2

PRINCIPAL POWERS

Development consent etc. granted by the Order

3.—(1) The undertaker is granted development consent for the authorised development as set out in Schedule 1 (authorised development), to be carried out within the Order limits and subject to the provisions of this Order including the requirements set out in Schedule 2 (requirements).

(2) Subject to paragraph (1), each numbered work must be situated in the area indicated on the works plans.

Limits of Deviation

4.—(1) In carrying out or maintaining the authorised development the undertaker may—

- (a) deviate from the lines or situations of the authorised development shown on the works plans subject to requirements 3 and 4 and carry out construction and maintenance activities for the purposes of the authorised development anywhere within the Order limits; and
- (b) deviate vertically from the levels of the authorised development set out in Table 1 of requirement 3—
 - (i) to any extent not exceeding 2 metres upwards; or
 - (ii) to any extent downwards as may be found to be necessary or convenient.

Operation of authorised development

5.—(1) The undertaker is authorised to install and keep installed the above ground electric line and the underground electric cable and all other elements of the authorised development.

(2) This article does not relieve the undertaker of any requirement to obtain any permit or licence under any other legislation that may be required from time to time authorising the installation, maintenance or use of an electric line above ground and any underground electric cable and all other elements of the authorised development.

(3) The undertaker may use the above ground electric line and the underground electric cable and any other elements of the authorised development as part of the electricity distribution system in England and Wales.

Maintenance of authorised development

6.—(1) The undertaker may, at any time, maintain the authorised development, except to the extent that this Order, or an agreement made under this Order, provides otherwise.

(2) This article only authorises the carrying out of maintenance works within the Order limits.

Benefit of the Order

7.—(1) Subject to article 8 (consent to transfer benefit of the Order), and paragraph (2), the provisions of this Order have effect solely for the benefit of the undertaker.

(2) Paragraph (1) does not apply where this Order provides an express benefit to owners and occupiers of land, statutory undertakers and other persons affected by the authorised development.

Consent to transfer benefit of the Order

8.—(1) Subject to paragraph (4), the undertaker may—

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order (including any of the numbered works) and such related statutory rights as may be agreed in writing 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 any of the numbered works) and such related statutory rights as may be so agreed.

(2) Where a transfer, or grant, has been made in accordance with paragraph (1) references in this Order to the undertaker, except in paragraph (3), include references to the transferee or the lessee.

(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

(4) The consent of the Secretary of State is required for the exercise of the powers of paragraph (1) except where—

- (a) the transferee or lessee is a statutory undertaker;
- (b) the transferee or lessee is a person who holds a licence issued under section 6(1) of the Electricity Act 1989 (licences authorising supply, etc)(a); or
- (c) the time limits for all claims for compensation in respect of the acquisition of land or effects upon land under this Order have elapsed and—
 - (i) no such claims have been made;
 - (ii) any such claims that have been made have all been compromised or withdrawn;
 - (iii) compensation has been paid in final settlement of all such claims;
 - (iv) payment of compensation into court in lieu of settlement of all such claims has taken place; or
 - (v) it has been determined by a tribunal or court of competent jurisdiction in respect of all claims that no compensation is payable.

(5) Where an exception in paragraph (4) applies, the undertaker must notify the Secretary of State in writing before transferring or granting any benefit referred to in paragraph (1).

PART 3

STREETS

Power to alter layout, etc. of streets

9.—(1) Subject to paragraphs (2) and (3), the undertaker may, for the purposes of constructing and maintaining the authorised development alter the layout of any street within the Order limits and, without limitation on the scope of this paragraph, the undertaker may—

- (a) permanently or temporarily alter the layout of any street or junction;

(a) 1989 c. 29.

- (b) increase the width of the carriageway of the street by reducing the width of any kerb, footpath, footway, cycle track or verge within the street;
- (c) alter the level or increase the width of any kerb, footpath, footway, cycle track or verge;
- (d) reduce the width of the carriageway of the street;
- (e) make and maintain crossovers and passing place(s);
- (f) carry out works for the provision of parking places and unloading areas; and
- (g) execute any works to provide or improve sight lines.

(2) Unless otherwise agreed in writing with the street authority, the undertaker must restore any street that has been temporarily altered under this article to the reasonable satisfaction of the street authority.

(3) The powers conferred by paragraph (1) must not be exercised without the consent of the street authority.

(4) Paragraphs (1)(a), (2) and (3) do not apply where the undertaker is the street authority for a street in which the works are being carried out.

Street works

10.—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets specified in Schedule 3 (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 and keep apparatus in or over the street;
- (d) maintain apparatus in or over the street or change its position;
- (e) carry out all necessary works required for the exercise of article 9 (power to alter layout, etc., of streets);
- (f) place and keep during the construction and installation of the authorised development scaffolding on any verge to a street;
- (g) remove or use all earth and materials in or under any street; and
- (h) execute any works required for or incidental to any works referred to in sub-paragraphs (a) to (g).

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

(3) The powers conferred in paragraphs (1) and (2) are without prejudice to the powers of the undertaker under the Electricity Act 1989.

(4) In this article “apparatus” has the meaning given in Part 3 of the 1991 Act.

(5) The provisions of sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1).

Temporary prohibition or restriction of use of streets and public rights of way

11.—(1) The undertaker, during and for the purposes of carrying out the authorised development, may temporarily alter, divert, prohibit the use of or restrict the use of any street or public right of way and may for any reasonable time—

- (a) divert the traffic from the street or public right of way; and
- (b) subject to paragraph (3), prevent all persons from passing along the street or public right of way.

(2) Without prejudice to the scope of paragraph (1), the undertaker may use any street or public right of way where the use has been prohibited or restricted under the powers conferred by this article and within the Order limits as a temporary working site.

(3) The undertaker must provide reasonable access for non-motorised users (including pedestrians) going to or from premises abutting a street or public right of way affected by the temporary alteration, diversion, prohibition of use or restriction of use of a street under this article if there would otherwise be no such access, and ensure that relevant provision is made for residents to park and for services to access properties which may be affected by the temporary alteration, diversion, prohibition of use or restriction of use of a street or public right of way under this article.

(4) The undertaker must not temporarily alter, divert, prohibit the use of or restrict the use of any street or public right of way without the consent of the street authority which may attach reasonable conditions to any consent.

(5) 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.

(6) This article does not remove the requirement for the undertaker to obtain any order required under sections 1, 9 or 22BB of the 1984 Act (traffic regulation orders outside Greater London) (experimental traffic orders) (traffic regulation byways etc. on National Parks in England and Wales).

Traffic regulation

12.—(1) Subject to the provisions of this article and the consent of the traffic authority in whose area the road concerned is situated, the undertaker may, in so far as may be expedient or necessary for the purposes of or in connection with construction of the authorised development, at any time prior to the date of final commissioning—

- (a) permit, prohibit or restrict the stopping, parking, waiting, loading or unloading of vehicles on any road;
- (b) authorise the use as a parking place of any road; and
- (c) make provision as to the direction or priority of vehicular traffic on any road either at all times or at times, on days or during such periods as may be specified by the undertaker.

(2) The undertaker must not exercise the powers of article 11 in respect of prohibitions or restrictions relating to vehicular traffic only on a road and paragraph (1) of this article unless it has—

- (a) given not less than 4 weeks' notice in writing of its intention so to do to the traffic authority in whose area the road is situated; and
- (b) advertised its intention in such manner as the traffic authority may specify in writing within 7 days of its receipt of notice of the undertaker's intention in the case of subparagraph (a).

(3) Any prohibition, restriction or other provision made by the undertaker under article 11 or paragraph (1) of this article—

- (a) has effect as if duly made by, as the case may be—
 - (i) the traffic authority in whose area the road is situated as a traffic regulation order under the 1984 Act; or
 - (ii) the local authority in whose area the road is situated as an order under section 32 of the 1984 Act (power of local authorities to provide parking places),

and the instrument by which it is effected is deemed to be a traffic order for the purposes of Schedule 7 to the Traffic Management Act 2004 (road traffic contraventions subject to civil enforcement)(a).

(4) In this article—

(a) 2004. c. 18. There are amendments to this Act not relevant to this Order.

- (a) subject to sub-paragraph (b) expressions used in this article and in the 1984 Act have the same meaning; and
- (b) a “road” means a road that is a public highway maintained by and at the expense of the traffic authority.

Access to works

13. The undertaker may, for the purposes of the authorised development and with the consent of the relevant planning authority, after consultation with the relevant highway authority, form and lay out such other means of access or improve the existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

Agreement with street authorities

- 14.—**(1) A street authority and the undertaker may enter into agreements with respect to—
- (a) the construction of any new street (including any structure carrying the street under or over the authorised development) authorised by this Order;
 - (b) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;
 - (c) any temporary closure, alteration or diversion of a street authorised by this Order;
 - (d) the carrying out in the street of any works.
- (2) Such an agreement may, without prejudice to the generality of paragraph (1)—
- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question;
 - (b) include an agreement between the undertaker and street 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

15.—(1) Subject to paragraphs (2) to (8), 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 development 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.

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

(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 that person may reasonably impose.

- (4) The undertaker must not make any opening into any public sewer or drain except—
- (a) in accordance with plans approved by the person to whom the sewer or drain belongs; and

(a) 1991 c. 56. Section 106 was amended by sections 43(2) and 35(8)(a) and paragraph 1 of Schedule 2 to the Competition and Service (utilities) Act 1992 (c.43) and sections 99(2), (4), (5)(a), (5)(b), (5)(c) and 36(2) of the Water Act 2003 (c. 37).

(b) where that person has been given the opportunity to supervise the making of the opening.

(5) Except as otherwise authorised under this Order, the undertaker must not, in carrying out or maintaining works, 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 pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(7) This article does not authorise any water discharge activities or groundwater activities for which a licence is required pursuant to regulation 12(1)(b) of the Environmental Permitting (England and Wales) Regulations 2016 (requirement for an environmental permit)(a).

(8) In this article—

(a) “public sewer or drain” means a sewer or drain which belongs to Homes England, the Environment Agency, a harbour authority within the meaning of section 57 of the Harbours Act 1964 (interpretation)(b), an internal drainage board, a joint planning board, a local authority, a National Park Authority, a sewerage undertaker or an urban development corporation; and

(b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991(c) have the same meaning as in that Act.

Authority to survey and investigate the land

16.—(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 development and—

- (a) survey or investigate the land;
- (b) without prejudice to the generality of sub-paragraph (a), make trial holes, boreholes or excavations 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 prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on such 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, boreholes or excavations.

(2) 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.

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

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

(4) No trial holes, boreholes or excavations are to be made under this article—

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

(5) The undertaker must—

- (a) make good any damage to the land where it has made a trial hole, boreholes or excavation; and

(a) S.I. 2016/1154.

(b) 1964 c. 40. There are amendments to section 57 that are not relevant to this Order.

(c) 1991 c. 57 as amended by S.I. 2009/3104.

- (b) 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 (determination of questions of disputed compensation).

PART 5

POWERS OF ACQUISITION

Compulsory acquisition of right: incorporation of the mineral code

17. Parts 2 and 3 of Schedule 2 to the Acquisition of Land Act 1981(a) (minerals) are incorporated into this Order subject to the modifications that—

- (a) paragraph 8(3) is not incorporated; and
- (b) for the “acquiring authority” there is substituted “the undertaker”.

Compulsory acquisition of rights.

18.—(1) The undertaker may create and acquire compulsorily the rights in, under or over the Order land and impose the restrictions affecting the Order land described in the book of reference and shown on the land plans.

(2) Subject to section 8 of the 1965 Act (other provisions as to divided land), schedule 2A (counter-notice requiring purchase of land not in notice to treat) (as substituted by paragraph (8) of Schedule 4 (modification of compensation and compulsory purchase enactments for creation of new rights)) and section 12 of the 1981 Act (divided land), where the undertaker creates or acquires a right over land under paragraphs (1), the undertaker is not required to acquire a greater interest in that land.

(3) Schedule 4 (modification of compensation and compulsory purchase enactments for creation of new rights) has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right in, under or over land by the creation of a new right or imposition of a restriction.

(4) In any case where the creation and acquisition of rights or the imposition of a restriction under paragraph (1) is required for the purposes of diverting, replacing or protecting the apparatus of a statutory undertaker, the undertaker may, with the consent of the Secretary of State, transfer the power to create and acquire such rights or impose such restrictions to the statutory undertaker in question.

(5) The exercise by a statutory undertaker of any power pursuant to a transfer under paragraph (4) is subject to the same restrictions, liabilities and obligations as would apply under this Order if that power were exercised by the undertaker.

(6) Nothing in this article authorises the acquisition of rights in, under or over, or the imposition of restrictions affecting, an interest which is for the time being held by or on behalf of the Crown.

(7) subject to the modifications set out in Schedule 4 (modification of compensation and compulsory purchase enactments for creation of new rights) the enactments for the time being in force with respect to compensation for the compulsory purchase of land are to apply in the case of a compulsory acquisition under this Order in respect of a right by the creation of a new right as they apply to the compulsory purchase of land and interests in land.

Statutory authority to override easements and other rights

19.—(1) The carrying out or use of the authorised development and the doing of anything else authorised by this Order is authorised for the purpose specified in section 158(2) of the 2008 Act (nuisance: statutory authority), notwithstanding that it involves—

- (a) an interference with an interest or right to which this article applies; or
 - (b) a breach of a restriction as to use of land arising by virtue of contract.
- (2) The undertaker must pay compensation to any person whose land is injuriously affected by—
- (a) an interference with an interest or right to which this article applies; or
 - (b) a breach of a restriction as to use of land arising by virtue of contract, caused by the carrying out or use of the authorised development and the operation of section 158 of the 2008 Act.
- (3) The interests and rights to which this article applies are any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support.
- (4) Subsection (2) of section 10 of the 1965 Act (further provision as to compensation for injurious affection) applies to paragraph (2) by virtue of section 152(5) of the 2008 Act (compensation in case where no right to claim in nuisance).
- (5) Any rule or principle applied to the construction of section 10 of the 1965 Act must be applied to the construction of paragraph (2) with any necessary modifications.

Time limit for exercise of authority to acquire rights compulsorily

20.—(1) After the end of the period of 5 years beginning on the day on which this Order is made—

- (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 (execution of declaration) as applied by article 22 (application of the Compulsory Purchase (Vesting Declarations) Act 1981)(a).

(2) The authority conferred by article 26 (temporary use of land for carrying out the authorised development) ceases at the end of the period referred to in paragraph (1), save that nothing in this paragraph prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

Private rights

21.—(1) Subject to the provisions of this article, all private rights or restrictive covenants over land subject to compulsory creation and acquisition of rights or the imposition of restrictions under the Order will be suspended as is necessary to ensure the operation of the Order and insofar as their continuance would be inconsistent with the exercise of the right created and acquired or the burden of the restriction imposed—

- (a) as from the date of creation and acquisition of the right or the benefit of the restriction 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) in pursuance of the right,

whichever is the earliest.

(2) Subject to the provisions of this article, all private rights and restrictive covenants 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 and so far as their continuance would be inconsistent with the exercise of the temporary possession of that land.

(3) Any person who suffers loss by the extinguishment or suspension of any private right or restrictive covenant under this Order is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(a) 1981 c. 66.

(4) This article does not apply in relation to any right to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 29 (statutory undertakers) applies.

(5) Paragraphs (1) and (3) have effect subject to—

(a) any notice given by the undertaker before—

- (i) the completion of the creation and acquisition of rights or the imposition of restrictions over or affecting the land;
- (ii) the undertaker's appropriation of it;
- (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; and

(b) any agreement made at any time between the undertaker and the person in or to whom the right or restrictive covenant in question is vested or belongs.

(6) If any such agreement as is referred to in paragraph (5)(b)—

(a) is made with a person in or to whom the right or restrictive covenant 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.

(7) Reference in this article to private rights and restrictive covenants over land includes any trust, incident, easement, wayleave, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including natural right to support and personal covenants.

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

22.—(1) The 1981 Act applies as if this Order were a compulsory purchase order.

(2) The 1981 Act, as applied by paragraph (1), has effect with the following modifications.

(3) In section 1 (application of Act), for subsection (2) there is substituted—

“(2) This section applies to any Minister, any local or other public authority or any other body or person authorised to acquire land by means of a compulsory purchase order.”

(4) In section 5 (earliest date for execution of declaration), in subsection 2, omit the words from “, and this subsection” to the end.

(5) Omit section 5A(a) (time limit for general vesting declaration).

(6) In section 5B(b) (extension of time limit during challenge)—

(a) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order” substitute “section 118(c) of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent)”; and

(b) for “the three year period mentioned in section 5A” substitute “the five year period mentioned in article 20 (time limit for exercise of authority to acquire rights compulsorily) of the Reinforcement to the North Shropshire Electricity Network Order 201[]”.

(7) In section 6(a) (notices after execution of declaration), in subsection (1)(b), for “section 15 of, or paragraph 6 of Schedule 1 to, the Acquisition of Land Act 1981” substitute “section 134(b) (notice of authorisation of compulsory acquisition) of the Planning Act 2008”.

(a) Inserted by section 182(2) of the Housing and Planning Act 2016 c. 22.

(b) As inserted by section 202(2) of Schedule 3 to the Housing and Planning Act 2016 c. 22.

(c) As amended by paragraphs 1 and 59 of Schedule 13, and Part 20 of Schedule 25 to the Localism Act 2011 c. 20 and section 92(4) of the Criminal Justice and Courts Act 2015 c. 2.

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

(9) In Schedule A1(c) (counter-notice requiring purchase of land not in general vesting declaration) for paragraph 1(2) substitute —

“(2) But see article 23(3) (acquisition of subsoil or airspace only) of the Reinforcement to the North Shropshire Electricity Distribution Network Order 201[] which excludes the acquisition of subsoil only from this Schedule.”

(10) References to the 1965 Act in the 1981 Act are to be construed as references to that Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act as modified by article 24 (modification of Part 1 of the Compulsory Purchase Act 1965) to the compulsory acquisition of rights under this Order.

Acquisition of subsoil or airspace only

23.—(1) The undertaker may acquire compulsorily such rights in the subsoil of, or the airspace over, the land referred to in article 18 (compulsory acquisition of rights) as may be required for any purpose for which rights or restrictions over that land may be created and acquired or imposed under that provision instead of acquiring any greater interest in that land.

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

(3) The following do not apply in connection with the exercise of the power under paragraph (1) in relation to subsoil and airspace only —

- (a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act;
- (b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and
- (c) Section 153 (4A) (blighted land: proposed acquisition of part interest; material detriment test) of the 1990 Act.

(4) Paragraphs (2) and (3) are to be disregarded where the undertaker acquires a cellar, vault, arch, or other construction forming part of a house, building or manufactory or airspace above a house building or manufactory.

Modification of Part 1 of the Compulsory Purchase Act 1965

24.—(1) Part 1 of the 1965 Act, as applied to this Order by section 125 of the 2008 Act (application of compulsory acquisition provisions), is modified as follows.

(2) In section 4A(1)(d) (extension of time limit during challenge)-

- (a) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 4” substitute “section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent), the five year period mentioned in article 20 (time limit for exercise of authority to acquire rights compulsorily) of the Reinforcement to the North Shropshire Electricity Distribution Network Order 201*”.

(3) In section 11A(e) (powers of entry: further notices of entry)-

- (a) in subsection (1)(a) after “land” insert “under that provision”; and
- (b) in subsection (2) after “land” insert “under that provision”.

(a) As amended by paragraph 52(2) of Schedule 2 to the Planning (Consequential Provisions) Act 1990 c. 11 and paragraph 7 of Schedule 15 to the Housing and Planning Act 2016 c. 22.

(b) As amended by section 142, and Part 21 of Schedule 25 to the Localism Act 2011 c.20 and S.I. 2012/16.

(c) As inserted by paragraph 6 of Schedule 18 to the Housing and Planning Act 2016 c. 22.

(d) As inserted by section 202(1) of the Housing and Planning Act 2016 c.22.

(e) As inserted by section 186(3) of the Housing and Planning Act 2016 c.22.

(4) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for “section 4 of this Act” substitute “article 20 (time limited for exercise of authority to acquire rights compulsorily) of the Reinforcement to the North Shropshire Electricity Distribution Network Order 201*”.

(5) In Schedule 2A (counter-notice requiring purchase of land not in notice to treat)-

(a) for paragraphs 1(2) and 14(2) substitute —

“(2) But see article 23(3) (acquisition of subsoil or airspace only) of the Reinforcement to the North Shropshire Electricity Distribution Network Order 201*, which excludes the acquisition of subsoil or airspace only from this Schedule”

(b) after paragraph 29 insert-

“PART 4

INTERPRETATION

30. In this Schedule, references to entering on and taking possession of land do not include doing so under article 26 (temporary use of land for carrying out the authorised development) or article 27 (temporary use of land for maintaining the authorised development) of the Reinforcement to the North Shropshire Electricity Distribution Network Order 201*.”

Rights under or over streets

25.—(1) The undertaker may enter upon 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 development and may use the subsoil or air-space for those purposes or any other purpose ancillary to the authorised development.

(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) is not to 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 is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) is exercised without the undertaker acquiring any part of that person’s interest in the land, and who suffers loss by the exercise of that power, is to be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) Compensation is not to be 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.

Temporary use of land for carrying out the authorised development

26.—(1) Subject to article 20(2) (time limit for exercise of authority to acquire rights compulsorily) and subject to paragraphs (2) to (11), the undertaker may, in connection with the carrying out of the authorised development—

(a) enter on and take temporary possession of—

(i) so much of the land specified in columns (1) and (2) of Schedule 5 (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 development specified in column (4) of that Schedule; and

- (ii) any of the 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 only) and no declaration has been made under section 4 of the 1981 Act (execution of declaration);
 - (b) remove any electric line, electrical plant, buildings, structures, poles, means of enclosure, apparatus and vegetation from that land;
 - (c) construct temporary works and permanent works (including the provision of means of access) and structures on that land and use that land as temporary laydown area, storage area and working area;
 - (d) construct any works specified in relation to that land in column (3) of Schedule 5; and
 - (e) carry out reinstatement works required pursuant to the requirements in Schedule 2.
- (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 after the end of the period of one year beginning with the date of final commissioning of the authorised development unless the undertaker has, before the end of that period, served notice of entry under section 11 of the 1965 Act (powers of entry) or made a declaration under section 4 of the 1981 Act (execution of declaration) or has otherwise acquired the land subject to temporary possession.
- (4) Unless the undertaker has served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act or has otherwise acquired the rights over land subject to temporary possession, the undertaker must before giving up possession of land of which temporary possession has been taken under either paragraph (1)(a)(i) or (1)(a)(ii), remove all temporary and permanent works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not required to—
- (a) replace any electric line, electrical plant, buildings, structures, poles and apparatus removed under this article; or
 - (b) restore the land on which any works have been carried out under paragraph (1)(d) insofar as the works relate to mitigation works identified in the environmental statement or required pursuant to the requirements in Schedule 2.
- (5) 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 provisions of any power conferred by this article.
- (6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, is to be determined under Part 1 of the 1961 Act.
- (7) Nothing in this article affects any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).
- (8) Nothing in this article precludes the undertaker from—
- (a) acquiring new rights or imposing restrictions on any part of the Order land under article 18 (compulsory acquisition of rights); or
 - (b) acquiring any right in the subsoil or of airspace over the Order land under article 23 (acquisition of subsoil or airspace only).
- (9) Where the undertaker takes possession of land under this article, the undertaker is not to be required to acquire any interest in it.
- (10) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) applies to the temporary use of land pursuant to 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).

(11) Nothing in this article prevents the taking of temporary possession more than once in relation to any land specified in Schedule 5.

(12) The provisions of Chapter 1 of Part 2 of the Neighbourhood Planning Act 2017^(a) do not apply insofar as they relate to temporary possession of land under this Article or Article 27 (temporary use of land for maintaining the authorised development).

Temporary use of land for maintaining the authorised development

27.—(1) Subject to article 20(2) (time limit for exercise of authority to acquire rights compulsorily) and subject to paragraphs (2) to (10), at any time during the maintenance period relating to any part of the authorised development, 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 development;
- (b) construct such temporary works (including the provision of means of access) and structures on the land as may be reasonably necessary for that purpose; and
- (c) enter on any land within the Order limits for the purpose of gaining access as is reasonably required for the purpose of maintaining the authorised development.

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

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

(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 only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised development 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 provisions of this article.

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

(8) Nothing in this article affects any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) or under any other enactment in respect of loss or damage arising from the maintenance of the authorised development, 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 to be required to acquire any interest in it.

(10) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) applies to the temporary use of land pursuant to 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).

(11) In this article “the maintenance period” in relation to any part of the authorised development means the period of 5 years beginning with the date of final commissioning.

(a) 2017 c. 20.

Special category land

28.—(1) So much of the special category land as will be required for the purposes of the exercising by the undertaker of the Order rights will be discharged from all rights, trusts and incidents to which it was previously subject in accordance with article 21(2) (private rights).

(2) So far as the temporary use of land under article 26 (temporary use of land for carrying out the authorised development) is concerned, the discharge in paragraph (1) is only for such time as the land is being used under that article.

(3) In this article—

“Order rights” means rights and powers exercisable over the special category land by the undertaker under article 18 (compulsory acquisition of rights), article 26 (temporary use of land for carrying out the authorised development); and

“the special category land” means the land numbered 2, 3 and 4 identified as forming part of a common, open space, or fuel or field allotment in the book of reference and on the land plan.

Statutory undertakers

29. Subject to the provisions of Schedule 6 (protective provisions), the undertaker may—

- (a) extinguish or suspend the rights of, remove or reposition the apparatus belonging to, statutory undertakers shown on the land plans and described in the book of reference; and
- (b) create and acquire compulsorily the rights or impose restrictions over land belonging to statutory undertakers shown on the land plans and described in the book of reference.

Recovery of costs of new connections

30.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 29 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is to be 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 29 (statutory undertakers) any person who is—

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

is to be 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 making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(3) In this article—

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

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

(a) 2003 c. 21.

PART 6

OPERATIONS

Felling or lopping of trees and removal of hedgerows

31.—(1) The undertaker may fell or lop any tree or shrub or cut back its roots, within or overhanging land within the Order limits if it reasonably believes it to be necessary to do so to prevent the tree or shrub from—

- (a) obstructing or interfering with the construction, maintenance or use of the authorised development or any apparatus used in connection with the authorised development; or
- (b) constituting a danger to persons using the authorised development.

(2) In carrying out any activity authorised by paragraph (1), the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

(3) Any dispute as to a person’s entitlement to compensation under paragraph (2), or as to the amount of compensation, is to be determined under Part 1 of the 1961 Act.

(4) The undertaker may, for the purposes of the authorised development—

- (a) subject to paragraph (2), remove any hedgerows within the Order limits that may be required for the purposes of carrying out the authorised development; and
- (b) remove the important hedgerows as are within the Order limits and specified in Schedule 8 (removal of important hedgerows).

(5) The power conferred by paragraph (4) will remove any obligation upon the undertaker to secure any consent to remove those hedgerows under the Hedgerows Regulations 1997(a).

(6) In this article “hedgerow” and “important hedgerow” have the same meaning as in the Hedgerow Regulations 1997.

PART 7

MISCELLANEOUS AND GENERAL

Application of landlord and tenant law

32.—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised development or the right to use the same; and
- (b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised development, or any part of it, so far as any such 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 that person’s use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants prejudices the operation of any 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 any such agreement so as to—

- (a) exclude or in any respect modify any of the rights and obligations of those 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 such right or obligation provided for by the terms of the lease; or

(a) S.I 1997/1160, to which there are amendments not relevant to this Order.

- (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.

Operational land for the purposes of the 1990 Act

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

Defence to proceedings in respect of statutory nuisance

34.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990 (summary proceedings by persons aggrieved by statutory nuisances)(a) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order is to be made, and no fine may be 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 development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction sites), or a consent given under section 61 (prior consent for work on construction sites) of the Control of Pollution Act 1974(b);
- (b) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (c) is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) Section 61(9) of the Control of Pollution Act 1974 (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) and section 65(8) of that Act (corresponding proviso in relation to consent for registered noise level to be exceeded) is not to apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

Certification of plans etc.

35.—(1) The undertaker must, as soon as practicable after the date on which this Order is made, submit to the Secretary of State copies of the documents listed in Schedule 9 (documents to be certified) for certification that they are true copies of the plans or documents referred to in this Order.

(2) A plan or document so certified is admissible in any proceedings as evidence of the contents of the plan or document of which it is a copy.

Service of notices

36.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

- (a) by post;
- (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or
- (c) with the consent of the recipient and subject to paragraphs (6) to (8), by electronic transmission

(a) 1990 c. 43. Section 82 was amended by section 103 of the Clean Neighbourhoods and Environment Act 2005 (c.16); Section 79 was amended by sections 101 and 102 of the same Act.
(b) 1974 c. 40.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 of the Interpretation Act 1978 (references to service by post)(a) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address and otherwise—

- (a) in the case of the secretary or clerk of that body corporate, the registered or principal office of that body; and
- (b) in any other case, the last known address of that person at that time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having an interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person by the description of “owner”, or as the case may be “occupier” of the land (describing it); and
- (b) either leaving it in the hands of the person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is to be taken to be fulfilled only where—

- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
- (b) the notice or document is capable of being accessed by the recipient;
- (c) the notice or document is legible in all material respects; and
- (d) in a form sufficiently permanent to be used for subsequent reference.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within seven days of receipt that the recipient requires a paper copy of all or any part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of an electronic transmission by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
- (b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.

(9) This article does not exclude the employment of any method of service not expressly provided for by it.

Procedure in relation to certain approvals etc.

37.—(1) Where an application is made to or request is made of the relevant planning authority, a relevant highway authority, a traffic 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 the Order (not including the requirements), such consent, agreement or approval to be validly given, must be given in writing and must not be unreasonably withheld or delayed.

(a) 1978 c. 30. Section 7 was amended by paragraph 19 of Schedule 10 to the Road Traffic Regulation 1984 (c.27). There are other amendments not relevant to this Order.

(2) Save for the applications made pursuant to Schedule 7 (Procedure for discharge of requirements), if, within 42 days after the application or request has been submitted to an authority or an owner as referred to in paragraph (1) of this article (or such longer period as may be agreed in writing with the undertaker) it has not notified the undertaker of its decision (and if it is a disapproval the grounds of disapproval), it is deemed to have approved the application or request.

(3) Schedule 7 (procedure for discharge of requirements) is to have effect in relation to all consents, agreements or approvals required from the relevant planning authority pursuant to the requirements.

Arbitration

38. Subject to article 37 (procedure in relation to certain approvals etc.) and except where otherwise provided for in this Order any difference under any provision of this Order, is to 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.

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

Address
Date

Name
Title
Department

SCHEDULE 1

Article 3

AUTHORISED DEVELOPMENT

A nationally significant infrastructure project, as defined in sections 14(1)(b) and 16 of the 2008 Act and associated development within the meaning of section 115(2) of the 2008 Act comprising—

OSWESTRY SUBSTATION

Work No. 1 Works at Oswestry substation as shown on sheet 1 of the works plans comprising the installation of electrical switchgear and associated equipment (including 132kV cable sealing ends, isolator and associated busbar and 132kV outdoor circuit breaker) and 132kV underground cable; and

132kV UNDERGROUND CABLE

Work No. 2 the construction and installation and keeping of a 132kV underground cable and fibre optic cable 1.2km in length from Oswestry substation connecting to Work No.3 at a terminal structure at Long Wood (grid reference: SJ 3113229877) comprising three 132kV single core cables together with a fibre optic cable installed in 200mm diameter polyethylene ducts laid in trefoil formation together with the installation of cable protection tiles above at a depth of approximately 1.4m to ensure a final minimum depth of 975mm and as shown on sheet 1 of the works plans; and

- (a) site preparation works and site clearance (including fencing, felling and vegetation removal);
- (b) earthworks (including soil stripping and storage and site levelling);
- (c) carrying out surveys or taking soil samples;
- (d) establishment of temporary laydown and storage areas, temporary vehicle parking and construction fencing;
- (e) cutting down, uprooting, topping or lopping of trees or shrubs or cutting back their roots;
- (f) reinstatement hedgerow planting;
- (g) establishment of temporary means of access and trackways;
- (h) drainage works and temporary culverts;
- (i) ramps, means of access, footpaths, bridleways;
- (j) works to alter the position of apparatus, including mains, sewers, drains and cables;
- (k) works to alter the course of, or otherwise interfere with a watercourse;
- (l) works to mitigate any adverse effects of the construction, maintenance or operation of the authorised development;
- (m) works for the benefit or protection of land affected by the authorised development;
- (n) the removal, disposal or re-siting of apparatus;
- (o) open trench excavations and directional drilling; and

132kV OVERHEAD LINE

Work No. 3 the construction and installation and keeping of a 132kV electric line above ground of 21.3 km in length commencing in the vicinity of Long Wood (grid ref: SJ 3113229877) and following an easterly direction passing to the south of Whittington, north of Rednal, to the north of Lower Hordley, south of Cockshutt, and passing to the south of Loppington terminating at a gantry at Wem substation more particularly shown on sheets 1 to 16 of the works plans. This will comprise a three phase 132kV line (three wires/conductors and fibre optic cable) mounted on 176 trident wood pole structures extending up to 18m high and terminal ends and cable sealing ends at

terminal poles and all modifications required and any support to facilitate a change in angle of the electric line; and—

- (a) site preparation works and site clearance (including fencing, felling and vegetation removal);
- (b) earthworks (including soil stripping and storage and site levelling);
- (c) carrying out surveys or taking soil samples;
- (d) establishment of temporary laydown and storage areas, temporary vehicle parking and construction fencing;
- (e) cutting down, uprooting, topping or lopping of trees or shrubs or cutting back their roots;
- (f) reinstatement hedgerow planting;
- (g) establishment of temporary means of access and trackways;
- (h) drainage works and temporary culverts;
- (i) ramps, means of access, footpaths, bridleways;
- (j) works to alter the position of apparatus, including mains, sewers, drains and cables;
- (k) works to alter the course of, or otherwise interfere with a watercourse;
- (l) works to mitigate any adverse effects of the construction, maintenance or operation of the authorised development;
- (m) works for the benefit or protection of land affected by the authorised development;
- (n) the provision of overhead electricity cables underground ducting and placing electricity cables below ground to connect to Work No.2 and Work No.5;
- (o) establishment of winching points and the installation of scaffolding;
- (p) a welfare unit and a security cabin at laydown area number 7; and

LOWER VOLTAGE DIVERSIONS

Work No.4A the removal of existing 11kV and 33kV overhead lines between Oswestry and Wem as shown on sheets 2, 3, 7, 8, 12, 13, 14 and 16 of the works plans and all associated wood poles, conductors, insulators and fittings and;

- (a) site preparation works and site clearance (including fencing, felling and vegetation removal);
- (b) earthworks (including soil stripping and storage and site levelling);
- (c) carrying out surveys or taking soil samples;
- (d) establishment of temporary laydown and storage areas, temporary vehicle parking and construction fencing;
- (e) cutting down, uprooting, topping or lopping of trees or shrubs or cutting back their roots;
- (f) reinstatement hedgerow planting;
- (g) establishment of temporary means of access and trackways;
- (h) drainage works and temporary culverts;
- (i) ramps, means of access, footpaths, bridleways;
- (j) works to alter the position of apparatus, including mains, sewers, drains and cables;
- (k) works to alter the course of, or otherwise interfere with a watercourse;
- (l) works to mitigate any adverse effects of the construction, maintenance or operation of the authorised development;
- (m) works for the benefit or protection of land affected by the authorised development;
- (n) establishment of winching points and the installation of scaffolding; and

Work No.4B The undergrounding of 11kV and 33kV cables between Oswestry and Wem as shown on sheets 1, 2, 3, 7, 8, 9, 12, 13, 14 and 16 of the works plans and;

- (a) site preparation works and site clearance (including fencing, felling and vegetation removal);
- (b) earthworks (including soil stripping and storage and site levelling);
- (c) carrying out surveys or taking soil samples;
- (d) establishment of temporary laydown and storage areas, temporary vehicle parking and construction fencing;
- (e) cutting down, uprooting, topping or lopping of trees or shrubs or cutting back their roots;
- (f) reinstatement hedgerow planting;
- (g) establishment of temporary means of access and trackways;
- (h) drainage works and temporary culverts;
- (i) ramps, means of access, footpaths, bridleways;
- (j) works to alter the position of apparatus, including mains, sewers, drains and cables;
- (k) works to alter the course of, or otherwise interfere with a watercourse;
- (l) works to mitigate any adverse effects of the construction, maintenance or operation of the authorised development;
- (m) works for the benefit or protection of land affected by the authorised development;
- (n) establishment of winching points and the installation of scaffolding;
- (o) works to install the means to connect the lower voltage overhead line (Work No.4A) with the new section of lower voltage underground cable; and

WEM SUBSTATION

Work No.5—Works at Wem substation as shown on sheet 16 of the works plans comprising the installation of a 132kV gantry, isolator, associated busbar, a 132kV to 33kV transformer, 33kV cable and a 33kV circuit breaker and:

- (a) site preparation works and site clearance (including fencing);
- (b) levelling; and
- (c) creation of hardstanding area.

SCHEDULE 2 REQUIREMENTS

Article 3

Interpretation

1. In this Schedule—

“bank holiday” means a holiday as defined under section 1 of the Banking and Financial Dealings Act 1971(a);

“commencement” means the carrying out of a material operation, as defined in section 155 of the 2008 Act (which explains when development begins), comprised in or carried out for the purposes of the authorised development and the words “commence” and “commenced” are to be construed accordingly;

“draft construction environmental management plan” means the document with reference 6.3.2 and certified by the Secretary of State and includes—

the outline hedgerow management plan;

the outline construction traffic management plan;

“Environment Agency” means an executive non-departmental public body sponsored by the Department of Environment, Food and Rural Affairs;

“felling” means any felling or lopping undertaken pursuant to article 31 (felling or lopping of trees and removal of hedgerows) of this Order;

“planning consent” means any of the following—

(a) planning permission granted under Part 3 of the 1990 Act;

(b) development consent granted under the 2008 Act;

(c) consent granted under the Electricity Act 1989; or

(d) planning permission granted under the Town and Country Planning (Development Management Procedure) (England) Order 2015(b);

“reinstatement planting” means the reinstatement of the vegetation that has been removed to enable the construction of the authorised development;

“working hours” means Monday to Friday between 0700 and 1900 hours during the months of March to October and between 0730 and 1730 hours or during daylight hours, whichever is the shorter, during the months of January to February and November to December and between 0700 and 1300 hours on Saturdays with no works to take place on Sundays or bank or public holidays.

Time limits

2. The authorised development must be commenced within 5 years of the date that this Order is made.

Compliance with approved details

3.—(1) The construction of the pole structures forming part of the authorised development comprised in Work No.3 must take place in accordance with the approved drawings listed in Table 1 below and within the limits of deviation as set out in article 4(a) (limits of deviation) as limited by requirement 4.

(a) 1971 c. 80.
(b) S.I. 2015/595

Table 1

<i>(1) Poles</i>	<i>(2) Drawing sheet number</i>	<i>(3) Pole height (metres)</i>	<i>(4) Pole type (TBC)</i>
1	works plan sheet 1	13	Terminal H-Pole
2	works plan sheet 1	10	Inter 2.5m Arm
3	works plan sheet 1	10	Inter 2.5m Arm
4	works plan sheet 1	10	Inter 2.5m Arm
5	works plan sheet 1	11	Inter 2.5m Arm
6	works plan sheet 1	12	Inter H-Pole
7	works plan sheet 2	14	Section Single
8	works plan sheet 2	13	Angle H-Pole
9	works plan sheet 2	13	Inter 2.5m Arm
10	works plan sheet 2	11	Inter 2.5m Arm
11	works plan sheet 2	12	Angle H-Pole
12	works plan sheet 2	13	Inter 2.5m Arm
13	works plan sheet 2	13	Inter 2.5m Arm
14	works plan sheet 3	12	Inter 2.5m Arm
15	works plan sheet 3	11	Inter 2.5m Arm
16	works plan sheet 3	10	Inter 2.5m Arm
17	works plan sheet 3	12	Angle H-Pole
18	works plan sheet 3	11	Inter 2.5m Arm
19	works plan sheet 3	11	Inter 2.5m Arm
20	works plan sheet 4	11	Inter 2.5m Arm
21	works plan sheet 4	12	Angle Single
22	works plan sheet 4	12	Angle H-Pole
23	works plan sheet 4	10	Inter 2.5m Arm
24	works plan sheet 4	10	Inter 2.5m Arm
25	works plan sheet 4	10	Inter 2.5m Arm
26	works plan sheet 4	11	Inter 2.5m Arm
27	works plan sheet 4	12	Inter 2.5m Arm
28	works plan sheet 4	12	Inter 2.5m Arm
29	works plan sheet 4	15	Angle H-Pole
30	works plan sheet 4	12	Inter 2.5m Arm
31	works plan sheet 4	11	Inter 2.5m Arm
32	works plan sheet 5	10	Inter 2.5m Arm
33	works plan sheet 5	10	Inter 2.5m Arm
34	works plan sheet 5	11	Inter 2.5m Arm
35	works plan sheet 5	12	Inter 2.5m Arm
36	works plan sheet 5	12	Inter H-Pole
37	works plan sheet 5	13	Section Single
38	works plan sheet 5	13	Inter 2.5m Arm
39	works plan sheet 5	12	Inter 2.5m Arm
40	works plan sheet 5	11	Inter 2.5m Arm
41	works plan sheet 5	10	Inter 2.5m Arm
42	works plan sheet 5	12	Angle H-Pole
43	works plan sheet 7	10	Inter 2.5m Arm
44	works plan sheet 7	10	Inter 2.5m Arm
45	works plan sheet 7	11	Inter 2.5m Arm
46	works plan sheet 7	12	Inter 2.5m Arm
47	works plan sheet 7	11	Inter 2.5m Arm
48	works plan sheet 7	10	Inter 2.5m Arm
49	works plan sheet 7	12	Angle H-Pole
50	works plan sheet 7	10	Inter 2.5m Arm

51	works plan sheet 7	10	Angle H-Pole
52	works plan sheet 7	10	Inter 2.5m Arm
53	works plan sheet 7	14	Angle H-Pole
54	works plan sheet 7	12	Angle H-Pole
55	works plan sheet 7	9	Inter 2.5m Arm
56	works plan sheet 7	9	Inter 2.5m Arm
57	works plan sheet 7	9	Inter 2.5m Arm
58	works plan sheet 7	11	Section Single
59	works plan sheet 8	12	Inter 2.5m Arm
60	works plan sheet 8	11	Inter 2.5m Arm
61	works plan sheet 8	11	Inter 2.5m Arm
62	works plan sheet 8	10	Inter 2.5m Arm
63	works plan sheet 8	10	Inter 2.5m Arm
64	works plan sheet 8	13	Angle H-Pole
65	works plan sheet 8	13	Inter 2.5m Arm
66	works plan sheet 8	10	Inter 2.5m Arm
67	works plan sheet 8	11	Inter 2.5m Arm
68	works plan sheet 8	12	Section Single
69	works plan sheet 8	11	Inter 2.5m Arm
70	works plan sheet 8	12	Inter 2.5m Arm
71	works plan sheet 8	11	Inter 2.5m Arm
72	works plan sheet 8	10	Inter 2.5m Arm
73	works plan sheet 9	10	Angle H-Pole
74	works plan sheet 9	10	Inter 2.5m Arm
75	works plan sheet 9	10	Inter 2.5m Arm
76	works plan sheet 9	14	Angle H-Pole
77	works plan sheet 9	15	Inter H-Pole
78	works plan sheet 9	16	Inter H-Pole
79	works plan sheet 9	12	Inter 2.5m Arm
80	works plan sheet 9	11	Inter 2.5m Arm
81	works plan sheet 9	12	Angle H-Pole
82	works plan sheet 9	14	Inter H-Pole
83	works plan sheet 9	15	Inter H-Pole
84	works plan sheet 9	15	Angle H-Pole
85	works plan sheet 9	12	Inter 2.5m Arm
86	works plan sheet 10	13	Inter 2.5m Arm
87	works plan sheet 10	14	Inter 2.5m Arm
88	works plan sheet 10	12	Inter 2.5m Arm
89	works plan sheet 10	11	Inter 2.5m Arm
90	works plan sheet 10	11	Inter 2.5m Arm
91	works plan sheet 10	11	Inter 2.5m Arm
92	works plan sheet 10	12	Angle Single
93	works plan sheet 10	10	Inter 2.5m Arm
94	works plan sheet 10	10	Inter 2.5m Arm
95	works plan sheet 10	10	Inter 2.5m Arm
96	works plan sheet 10	10	Inter 2.5m Arm
97	works plan sheet 11	12	Angle H-Pole
98	works plan sheet 11	10	Inter 2.5m Arm
99	works plan sheet 11	15	Inter 2.5m Arm
100	works plan sheet 11	13	Angle H-Pole
101	works plan sheet 11	12	Inter 2.5m Arm
102	works plan sheet 11	16	Inter H-Pole
103	works plan sheet 11	15	Inter H-Pole

104	works plan sheet 11	12	Inter 2.5m Arm
105	works plan sheet 11	14	Angle H-Pole
106	works plan sheet 11	16	Inter 2.5m Arm
107	works plan sheet 12	16	Inter 2.5m Arm
108	works plan sheet 12	13	Angle Single
109	works plan sheet 12	12	Inter 2.5m Arm
110	works plan sheet 12	11	Inter 2.5m Arm
111	works plan sheet 12	11	Inter 2.5m Arm
112	works plan sheet 12	12	Angle H-Pole
113	works plan sheet 12	15	Angle H-Pole
114	works plan sheet 12	11	Inter 2.5m Arm
115	works plan sheet 12	12	Angle H-Pole
116	works plan sheet 12	12	Inter 2.5m Arm
117	works plan sheet 13	12	Inter 2.5m Arm
118	works plan sheet 13	12	Inter 2.5m Arm
119	works plan sheet 13	12	Inter 2.5m Arm
120	works plan sheet 13	12	Angle H-Pole
121	works plan sheet 13	11	Inter 2.5m Arm
122	works plan sheet 13	11	Inter 2.5m Arm
123	works plan sheet 13	11	Inter 2.5m Arm
124	works plan sheet 13	11	Inter 2.5m Arm
125	works plan sheet 13	15	Section H-Pole
126	works plan sheet 13	15	Section H-Pole
127	works plan sheet 13	15	Angle H-Pole
128	works plan sheet 13	15	Angle H-Pole
129	works plan sheet 14	11	Inter 2.5m Arm
130	works plan sheet 14	10	Inter 2.5m Arm
131	works plan sheet 14	10	Inter 2.5m Arm
132	works plan sheet 14	12	Angle H-Pole
133	works plan sheet 14	10	Inter 2.5m Arm
134	works plan sheet 14	10	Inter 2.5m Arm
135	works plan sheet 14	10	Inter 2.5m Arm
136	works plan sheet 14	11	Inter 2.5m Arm
137	works plan sheet 14	12	Inter 2.5m Arm
138	works plan sheet 14	14	Angle H-Pole
139	works plan sheet 14	11	Inter 2.5m Arm
140	works plan sheet 14	13	Angle H-Pole
141	works plan sheet 14	12	Inter 2.5m Arm
142	works plan sheet 14	12	Inter 2.5m Arm
143	works plan sheet 14	12	Angle H-Pole
144	works plan sheet 14	11	Inter 2.5m Arm
145	works plan sheet 14	13	Inter 2.5m Arm
146	works plan sheet 14	11	Angle H-Pole
147	works plan sheet 15	11	Inter 2.5m Arm
148	works plan sheet 15	11	Inter 2.5m Arm
149	works plan sheet 15	10	Inter 2.5m Arm
150	works plan sheet 15	12	Angle H-Pole
151	works plan sheet 15	13	Inter 2.5m Arm
152	works plan sheet 15	15	Inter 2.5m Arm
153	works plan sheet 15	13	Inter 2.5m Arm
154	works plan sheet 15	10	Inter 2.5m Arm
155	works plan sheet 15	11	Section Single
156	works plan sheet 15	10	Inter 2.5m Arm

157	works plan sheet 15	10	Inter 2.5m Arm
158	works plan sheet 15	10	Inter 2.5m Arm
159	works plan sheet 15	10	Inter 2.5m Arm
160	works plan sheet 15	10	Inter 2.5m Arm
161	works plan sheet 15	10	Inter 2.5m Arm
162	works plan sheet 15	13	Angle H-Pole
163	works plan sheet 16	13	Inter H-Pole
164	works plan sheet 16	11	Angle H-Pole
165	works plan sheet 16	12	Inter 2.5m Arm
166	works plan sheet 16	13	Angle Single
167	works plan sheet 16	11	Inter 2.5m Arm
168	works plan sheet 16	10	Inter 2.5m Arm
169	works plan sheet 16	12	Inter 2.5m Arm
170	works plan sheet 16	11	Inter 2.5m Arm
171	works plan sheet 16	10	Inter 2.5m Arm
172	works plan sheet 16	12	Angle H-Pole
173	works plan sheet 16	10	Inter 2.5m Arm
174	works plan sheet 16	11	Inter 2.5m Arm
175	works plan sheet 16	12	Section Single
176	works plan sheet 16	11	Section Single

Restriction on the limits of deviation

- 4.—(1) No pole structure (as set out in Table 1 of requirement 3) is authorised to move:
- (a) more than 5 metres in any direction from its location (as shown on the works plans); and
 - (b) within 1 metre of the outside edge of any hedgerow.

Plans

5. Subject to article 4 (limits of deviation) and any of the other requirements, the authorised development must be carried out in accordance with the plans or other documents certified in accordance with article 35 (certification of plans).

Felling

6.—(1) All felling must be undertaken in accordance with the relevant guidance specified in paragraph (2).

- (2) The relevant guidance is—
- (a) The UK Forestry Standard (“UKFS”);
 - (b) UKFS Guidelines – Forests and Water (2011);
 - (c) UKFS Guidelines – Forests and Soil (2011);
 - (d) UKFS Guidelines – Forests and Biodiversity (2011); and
 - (e) UKFS Guidelines – Forests and Historic Environment (2011).

Construction Hours

7.—(1) Subject to sub-paragraph (2), construction work must not take place other than during the working hours.

- (2) The following operations may take place outside the working hours—
- (a) The installation and removal of scaffolding and protective netting across railways, highways and watercourses;

- (b) Stringing of the line across the highway subject to the prior written approval of the relevant planning authority;
- (c) The completion of operations commenced during working hours which cannot be safely stopped.

Contaminated land and groundwater

8.—(1) In the event that contamination is found at any time when carrying out the authorised development, it must be reported in writing immediately to the relevant planning authority and the carrying out of that part of the authorised development affected by such contamination must cease immediately. An investigation and risk assessment must be completed in accordance with a scheme to assess the nature and extent of any contamination within the Order limits and whether or not it originates within the Order limits, such scheme to be submitted to and approved by the relevant planning authority. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced and submitted to and approved by the relevant planning authority.

(2) Where remediation is required pursuant to the approved investigation and risk assessment, a detailed remediation scheme to bring the relevant land to a condition suitable for the intended use must be prepared, and submitted for the written approval of the relevant planning authority.

(3) The approved remediation scheme must be carried out in accordance with its terms.

(4) Following completion of measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out must be produced, and approved in writing by the relevant planning authority.

(5) Where the carrying out of any part of the authorised development has ceased pursuant to sub-paragraph (1) the undertaker may only recommence the carrying out of that part of the authorised development following—

- (a) where remediation is required pursuant to the approved investigation and risk assessment for contamination affecting that part, the completion of measures pursuant to subparagraph (4); or
- (b) in all other cases the approval of the investigation and risk assessment pursuant to subparagraph (2).

Construction Environmental Management Plan

9.—(1) No authorised development is to commence until, following consultation with the relevant highway authority and the Environment Agency, a construction environmental management plan for that stage, which is substantially in accordance with the draft construction environmental management plan, has been submitted to and approved by the relevant planning authority. The construction environmental management plan must include measures to minimise impacts of construction works and must include but not be limited to the following plans—

- (a) hedgerow management plan;
- (b) a construction traffic management plan.

(2) The authorised development must be carried out in accordance with the construction environmental management plan as approved under this requirement.

Approved plans and amendments to approved plans.

10.—(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 approved plan must be taken to include any amendments that may be approved subsequently by the relevant planning authority (after consulting every person required to be consulted before approval of the original plan).

(2) The relevant planning authority must not approve the plan or an amendment to the plan unless it is satisfied that the plan or the amendment is unlikely to give rise to any new or materially different environmental effects from those assessed in the environmental statement.

SCHEDULE 3

Article 10

STREETS SUBJECT TO STREET WORKS

Table 2

<i>(1) Area</i>	<i>(2) Street subject to street works</i>	<i>(3) Description of the street works</i>
Shropshire	B5009 – Approx. 105m north from junction with Oil Tank Services Ltd	Scaffolding and Netting
Shropshire	Unnamed (Hordley Road) – Approx. 160m from the access to Dandy Ford Farm	Scaffolding and Netting
Shropshire	A528 – Approx. 500m south from Wackley Lodge	Scaffolding and Netting
Shropshire	B4397 – Approx. 480m east of Malt Kiln Farm	Scaffolding and Netting
Shropshire	Salters Lane – Approx. 240m north of The Shayes	Scaffolding and Netting
Shropshire	B5063 – Wem Substation	Scaffolding and Netting
Shropshire	Woodhouse Road – Rednal	Installation of LV cable in carriageway
Shropshire	B5063 – Wem Substation	Installation of LV cable in carriageway
Shropshire	A5 (T) – Approx. 720m south of roundabout with B4580 and A495	Directional Drill under carriageway
Shropshire	Woodhouse Road - Approx. 65m north from Rednal Mill House	Crossing with overhead conductors
Shropshire	Unnamed (Hordley Road) - Approx. 660m east of Dandyford Farm	Crossing with overhead conductors
Shropshire	Unnamed (Hordley Road) - Approx. 820m east of Dandyford Farm	Crossing with conductors
Shropshire	Unnamed Road (Stanwardine) - Approx. 240 west of A528	Crossing with overhead conductors
Shropshire	Unnamed Road (Malt Kiln Farm) - Approx. 150m west of Malt Kiln Farm	Crossing with overhead conductors
Shropshire	PRoW 0306/12/7 - Adjacent to A5 (T)	Crossing with underground cable
Shropshire	PRoW 0313/41/1 – Approx. 640m north east of Top House Farm	Crossing with overhead conductors
Shropshire	PRoW 0313/41/1 – Approx. 630m north east of top House Farm	Recovery of existing line
Shropshire	PRoW 0313/41/1 – Approx. 450 south west Brook Field Farm	Crossing with underground cable
Shropshire	PRoW 0307/66/1 – Approx. 180m south of Top House Farm	Crossing of public right of way by construction and maintenance access track
Shropshire	PRoW0307/65/1 - Approx. 130m east of Top House Farm	Crossing of public right of way by construction and maintenance access track
Shropshire	PRoW 0313/42/1 - Approx. 400m west of Brook Field Farm	Crossing of public right of way by construction and maintenance access track
Shropshire	PRoW 0313/42/1 – Following access track from Brook Field Farm	Crossing of public right of way by construction and

Shropshire	PRoW 0313/42/1 - Adjacent to Brook Field Farm Yard	maintenance access track Crossing of public right of way by construction and maintenance access track
Shropshire	PRoW 0313/42/1 – Crossing access track to Brook Field Farm	Crossing of public right of way by construction and maintenance access track
Shropshire	PRoW 0313/47/1 – Adjacent to Bryn y Plentyn	Crossing of public right of way by construction and maintenance access track
Shropshire	PRoW 0313/44/2 – Following track south from Perrymoor Farm	Crossing with overhead conductors and access route
Shropshire	Regional Trail – Montgomery Canal	Crossing with overhead conductors
Shropshire	PRoW 0207/14/3 – Approx. 400m east of Top House Farm	Crossing with overhead conductors and access route
Shropshire	PRoW 0207/15/1 - Approx. 430m south west of Kenwick Lodge	Crossing of public right of way by construction and maintenance access track
Shropshire	PRoW 0207/15/1 – Approx. 400m south west of Kenwick Lodge.	Crossing with overhead conductors
Shropshire	PRoW 0207/15/1 – Approx. 250m south of Kenwick Lodge.	Crossing of public right of way by construction and maintenance access track
Shropshire	PRoW 0207/16/2 – Approx. 210 m south east of Kenwick Lodge	Crossing of public right of way by construction and maintenance access track
Shropshire	PRoW 0207/16/2 - Kenwick Lodge Drive way	Crossing of public right of way by construction and maintenance access track
Shropshire	PRoW 0207/13/1 - Kenwick Lodge Drive way	Crossing of public right of way by construction and maintenance access track
Shropshire	PRoW 0207/4/1 - Access to The Wood near Malt Kiln Farm	Crossing of public right of way by construction and maintenance access track
Shropshire	PRoW 0207/4/2 – Approx. 100m north west of Malt Kiln Farm	Crossing of public right of way by construction and maintenance access track
Shropshire	PRoW 0217/4/2 – Approx. 130m north west of Malt Kiln Farm	Crossing with overhead conductors
Shropshire	PRoW 0217/5/1 – Approx. 300 m east of Malt Kiln Farm	Crossing of public right of way by construction and maintenance access track
Shropshire	PRoW 0217/5/1 – Approx. 200 m south west of Coppice Farm	Crossing with overhead conductors
Shropshire	PRoW 0217/10/1 – Approx. 500 m south of Bentley Farm.	Crossing of public right of way by construction and maintenance access track
Shropshire	PRoW 0217/10/1 – Approx.510 m south of Bentley Farm.	Crossing of public right of way by construction and maintenance access track
Shropshire	PRoW 0217/10/1 – Approx. 60m south of Bentley Farm	Crossing of public right of way by construction and maintenance access track
Shropshire	PRoW 0217/11/1 – Approx. 50m south of	Crossing of public right of

	Bentley Farm.	way by construction and maintenance access track
Shropshire	PRoW 0217/11/1 – Approx. 270 m East of Bentley Farm.	Crossing with overhead conductors
Shropshire	PRoW 0217/11/1 - Approx. 360 m East of Bentley Farm.-	Crossing of public right of way by construction and maintenance access track
Shropshire	PRoW 0217/12/1 – Approx.250 m north of The Shayes.	Crossing with overhead conductors
Shropshire	PRoW 0217/12/1 – Approx. 250m north of The Shayes.	Crossing with overhead conductors
Shropshire	PRoW 0217/13/1 – Approx. 380m north east of The Shayes	Crossing of public right of way by construction and maintenance access track
Shropshire	PRoW0230/47/1 – Approx.360m north east of The Shayes	Crossing with overhead conductors
Shropshire	PRoW 0230/47/1 – Approx. 550m south of The Ditches Hall.	Crossing of public right of way by construction and maintenance access track
Shropshire	PRoW 0230/47/1 - Following access to The Ditches Hall heading South.	Crossing of public right of way by construction and maintenance access track
Shropshire	PRoW 0230/47/1 – Approx. 250 meters south of Pools Farm.	Crossing of public right of way by construction and maintenance access track
Shropshire	PRoW 0230/47/2 – Approx. 260m south of Pools Farm.	Crossing with overhead conductors

MODIFICATION OF THE COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS

Compensation enactments

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 set out in this Schedule, 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 restriction as they apply as respects compensation on the compulsory purchase of land and interests in land.

Modification of the Land Compensation Act 1973

2.—(1) Without limitation on the scope of paragraph (1), the Land Compensation Act 1973^(a) has effect subject to the modification set out in sub-paragraph (2).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 of the 1965 Act (measure of compensation in case of severance) as substituted by paragraph 5 (3)—

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

3.—(1) Without limitation on the scope of paragraph 1, the 1961 Act has effect subject to the modification set out in sub-paragraph (2).

(2) For section 5A of the 1961 Act, (relevant valuation date) after “if” substitute—

- (a) the acquiring authority enters on the land for the purpose of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act (as modified by paragraph 5(5) of Schedule 4 to the Reinforcement to the North Shropshire Electricity Distribution Network Order 201*); and
- (b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A to the 1965 Act (as substituted by paragraph 5(8) of Schedule 4 to the Reinforcement to the North Shropshire Electricity Distribution Network Order 201*) to acquire an interest in the land; and
- (c) the acquiring authority enters on and takes possession of that land,

the authority is deemed for the purposes of subsection (3)(a) to have entered on that land where it entered on that land for the purpose of exercising that right.

Application of Part 1 of the 1965 Act

4.—(1) Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act, as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act and modified by article 24 (modification of Part 1 of the 1965 Act) applies to the compulsory acquisition of a right by the creation of a new right or to the imposition of a restrictive covenant under article 18 (compulsory acquisition of rights) —

- (a) with the modifications specified in paragraph 5; and
- (b) with such other modifications as may be necessary.

5.—(1) The modifications referred to in paragraph 4(1)(a) are as follows:

(a) 1973. c. 26.

(2) References in the 1965 Act to land are, in the appropriate contexts, to 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 restriction imposed or to be imposed; or
- (b) the land over which the right is or is to be exercisable, or the restriction is to be enforceable.

(3) For section 7 of the 1965 Act (measure of compensation in case of severance) substitute—

“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 covenant but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”

(4) 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) (failure by owners to convey);
- (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.

(5) Section 11 of the 1965 Act (powers of entry)(a) is modified to secure that, where the acquiring authority has served notice to treat in respect of any right or restriction, as well as the notice of entry required by subsection (1) of that section, it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant; and sections 11A (powers of entry: further notices of entry)(b), 11B (counter-notice requiring possession to be taken on specified date)(c), 12 (unauthorised entry)(d) and 13 (refusal to give possession to acquiring authority)(e) of the 1965 Act are modified correspondingly.

(6) Section 20(f) of the 1965 Act (of 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.

(7) Section 22 of the 1965 Act (interests omitted from purchase) as modified by article 24(4) is also modified 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 enforce the restriction imposed, subject to compliance with that section as respects compensation.

(8) For Schedule 2A to the 1965 Act substitute—

(a) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 c. 67, section 3 of, and part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 c. 71, section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1) and S.I. 2009/1307

(b) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016 c. 22.

(c) Section 11B was inserted by section 187(2) of the Housing and Planning Act 2016 c. 22.

(d) Section 12 was amended by section 56(2) of, and part 1 of Schedule 9 to, the Courts Act 1971 c. 23.

(e) Section 13 was amended by sections 62(3), 139(4) to (9) and 146 of, and paragraphs 27 and 28 of Schedule 13 and part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 c. 15.

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

COUNTER-NOTICE REQUIRING PURCHASE OF LAND

Introduction

1.—(1) This Schedule applies where an acquiring authority serves a notice to treat in respect of a right over, or restrictive covenant affecting, the whole or part of a house, building or factory and have not executed a general vesting declaration under section 4 of the 1981 Act as applied by article 22 (application of the Compulsory Purchase (Vesting Declarations) Act 1981) of the Reinforcement to the North Shropshire Electricity Distribution Network Order 201* in respect of the land to which the notice to treat relates.

(2) But see article 23 (acquisition of subsoil only) of the Reinforcement to the North Shropshire Electricity Distribution Network Order 201* which excludes the acquisition of subsoil or airspace only from this Schedule.

2. In this Schedule, “house” includes any park or garden belonging to a house.

Counter-notice requiring purchase of land

3. A person who is able to sell the house, building or factory (“the owner”) may serve a counter-notice requiring the authority to purchase the owner’s interest in the house, building or factory.

4. A counter-notice under paragraph 3 must be served within the period of twenty-eight days beginning with the day on which the notice to treat was served.

Response to counter-notice

5. On receiving a counter-notice, the acquiring authority must decide whether to—

- (a) withdraw the notice to treat,
- (b) accept the counter-notice, or
- (c) refer the counter-notice to the Upper Tribunal.

6. The authority must serve notice of their decision on the owner within the period of 3 months beginning with the day on which the counter-notice is served (“the decision period”).

7. If the authority decide to refer the counter-notice to the Upper Tribunal they must do so within the decision period.

8. If the authority do not serve notice of a decision within the decision period they are to be treated as if they had served notice of a decision to withdraw the notice to treat at the end of that period.

9. If the authority serve notice of a decision to accept the counter-notice, the compulsory purchase order and the notice to treat are to have effect as if they included the owner’s interest in the house, building or factory.

Determination by Upper Tribunal

10. On a referral under paragraph 7, the Upper Tribunal must determine whether the acquisition of the right or the imposition of the restrictive covenant would—

- (a) in the case of a house, building or factory, cause material detriment to the house, building or factory, or
- (b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

11. In making its determination, the Upper Tribunal must take into account—

- (a) the effect of the acquisition of the right or the imposition of the covenant,
- (b) the use to be made of the right or covenant proposed to be acquired or imposed, and
- (c) if the right or covenant is proposed to be acquired or imposed for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.

12. If the Upper Tribunal determines that the acquisition of the right or the imposition of the covenant would have either of the consequences described in paragraph 10, it must determine how much of the house, building or factory the authority ought to be required to take.

13. If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in that land.

14.—(1) If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the authority may at any time within the period of 6 weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.

(2) If the acquiring authority withdraws the notice to treat under this paragraph they must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawal of the notice.

(3) Any dispute as to the compensation is to be determined by the Upper Tribunal.”

SCHEDULE 5

Article 26

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

Table 3

<i>(1) Location</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 the authorised development</i>
East of the A5(T) near Long Wood at Middleton	9	Temporary use as laydown area and access	Part of Work No.2 and Work No.3
East of the A5(T) near Long Wood at Middleton	10	Temporary use as laydown area	Part of Work No.2 and Work No.3
East of the A5(T) near Long Wood at Middleton	11	Temporary use as access	Part of Work No.2 and Work No.3
in Middleton between Cabin House and Top House Farm	16	Temporary use as laydown area	Part of Work No.3 and Work No.4
Southwest of Brookfield Farm, Coalpit Lane	39	Temporary use to dismantle existing LV overhead line	Part of Work No.4A
at Brookfield Farm, at the southern end of Coalpit Lane	45	Temporary use as laydown area	Part of Work No.3 and Work No.4
at Dandyford farm near Lower Hordley	142	Temporary use as laydown area	Part of Work No.3 and Work No.4
at Top House Farm	186	Temporary use as laydown area	Part of Work No.3 and Work No.4
at Coppice Farm, southwest of Loppington	258	Temporary use as laydown area	Part of Work No.3 and Work No.4
on the western edge of Wem, in the field just south of Wem substation	375,376	Temporary use as laydown area and for welfare unit and security cabin	Part of Work No.3 and Work No.4 and Work No.5

PROTECTIVE PROVISIONS

PART 1

FOR THE PROTECTION OF OPERATORS OF ELECTRONIC
COMMUNICATIONS CODE NETWORKS

1.—(1) For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the operator.

(2) In this Part of this Schedule—

”the 2003 Act” means the Communications Act 2003**(a)**;

”conduit system” has the same meaning as in the electronic communications code and references to providing a conduit system are to be construed in accordance with paragraph 1(3A) of that code;

”electronic communications apparatus” has the same meaning as in the electronic communications code;

”the electronic communications code” has the same meaning as in section 106(1) of the 2003 Act (application of the electronic communications code)**(b)**;

”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; and

”operator” means the operator of an electronic communications code network.

2. The exercise of the powers of article 29 (statutory undertakers) is subject to Part 10 of Schedule 3A of the 2003 Act.

3.—(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised development or its construction 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, the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage and make reasonable compensation to that operator for any other expenses, loss, or costs incurred by it, by reason, of any such damage, provided that the operator is not entitled to recover any indirect or consequential losses or losses of profits from the undertaker.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage 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 such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(a) 2003 c. 21.

(b) See section 106.

(4) Any difference arising between the undertaker and the operator under this Part of this Schedule must be referred to and settled by arbitration under article 38 (arbitration).

4. This Part of this Schedule does not apply to—

- (a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 of the 1991 Act; or
- (b) any damage, or any interruption, caused by electro-magnetic interference (if any) arising from the construction or use of the authorised development.

5. Nothing in this Part of this Schedule 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 2

FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

6. For the protection of the statutory undertakers referred to in this Part of this Schedule the following provisions, unless otherwise agreed in writing between the undertaker and the statutory undertaker concerned, have effect.

7. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable the relevant statutory undertaker to fulfil its statutory functions in a manner not less efficient than previously;

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989(a)), belonging to or maintained by that electricity undertaker for the purposes of electricity supply;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by that gas undertaker for the purposes of gas supply;
- (c) in the case of a water undertaker, mains, pipes or other water apparatus belonging to or maintained by that water undertaker for the purposes of water supply; and
- (d) in the case of a sewerage undertaker—
 - (i) any drain or works vested in that undertaker under the Water Industry Act 1991(b); and
 - (ii) 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 (adoption of sewers and disposal works) or an agreement to adopt made under section 104 of that Act (agreements to adopt sewer, drain or sewage disposal works, at future date),

and 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 is to 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 upon land;

“relevant statutory undertaker” means, in relation to any apparatus, the statutory undertaker that owns the apparatus or is responsible for its maintenance; and

(a) 1989 C. 29.
(b) 1991 C. 56.

“statutory undertaker” means—

- (a) any licence holder within the meaning of Part 1 of the Electricity Act 1989;
- (b) a gas transporter within the meaning of Part 1 of the Gas Act 1986(a);
- (c) a water undertaker within the meaning of the Water Industry Act 1991; and
- (d) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991 for the area of the authorised development.

8. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the statutory undertaker are regulated by the provisions of Part 3 of the 1991 Act.

9. Regardless of any provision in this Order or anything shown on the land plans, the undertaker may not acquire any apparatus otherwise than by agreement with the relevant statutory undertaker.

10.—(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, that apparatus must not be removed under this Part of this Schedule and any right of a statutory undertaker 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 the relevant statutory undertaker.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to the relevant statutory undertaker written notice of that requirement, together with a plan and section of the work proposed.

(3) If alternative apparatus or any part of such apparatus is to be constructed as a consequence of the removal of apparatus placed on the land referred to in sub-paragraph (2), the relevant statutory undertaker, must on receipt of a written notice to that effect from the undertaker, use its best endeavours to obtain the necessary facilities and rights in other land in which the alternative apparatus is to be constructed.

(4) The relevant statutory undertaker must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 38 (arbitration), and after the grant to the statutory undertaker of any such facilities and rights as are referred to in sub-paragraph (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 the provisions of this Part of this Schedule.

(5) Regardless of anything in sub-paragraph (4), if the undertaker gives notice in writing to the relevant statutory undertaker that it desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus, that work, instead of being executed by the statutory undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the statutory undertaker.

(6) Nothing in sub-paragraph (5) 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.

11.—(1) Not less than 28 days before starting the execution of any works of the type referred to in paragraph 10(2) that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 10(2), the undertaker must submit to the relevant statutory undertaker a plan, section and description of the works to be executed.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the statutory undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, (declaring that these must

(a) 1986 c. 44. A new section 7 was submitted by section 5 of the Gas Act 1995 (c. 45) and was further amended by section 76 of the Utilities Act (c. 27)

be on land held or controlled by the relevant statutory undertaker or the undertaker and subject to them being authorised by the order or being development permitted by an Act of Parliament or general development order made under the 1990 Act) and the statutory undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by a statutory undertaker under sub-paragraph (2) must be made within a period of 28 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If a statutory 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 1 to 4 apply as if the removal of the apparatus had been required by the undertaker under paragraph 10(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 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 relevant statutory undertaker notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

12.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to the relevant statutory undertaker the proper and reasonable expenses reasonably incurred by that statutory undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus provided that the relevant statutory undertaker is not entitled to recover any indirect or consequential losses or losses of profits from the undertaker.

(2) The value of any apparatus removed under the provisions of this Part of the Schedule is to be deducted from any sum payable under sub-paragraph (1), that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (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 38 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule 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 relevant statutory undertaker by virtue of sub-paragraph (1) is to 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 is not to 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 is to 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 relevant 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.

PART 3

FOR THE PROTECTION OF RAILWAY INTERESTS

13. The following provisions of this Part have effect, unless otherwise agreed in writing between the undertaker and Network Rail.

14. In this Part—

“construction” includes execution, placing, alteration and reconstruction and “construct” and “constructed” have corresponding meanings;

“the 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 by the Secretary of State in exercise of the powers in section 8 of the Railways Act 1993(a);

“Network Rail” means Network Rail Infrastructure Limited (company registration number 02904587) whose registered office is at 1 Evershott Street, London, NW1 2DN and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition “associated company” means any company which is (within the meaning of section 115) of the Companies Act 2006(b) (meaning of “subsidiary” etc)) 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 dates of, 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) 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 and 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; and

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

15.—(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 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) 1993 c. 43.
(b) 2006 c. 46.

- (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 pursuant to this Order.

16.—(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 under article 38 (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 35 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 his disapproval he shall be 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) which in the reasonable opinion of the engineer must be carried out before the commencement of the construction of a specified work (declaring that such protective works must be on land held or controlled by Network Rail and subject to such works being authorised by the order or being development permitted by an Act of Parliament or general development order made under the 1990 Act) 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 the same (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 such protective works as may be reasonably necessary for those purposes are to be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works must be carried out at the expense of the undertaker in either case with all reasonable dispatch, and 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.

17.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 16(3) 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 16;
- (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;
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property; and
- (e) so as not to interfere with the safe use of any railway of Network Rail or the traffic thereon or the safety of passengers using railway property.

18. 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.

19. 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.

20.—(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 12 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; and if Network Rail gives to the undertaker 56 days 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.

(2) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 9(a) provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

(3) 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.

21. 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 any protective works under the provisions of paragraph 16(3) 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, signalmen, watchmen 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; and
- (d) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

22. 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 such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.

23. The undertaker 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 it 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.

24.—(1) The undertaker must—

- (a) pay to Network Rail all reasonable and proper costs, charges, damages and expenses not otherwise provided for in this Part (but subject to the provisions of this paragraph) which may be occasioned to or reasonably incurred by Network Rail by reason of—
 - (i) any damage caused by the construction or maintenance of a specified work or the failure of such a work; or

- (ii) any negligence of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work.

(2) Network Rail must—

- (a) give the undertaker written notice of any claims or demands as soon as reasonably possible after Network Rail become aware of any such claims or demands;
- (b) not admit liability or make any offer to settle or settle or compromise any claim or demand without the prior consent of the undertaker (which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand);
- (c) take all reasonable steps to mitigate any liabilities relating to such claims or demands; and
- (d) keep the undertaker informed in relation to the progress of any claims and demands and pay due regard to the undertaker's reasonable representations in relation to them.

(3) In no circumstances is the undertaker liable to Network Rail under this Part for any indirect or consequential loss or loss of profits.

(4) Nothing in this Part imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the act, omission, default or negligence of Network Rail or its servants, contractors or agents.

25.—(1) If Network Rail considers that a fee, charge, cost or expense will be payable by the undertaker pursuant to this Part, Network Rail will first provide an estimate of that fee, charge, cost or expense and supporting information in relation to the estimate to the undertaker along with a proposed timescale for payment for consideration and the undertaker may, within a period of 21 days—

- (a) provide confirmation to Network Rail that the estimate is agreed and pay to Network Rail, by the date stipulated, that fee, charge, cost or expense; or
- (b) provide confirmation to Network Rail that the estimate is not accepted along with a revised estimate and a proposal as to how or why the undertaker considers that the estimate can be reduced and or paid at a later date.

(2) Network Rail must take in to account any representations made by the undertaker in accordance with this paragraph 25 and must, within 21 days of receipt of the information pursuant to sub-paragraph (1), confirm the amount of the fee, charge, cost or expense to be paid by the undertaker (if any) and the date by which this is to be paid.

(3) Network Rail must, when estimating and incurring any charge, cost or expense pursuant to this paragraph 25, do so with a view to being reasonably economic and acting as if Network Rail were itself to fund the relevant fee, charge, cost or expense.

26. 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 or 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.

27. 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.

28. 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 4

FOR THE PROTECTION OF CANAL & RIVER TRUST NETWORK

Interpretation

29.—(1) For the protection of CRT the following provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and CRT.

(2) In this Part of this Schedule—

“Code of Practice” means the Code of Practice for Works Affecting the Canal & River Trust (April 2018) or any updates or amendments thereto;

“construction”, in relation to any specified work or protective work, includes—

- (a) the execution and placing of that work; and
- (b) any relaying, renewal, or maintenance of that work as may be carried out during the period of 24 months from the completion of that work; and “construct” and “constructed” have corresponding meanings;

“CRT” means the Canal & River Trust a company limited by guarantee (company registration number 07807276) whose registered office is at First Floor, North Station House, 500 Elder Gate, Milton Keynes MK9 1BB and a registered charity registered with the charity commission number 1146792;

“CRT’s network” means CRT’s network of waterways;

“detriment” means any damage to the waterway or any other property of CRT caused by the presence of the authorised development and, without prejudice to the generality of that meaning, includes—

- (a) any obstruction of, or interference with, or hindrance or danger to, navigation or to any use of the waterway (including towing paths);
- (b) the erosion of the bed or banks of the waterway, or the impairment of the stability of any works, lands or premises forming part of the waterway;
- (c) the deposit of materials or the siltation of the waterway so as to damage the waterway;
- (d) the pollution of the waterway;
- (e) any significant alteration in the water level of the waterway, or significant interference with the supply of water thereto, or drainage of water therefrom;
- (f) any harm to the ecology of the waterway (including any adverse impact on any site of special scientific interest comprised in CRT’s network);
- (g) any interference with the exercise by any person of rights over CRT’s network;

“the engineer” means an engineer appointed by CRT for the purpose in question;

“plans” includes sections, designs, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction) and programmes;

“protective work” means a work constructed under paragraph 31(2)(a) and “protective works” is to be construed accordingly;

“specified work” means so much of Work No.3 as is situated upon, across, under, over or within 15 metres of, or may in any way affect the waterway and “specified works” is to be construed accordingly;

“the waterway” means the Montgomery Canal, and includes any works, lands or premises belonging to CRT, or under its management or control, and held or used by CRT in connection with that navigation.

(3) Where the Code of Practice applies to any works or matter that are part of the authorised development or that form part of the protective works and there is an inconsistency between these protective provisions and the Code of Practice, the part of the Code of Practice that is inconsistent with these protective provisions will not apply and these protective provisions will apply.

Powers requiring CRT's consent

30.—(1) The undertaker must not in the exercise of the powers conferred by this Order obstruct or interfere with pedestrian or vehicular access to the waterway unless such obstruction or interference with such access is with the consent of CRT.

(2) The undertaker must not exercise any power conferred by this Order to discharge water into the waterway under article 15 (discharge of water) or in any way interfere with the supply of water to or the drainage of water from the waterway unless such exercise is with the consent of CRT, save as to surface water discharge which will not require the consent of CRT.

(3) The undertaker must not exercise the powers conferred by article 16 (authority to survey and investigate the land) or section 11(3) of the 1965 Act (powers of entry), in relation to the waterway unless such exercise is with the consent of CRT.

(4) The undertaker must not exercise the powers conferred by this Order to temporarily stop up streets or public rights of way under article 11 (temporary prohibition or restriction of use of streets and public rights of way) so as to divert any right of access to or any right of navigation along the waterway but such right of access may be diverted with the consent of CRT.

(5) The consent of CRT pursuant to sub-paragraphs (1) to (4) must not be unreasonably withheld or delayed but may be given subject to reasonable terms and conditions which in the case of article 15 (discharge of water) may include conditions—

- (a) specifying the maximum volume water which may be discharged in any period; and
- (b) authorising CRT on giving reasonable notice (except in an emergency, when CRT may require immediate suspension) to the undertaker to require the undertaker to suspend the discharge of water or reduce the flow of water where this is necessary by reason of any operational or environmental requirement of CRT, to the extent that any discharge of water by the undertaker is into the waterway.

(6) The undertaker must not exercise the powers conferred by this Order to abstract water from the Montgomery Canal unless such abstraction is with the consent of CRT. Such consent may be given subject to reasonable terms and conditions including specifying the maximum velocity of the flow of water which may be abstracted at right angles to the waterway at any time.

Approval of plans, protective works etc.

31.—(1) The undertaker must before commencing construction of any specified work including any temporary works supply to CRT proper and sufficient plans of that work on CRT form(s) and such further particulars available to it as CRT may within 14 days of the submission of the plans reasonably require for the approval of the engineer and must not commence such construction of a specified work until plans of that work 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 or delayed, and if within 35 days after such plans (including any other particulars reasonably required under sub-paragraph (1)) have been received by CRT the engineer has not intimated his disapproval of those plans and the grounds of his disapproval he shall be deemed to have approved the plans as submitted. When signifying approval of the plans the engineer may specify on land held or controlled by CRT or the undertaker and subject to such works being authorised by the order or being development permitted by an Act of Parliament or general development order made under the 1990 Act—

- (a) any protective work (whether temporary or permanent) which in the reasonable opinion of the engineer should be carried out before the commencement of a specified work to prevent detriment; and
- (b) such other requirements as may be reasonably necessary to prevent detriment;

and such protective works must be constructed by the undertaker or by CRT at the undertaker's request with all reasonable dispatch and the undertaker must not commence the construction of a specified work until the engineer has notified the undertaker that the protective works have been

completed to the engineer's reasonable satisfaction such consent not to be unreasonably withheld or delayed.

(3) The undertaker must pay to CRT a capitalised sum representing the reasonably increased or additional cost of maintaining and, when necessary, renewing any works, including any permanent protective works provided under sub-paragraph (2) above, and of carrying out any additional dredging of the waterway reasonably necessitated by the exercise of any of the powers under this Order but if the cost of maintaining the waterway, or of works of renewal of the waterway, is reduced in consequence of any such works, a capitalised sum representing such reasonable saving is to be set off against any sum payable by the undertaker to CRT under this paragraph.

(4) In the event that the undertaker fails to complete the construction of, or part of, the specified works CRT may, if it is reasonably required in order to avoid detriment, serve on the undertaker a notice in writing requesting that construction be completed. Any notice served under this subparagraph shall state the works that are to be completed by the undertaker and lay out a reasonable timetable for the works' completion. If the undertaker fails to comply with this notice within 35 days, CRT may construct any of the specified works, or part of such works, (together with any adjoining works) in order to complete the construction of, or part of, the specified works or make such works.

Design of works

32.—(1) Without prejudice to its obligations under the foregoing provisions of this Part of this Schedule the undertaker must consult, collaborate and respond constructively to any reasonable approach, suggestion, proposal or initiative made by CRT on—

- (a) the design and appearance of the specified works, including the materials to be used for their construction; and
- (b) the environmental effects of those works; and must have regard to such views as may be expressed by CRT to the extent that these accord with the requirements of the local planning authority in response to such consultation pursuant in particular to the requirements imposed on CRT by section 22 (general environmental and recreational duties) of the British Waterways Act 1995(a) and to the interest of CRT in preserving and enhancing the environment of its waterways.

Notice of works

33. The undertaker must give to the engineer 28 days' notice of its intention to commence the construction of any of the specified or protective works, or, in the case of repair carried out in an emergency, such notice as may be reasonably practicable so that, in particular, CRT may where appropriate arrange for the publication of notices bringing those works to the attention of users of CRT's network.

Construction of specified works

34.—(1) Any specified or protective works must, when commenced, be constructed—

- (a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled as aforesaid and with any specifications made under paragraph 31 and paragraph 32 of this Part;
- (b) under the supervision (if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little detriment as is reasonably practicable;
- (d) in such manner as to cause as little inconvenience as is reasonably practicable to CRT, its officers and agents and all other persons lawfully using the waterways, except to the extent that temporary obstruction has otherwise been agreed by CRT; and

(a) 1995 c.i.

(e) in such a manner so as to ensure that no materials are discharged or deposited into the waterway otherwise than in accordance with article 15 (discharge of water).

(2) Nothing in this Order authorises the undertaker to make or maintain any permanent works in or over the waterway so as to impede or prevent (whether by reducing the width of the waterway or otherwise) the passage of any vessel which is of a kind (as to its dimensions) for which CRT is required by section 105(1)(b) and (2) of the Transport Act 1968(a) (maintenance of waterways) to maintain the waterway.

(3) Following the completion of the construction of the specified works the undertaker must restore the waterway to a condition no less satisfactory than its condition immediately prior to the commencement of those works unless otherwise agreed between the undertaker and CRT.

Prevention of pollution

35. The undertaker must not in the course of constructing a specified work or a protective work or otherwise in connection therewith do or permit anything which may result in the pollution of the waterway or the deposit of materials therein and must take such steps as the engineer may reasonably require to avoid or make good any breach of its obligations under this paragraph.

Access to work – provision of information

36.—(1) The undertaker on being given reasonable notice must—

- (a) at all reasonable times allow 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.

(2) CRT on being given reasonable notice must—

- (a) at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by CRT under this Part of this Schedule during their construction; and
- (b) supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them and the undertaker must reimburse CRT's reasonable costs in relation to the supply of such information.

Alterations to the waterway

37.—(1) If during the construction of a specified work or a protective work or during a period of 12 months after the completion of those works any alterations or additions, either permanent or temporary, to the waterway are reasonably necessary in consequence of the construction of the specified work or the protective work in order to avoid detriment, and provided that CRT gives to the undertaker 56 days' notice of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to CRT the reasonable costs of those alterations or additions including, in respect of any such alterations or additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by CRT in maintaining, working and, when necessary, renewing any such alterations or additions.

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

Maintenance of works

38. If at any time after the completion of a specified work or a protective work, not being a work vested in CRT, CRT gives notice to the undertaker informing it that it reasonably considers that the state of maintenance of the work appears to be such that the work is causing or likely to cause

(a) 1968 c.73

detriment, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put the work in such state of maintenance as not to cause such detriment.

Repayment of CRT's fees, etc.

39.—(1) The undertaker must repay to CRT in accordance with the Code of Practice all fees, costs, charges and expenses reasonably incurred by CRT—

- (a) in constructing any protective works under the provisions of paragraphs 31(2)(a) or 31(4);
- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction or repair of a specified work and any protective works;
- (c) in respect of the employment during the construction of the specified works or any protective works of any inspectors, watchmen and other persons whom it is reasonably necessary to appoint for inspecting, watching and lighting any waterway and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of the specified works or any protective works; and
- (d) in bringing the specified works or any protective works to the notice of users of CRT's network.
- (e) in constructing and/or carrying out any measures related to any specified works or protective works which are reasonably required by CRT to ensure the safe navigation of the waterway SAVE THAT nothing is to require CRT to construct and/or carry out any measures.

(2) If CRT considers that a fee, charge, cost or expense will be payable by the undertaker pursuant to sub-paragraph (1), CRT will first provide an estimate of that fee, charge, cost or expense and supporting information in relation to the estimate to the undertaker along with a proposed timescale for payment for consideration and the undertaker may, within a period of 21 days—

- (a) provide confirmation to CRT that the estimate is agreed and pay to CRT, by the date stipulated, that fee, charge, cost or expense; or
- (b) provide confirmation to CRT that the estimate is not accepted along with a revised estimate and a proposal as to how or why the undertaker considers that the estimate can be reduced and or paid at a later date.

(3) CRT must take in to account any representations made by the undertaker in accordance with this paragraph 39 and must, within 21 days of receipt of the information pursuant to sub-paragraph (1), confirm the amount of the fee, charge, cost or expense to be paid by the undertaker (if any) and the date by which this is to be paid.

(4) CRT must, when estimating and incurring any charge, cost or expense pursuant to this paragraph 39, do so with a view to being reasonably economic and acting as if CRT were itself to fund the relevant fee, charge, cost or expense.

Making good of detriment; compensation and indemnity, etc.

40.—(1) The undertaker must be responsible for and make good to CRT all costs, charges, damages, expenses and losses not otherwise provided for in this Part of this Schedule which may be occasioned to and reasonably incurred by CRT—

- (a) by reason of any detriment caused by the construction of a specified work or a protective work or the failure of such a work; or
- (b) by reason of any negligence of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon the construction of a specified work or protective work; and subject to sub-paragraph (2) the undertaker must effectively indemnify and hold harmless CRT from and against all claims and demands arising out of or in connection with any of the matters referred to in paragraphs (a) and (b);

provided that CRT is not entitled to recover any indirect or consequential losses from the undertaker.

(2) Nothing in this Part imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the neglect, act or default of CRT, its officers, servants, contractors or agents.

(3) CRT must give the undertaker reasonable notice of any such claim or demand as aforesaid and no settlement or compromise of such a claim or demand is to be made without the prior consent of the undertaker.

Arbitration

41. Any difference arising between the undertaker and CRT under this Part of this Schedule (other than a difference as to the meaning or construction of this Part of this Schedule) must be referred to and settled by arbitration in accordance with article 38 (arbitration) of this Order.

Capitalised sums

42. Any capitalised sum which is required to be paid under this Part of this Schedule must be calculated by multiplying the cost of the maintenance or renewal works to the waterway necessitated as a result of the operation of the authorised development by the number of times that the maintenance or renewal works will be required during the operation of the authorised development.

PART 5

FOR THE PROTECTION OF NATIONAL GRID AS ELECTRICITY UNDERTAKER

Application

43. The following provisions have effect for the protection of National Grid unless otherwise agreed in writing between the undertaker and National Grid.

Interpretation

44. In this Part of this Schedule—

“alternative apparatus” means appropriate alternative apparatus to enable National Grid to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by National Grid together with any replacement apparatus and such other apparatus constructed pursuant to this Order that becomes operational apparatus of National Grid for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised development” has the same meaning as is given to the term in article 2 of this Order and (unless otherwise specified) for the purposes of this Part of this Schedule includes the use and maintenance of the authorised development;

“commencement” has the same meaning as in paragraph 1 of Schedule 2 (requirements);

“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 upon such land;

“maintain” and “maintenance” includes the ability and right to do any of the following in relation to any apparatus or alternative apparatus of National Grid including construct, use, repair, alter, inspect, renew or remove the apparatus;

“National Grid” means National Grid Electricity Transmission PLC (Company No. 2366977) whose registered office is at 1-3 Strand, London, WC2N 5EH or any of its entities or successor entities;

“plan” or “plans” include all 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; and

“specified works” means so much of any of the authorised development or activities authorised by this Order and undertaken in association with the authorised development which:

- (a) will or may be situated over, or within 15 metres (measured in any direction) of any apparatus the removal of which has not been required by the undertaker under paragraph 4(2) or otherwise; and/or
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 46(2) or otherwise;

45. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and National Grid are regulated by the provisions of Part 3 of the 1991 Act.

Removal of apparatus

46.—(1) If the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of National Grid 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 National Grid.

(2) If, for the purpose of executing any works comprised in the authorised development 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 that land, it must give to National Grid 56 days’ advance written notice of that requirement, together with a plan of the work proposed.

(3) If alternative apparatus or any part of such apparatus is to be constructed as a consequence of the removal of apparatus placed on the land referred to in sub-paragraph (2), National Grid must on receipt of a written notice to that effect from the undertaker, use its best endeavours to obtain the necessary facilities and rights in other land in which the alternative apparatus is to be constructed.

(4) National Grid must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 38 (arbitration) and after the grant to National Grid of any such facilities and rights as are referred to in sub-paragraph 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 the provisions of this part of this Schedule.

(5) Regardless of anything in sub-paragraph (4), if the undertaker gives notice in writing National Grid that it desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus, that work, instead of being executed by National Grid, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of National Grid.

(6) Where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation or removal of apparatus and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Grid as of right or other use in relation to the apparatus then the provisions in this Part of this Schedule prevail.

Retained apparatus: Protection of National Grid as Electricity Undertaker

47.—(1) Not less than 28 days before the commencement of any specified work that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 46(2) (removal of apparatus) or otherwise, the undertaker must submit to National Grid a plan of the works to be executed and seek from National Grid details of the underground extent of their electricity tower foundations.

(2) The plan to be submitted under sub-paragraph (1) must show—

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

(3) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (1) must include a method statement which in addition to the matters set out in sub-paragraph (2) must—

- (a) describe details of any cable trench design including route, dimensions, clearance to pylon foundations;
- (b) demonstrate that pylon foundations will not be affected prior to, during and post construction;
- (c) describe details of load bearing capacities of trenches;
- (d) describe details of cable installation methodology including access arrangements, jointing bays and backfill methodology;
- (e) provide a written management plan for high voltage hazard during construction and ongoing maintenance of the cable route;
- (f) provide written details of the operations and maintenance regime for the cable, including frequency and method of access;
- (g) provide assessment of earth rise potential if reasonably required by National Grid'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 (1) applies until National Grid has given written approval of the plan so submitted, declaring that if within 35 days after the request for approval has been submitted to National Grid it has not notified the undertaker of its decision (and if it is a disapproval the grounds of disapproval) it is deemed to have approved the plan.

(5) Any approval of National Grid required in relation to a plan submitted under sub-paragraph (1)—

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

(6) In relation to a work requiring the submission of a plan under sub-paragraph (1), National Grid may require such modifications to be made to the plan as may be reasonably necessary for the purpose of securing its apparatus against risk of damage or for the purpose of providing or securing means of access to any apparatus, declaring that any such reasonable requirements must

be made within a period of 28 days beginning with the date on which the plan required under sub-paragraph (1) has been submitted to National Grid.

(7) Works requiring the submission of a plan under sub-paragraph (1) must only be executed in accordance with the plan, as approved or as amended from time to time by agreement between the undertaker and National Grid, and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (6) or (8) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid will be entitled to watch and inspect the execution of those works.

(8) Where National Grid reasonably require any protective works (whether of a temporary or permanent nature) to be carried out either by itself or by the undertaker (declaring that such protective works must be on land held or controlled by National Grid and subject to such works being authorised by the order or being development permitted by an Act of Parliament or general development order made under the 1990 Act) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to National Grid's satisfaction prior to the commencement of any authorised development (or any relevant part thereof) for which protective works are required and National Grid must give 28 days' notice of such works from the date of submission of a plan pursuant to this paragraph (except in an emergency).

(9) If National Grid in accordance with sub-paragraphs (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, paragraph 46 applies as if the removal of the apparatus had been required by the undertaker under paragraph 46(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 28 days before commencing the execution of the authorised works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.

(11) The undertaker will not be 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 it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and must—

- (a) comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances; and
- (b) comply with sub-paragraph (12) at all times.

(12) At all times when carrying out any works authorised under the Order, the undertaker must comply with National Grid's policies for development near overhead lines EN43-8 and the Health and Safety Executive's guidance note 6 "Avoidance of Danger from Overhead Lines".

Expenses

48.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to National Grid on reasonable demand all charges, costs and expenses reasonably anticipated or incurred by National Grid in respect of—

- (a) any costs reasonably incurred by or compensation properly paid by National Grid in connection with the acquisition of rights or the exercise of statutory powers for any alternative apparatus including without limitation all costs incurred by National Grid as a consequence of National Grid using its own compulsory purchase powers to acquire any necessary rights under paragraph 46(3);
- (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;

- (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 of this Schedule.

(2) If National Grid considers that a charge, cost or expense will be payable by the undertaker pursuant to sub-paragraph (1), National Grid will first provide an estimate of that charge, cost or expense and supporting information in relation to the estimate to the undertaker along with a proposed timescale for payment for consideration and the undertaker may, within a period of 21 days—

- (a) provide confirmation to National Grid that the estimate is agreed and pay to National Grid, by the date stipulated, that charge, cost or expense; or
- (b) provide confirmation to National Grid that the estimate is not accepted along with a revised estimate and a proposal as to how or why the undertaker considers that the estimate can be reduced or paid at a later date.

(3) National Grid must take into account any representations made by the undertaker in accordance with sub-paragraph (2) and must, within 21 days of receipt of the information pursuant to sub-paragraph (2) confirm the amount of the charge, cost or expense to be paid by the undertaker (if any) and the date when it is to be paid.

(4) National Grid must, when estimating and incurring any charge, cost or expense pursuant to this paragraph 48, do so with a view to being reasonably economic and acting as if National Grid were itself to fund the relevant fee, charge, cost or expense.

(5) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(6) If in accordance with the provisions of this Part of this Schedule—

- (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, is not determined by arbitration in accordance with article 38 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule 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 National Grid by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

(7) For the purposes of sub-paragraph (6)—

- (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.
- (c) An amount which apart from this sub-paragraph would be payable to National Grid 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 National Grid 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

49.—(1) Subject to sub-paragraphs (2), (3) and (4), if by reason of the construction of any such works authorised by this Part of this Schedule or of the construction, use, maintenance or failure of any of the authorised development by or on behalf of the undertaker or any negligence of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule, any material 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 these works) or property of National Grid, the undertaker is liable for the cost reasonably incurred by National Grid in making good such damage.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker in respect of any damage to the extent that it is attributable to the neglect, act or default of National Grid, its officers, servants, contractors or agents.

(3) National Grid must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without first consulting the undertaker and considering their representations.

(4) National Grid must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands and penalties to which the indemnity under this paragraph 49 applies. If requested to do so by the undertaker, National Grid must provide an explanation of how the claim has been minimised. The undertaker is only liable under this paragraph 49 for claims reasonably incurred by National Grid and National Grid is not entitled to recover any indirect or consequential losses or losses of profits from the undertaker.

Enactments and agreements

50. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between National Grid and the undertaker, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and National Grid 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

51. National Grid and the undertaker must use their reasonable endeavours to co-ordinate with each other on the timing and method of the execution of any works carried out under this Order or this part of this Schedule 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 other party's operations.

Access

52. If in consequence of the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

53. Any difference or dispute arising between the undertaker and National Grid under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Grid, be determined by arbitration in accordance with article 38 (arbitration).

Notices

54. The plans submitted to National Grid by the undertaker pursuant to paragraph 47(1) must be sent to National Grid Plant Protection at plantprotection@nationalgrid.com or such other address

as National Grid may from time to time appoint instead for that purpose and notify to the undertaker in writing.

PART 6 FOR THE PROTECTION OF HIGHWAYS ENGLAND

Application

55. The provisions of this Part of this Schedule apply to the HE works and have effect unless otherwise agreed in writing between the undertaker and Highways England.

Interpretation

56.—(1) Where terms defined in article 2 are inconsistent with the terms defined in subparagraph (2) below, the latter prevail.

(2) In this Part of this Schedule—

“the contractor” means any contractor or sub-contractor appointed by the undertaker to construct the HE works;

“the detailed design information” means details of the following where applicable to the HE works —

- (a) site clearance details;
- (b) boundary and mitigation fencing;
- (c) road restraints systems and supporting road restraint risk appraisal process assessment;
- (d) drainage and ducting and supporting drainage calculations;
- (e) earthworks including supporting geotechnical assessments and any required strengthened earthworks appraisal form certification;
- (f) kerbs, footways and paved areas;
- (g) traffic signs and road markings;
- (h) traffic signal equipment and associated signal phasing and timing detail;
- (i) road lighting (including columns and brackets) and supporting lighting calculations;
- (j) electrical work for road lighting, traffic signs and signals;
- (k) highway structures and any required structural approval in principle;
- (l) landscaping;
- (m) proposed departures from DMRB requirements;
- (n) utilities diversions;
- (o) topographical survey;
- (p) site waste management plan;
- (q) maintenance and repair strategy in accordance with Designing for Maintenance Interim Advice Note 69/15 or any replacement or modification of it;
- (r) asbestos survey;
- (s) regime of core testing and sampling of existing trunk road pavement construction;
- (t) site investigation survey;
- (u) health and safety information; and
- (v) other such information used to inform the detailed design of the HE works that may be required by Highways England;

“DMRB” means the Design Manual for Roads and Bridges or any replacement or modification of it;

“the estimated costs” means the estimated costs in respect of the HE works agreed pursuant to paragraph 60 of this Part of this Schedule;

“the HE works” means the part of Work No.2 of the authorised development which directly affects the A5(T) near Long Wood at Middleton being the directional drilling and installation of an underground cable conduit and 132kV cable under the A5(T);

“the nominated persons” means the undertaker’s representatives or the contractor’s representatives on site during construction of the HE works, as notified to Highways England from time to time;

“the programme of works” means a document setting out the sequence and timetabling of the HE works; and

“utilities” means any pipes, wires, cables or other equipment belonging to any person or body having power or consent to undertake street works under the 1991 Act.

Prior approvals

57.—(1) The HE works must not commence until—

- (a) the detailed design of the HE works comprising of the following details has been submitted to and approved by Highways England—
 - (i) the detailed design information;
 - (ii) the programme of works;
 - (iii) details of proposed road space bookings;
 - (iv) a scheme of traffic management; and
 - (v) the identity of the contractor and nominated persons
- (b) all necessary temporary traffic regulation measures have been made by the undertaker under article 11(1) or 12(3), or all necessary temporary traffic regulation orders have been made by Highways England;
- (c) at least 28 days’ notice of the commencement date of the HE works has been given to Highways England in writing, unless otherwise agreed by Highways England; and

(2) Highways England must notify the undertaker of its approval or, as the case may be, of its disapproval and the grounds of disapproval, within 28 days of the information required by sub-paragraphs (1)(a)(i)-(1)(a)(v) being received by Highways England. Any failure to notify the undertaker within 28 days shall constitute deemed approval by Highways England.

(3) In the event of any disapproval, the undertaker may re-submit the information required by sub-paragraphs (1)(a)(i)-(1)(a)(v) with modifications and Highways England must notify the undertaker of its approval or, as the case may be, of its disapproval and the grounds of disapproval, within 28 days of the revised detailed design information being received by Highways England. Any failure to notify the undertaker within 42 days shall constitute deemed approval by Highways England.

(4) The documents and programmes approved under sub-paragraphs (1) and (2) may be subsequently amended by agreement between the undertaker and Highways England from time to time, both parties acting reasonably.

(5) Within 28 days of receipt of a written request by the undertaker and in any event prior to the commencement of the HE works, Highways England must inform the undertaker of the identity of the person who will act as the point of contact on behalf of Highways England for consideration of the information required under sub-paragraph (1).

Construction of the HE works

58.—(1) The HE works must be constructed to the satisfaction of Highways England acting reasonably and in accordance (where relevant) with—

- (a) the information approved under paragraph 57(1) or as subsequently varied by agreement between the undertaker and Highways England;

- (b) the DMRB and the Specification for Highway Works (contained within the Manual of Contract Documents for Highways Works) together with all other relevant standards as required by Highways England (to include all relevant interim advice notes, the Traffic Signs Manual 2008 and any amendment to or replacement of such standards for the time being in force), save to the extent that exceptions to those standards apply which have been approved by Highways England under paragraph 57(1) in respect of the HE works;
- (c) the Traffic Signs Regulations and General Directions 2016 or any amendment to or replacement of them; and
- (d) all aspects of the Construction (Design and Management) Regulations 2015 or any amendment to or replacement of them.

(2) The undertaker must permit and must require the contractor to permit at all reasonable times persons authorised by Highways England (whose identity must have been previously notified to the undertaker and the contractor by Highways England) to gain access to the HE works for the purposes of inspection and supervision of the HE works.

(3) The undertaker must permit and must require the contractor to act upon any reasonable request made by Highways England in relation to the construction of the HE works as soon as reasonably practicable provided such a request is not inconsistent with and does not fall outside the contractor's obligations under its contract with the undertaker or the undertaker's obligations under this Order.

(4) If any part of the HE works is constructed otherwise than in accordance with the requirements of this Part of this Schedule, Highways England may by notice in writing require the undertaker, at the undertaker's own expense, to comply with the requirements of this Part of this Schedule.

(5) If within 28 days of the date on which a notice under sub-paragraph (4) is served on the undertaker, the undertaker has failed to take the steps required by that notice, Highways England may carry out works to reinstate the highway and other land and premises of Highways England, and Highways England may recover from the undertaker any expenditure reasonably incurred by it in so doing.

(6) If during construction of the HE works the undertaker causes any damage to the strategic road network then Highways England may by notice in writing require the undertaker, at the undertaker's own expense, to remedy the damage.

(7) If within 28 days of the date on which a notice under sub-paragraph (6) is served on the undertaker, the undertaker has failed to take steps to comply with the notice, Highways England may carry out the steps required of the undertaker and may recover from the undertaker any expenditure reasonably incurred by Highways England in so doing.

(8) Nothing in this Part of this Schedule prevents Highways England from carrying out any work or taking such action as it reasonably believes to be necessary as a result of the construction of the HE works without prior notice to the undertaker in the event of an emergency or to prevent the occurrence of danger to the public and Highways England may recover from the undertaker any reasonable expenditure incurred by Highways England in so doing.

(9) In constructing the HE works, the undertaker must at its own expense divert or protect all utilities and all agreed alterations and reinstatement of highway over existing utilities must be constructed to the reasonable satisfaction of Highways England.

Payments

59.—(1) The undertaker must fund the full cost of the HE works and any incidental and amended works approved under this Part of this Schedule and must also pay to Highways England in respect of the HE works a sum equal to the whole of any costs and expenses which Highways England reasonably incurs (including costs and expenses for using internal or external staff) in relation to—

- (a) the checking and approval of the information required by paragraph 57(1)(a);
- (b) the supervision of the HE works;

- (c) all legal and administrative costs in relation to paragraphs (a) and (b) above;
- (d) any costs incurred by Highways England in undertaking any necessary statutory procedure required as a result of construction of the HE works, and in preparing and bringing into force any traffic regulation order necessary to construct or implement the HE works, provided that this paragraph will not apply to the making of any orders which duplicate traffic regulation measures contained in, or which may be made by the undertaker under, this Order; and
- (e) any value added tax which is payable by Highways England in respect of the costs incurred pursuant to paragraphs (a) to (e) which Highways England cannot otherwise recover from HM Revenue and Customs,

paragraphs (a) to (e) together comprising “the estimated costs”.

(2) The undertaker and Highways England must, acting reasonably, agree a schedule of the estimated costs prior to the commencement of the HE works and once that schedule is agreed the undertaker must pay to Highways England the estimated costs in line with the agreed schedule.

(3) Highways England is not entitled to costs or expenses incurred under any limb of sub-paragraph (1) if those costs or expenses are included as part of the estimated costs under any other limb of that sub-paragraph.

Indemnity

60.—(1) The undertaker must in relation to the construction of the HE works indemnify Highways England from and against all costs, expenses, damages, losses and liabilities arising from any claim, demand, action or proceedings resulting from damage caused by the construction of the HE works provided that—

- (a) Highways England notifies the undertaker immediately upon receipt of any such claim, demand, action or proceedings;
- (b) unless Highways England is otherwise required to do so sooner as a requirement in law or to comply with any order of the court, Highways England must prior to the settlement or compromise of any such claim, demand, action or proceedings consult the undertaker and have regard to any representations made by the undertaker in respect of any such claim, demand, action or proceedings; and
- (c) following the acceptance of any such claim, demand, action or proceedings, Highways England notifies the undertaker of the quantum in writing.

(2) Sub-paragraph (1) does not apply if the costs, expenses, damages, losses and liabilities were caused by or arise out of the act, neglect or default of Highways England or its officers, servants, agents, contractors or any person or body for whom it is responsible.

(3) Highways England must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, damages, losses and liabilities to which the indemnity under this paragraph 60 applies. If requested to do so by the undertaker, Highways England must provide an explanation of how the claim has been minimised. The undertaker is only liable under this paragraph 6 for claims reasonably incurred by Highways England.

(4) In no circumstances is the undertaker liable to Highways England under this Part for any indirect or consequential loss or loss of profits.

Arbitration

61. Any difference or dispute arising between the undertaker and Highways England under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and Highways England, be determined by arbitration in accordance with article 38 (arbitration).

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

Applications made under requirements

1.—(1) Where an application has been made to the relevant planning authority for any consent, agreement or approval required by a requirement the relevant planning authority must give notice to the undertaker of its decision on the application before the end of the decision period.

(2) For the purposes of sub-paragraph (1), the decision period is—

- (a) where no further information is requested under paragraph 2, 42 days from the day immediately following that on which the application is received by the relevant planning authority;
- (b) where further information is requested under paragraph 2, 42 days from the day immediately following that on which the further information has been supplied by the undertaker under paragraph 2; or
- (c) such longer period as may be agreed by the undertaker and the relevant planning authority in writing before the end of the period in paragraph (a) or (b).

(3) Notice under sub-paragraph (1) above must be in writing and where the notice is a refusal the notice must provide the relevant planning authority's reasons for refusal.

Further information

2.—(1) In relation to any application to which this Schedule applies, the relevant planning authority has the right to request such further information from the undertaker as is necessary to enable it to consider the application.

(2) If the relevant planning authority considers such further information to be necessary it must, within 10 business days of receipt of the application, notify the undertaker in writing specifying the further information required.

(3) If the relevant planning authority does not give such notification as specified in sub-paragraph (2) it is to be deemed to have sufficient information to consider the application and is not subsequently entitled to request further information without the prior agreement of the undertaker.

Fees

3.—(1) Where an application is made to the relevant planning authority for consent, agreement or approval in respect of a requirement, a fee of £116 is to be paid to that authority.

(2) Any fee paid under this Schedule must be refunded to the undertaker within 42 days of—

- (a) the application being rejected as invalidly made; or
- (b) the relevant planning authority failing to determine the application within the decision period as determined under paragraph 1;

unless within that period the undertaker agrees, in writing, that the fee is to be retained by the relevant planning authority and credited in respect of a future application.

Appeals

4.—(1) The undertaker may appeal in the event that-

- (a) the relevant planning authority refuses an application for any consent, agreement or approval required by a requirement included in this Order or grants it subject to conditions;

- (b) the relevant planning authority does not give notice of its decision to the undertaker within the decision period specified in paragraph 1;
- (c) on receipt of a request for further information under paragraph 2 the undertaker considers that either the whole or part of the specified information requested by the relevant planning authority is not necessary for consideration of the application; or
- (d) on receipt of any further information requested, the relevant planning authority notifies the undertaker that the information provided is inadequate and requests additional information which the undertaker considers is not necessary for consideration of the application.

(2) The appeal process is as follows:

- (a) any appeal by the undertaker must be made within 42 days of the date of the notice of the decision or determination, or (where no determination has been made) expiry of the decision period as determined under paragraph 1;
- (b) the undertaker must submit the appeal documentation to the Secretary of State and must on the same day provide copies of the appeal documentation to the relevant planning authority and the requirement consultees;
- (c) as soon as is practicable after receiving the appeal documentation, the Secretary of State must appoint a person to determine the appeal (“the appointed person”) and must notify the appeal parties of the identity of the appointed person and the address to which all correspondence for that person’s attention should be sent;
- (d) the relevant planning authority and the requirement consultees must submit written representations to the appointed person in respect of the appeal within 20 business days of the date on which the appeal parties are notified of the appointment of a person under paragraph (c) and must 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;
- (e) the appeal parties must make any counter-submissions to the appointed person within 20 business days of receipt of written representations under paragraph (d).

(3) The appointed person must make a decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable.

(4) The appointment of the person pursuant to sub-paragraph (c) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(5) If the appointed person considers that further information is necessary to enable consideration of the appeal the appointed person must, as soon as practicable, notify the appeal parties in writing specifying the further information required, the appeal party from whom the information is sought, and the date by which the information is to be submitted.

(6) Any further information required under sub-paragraph (5) is to be provided by the party from whom the information is sought to the appointed person and to other appeal parties by the date specified by the appointed person. Any written representations concerning matters contained in the further information must be submitted to the appointed person, and made available to all appeal parties within 10 business days of that date.

(7) On an appeal under this paragraph, the appointed person 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),

and may deal with the application as if it had been made to the appointed person in the first instance.

(8) The appointed person may proceed to a decision on an appeal taking into account only such written representations as have been sent within the prescribed time limits, or set by the appointed person under this paragraph.

(9) The appointed person may proceed to a decision even though no written representations have been made within the prescribed time limits, if it appears to the appointed person 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 to be final and binding on the appeal 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 an approval is given by the appointed person under this Schedule, it is deemed to be an approval for the purpose of Schedule 2 (requirements) as if it had been given by the relevant planning authority. The relevant planning authority may confirm any determination given by the appointed person in identical form in writing but a failure to give such confirmation (or a failure to give it in identical form) is not to be taken to affect or invalidate the effect of the appointed person's determination.

(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 are to be met by the undertaker.

(13) On 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. In considering whether to make any such direction and the terms on which it is to be made, the appointed person must have regard to the Planning Practice Guidance published by the Department for Communities and Local Government on 6th March 2014 or any circular or guidance which may from time to time replace it.

Interpretation of Schedule 7

5. In this Schedule—

“the appeal parties” means the relevant planning authority, the undertaker and any requirement consultees.

“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;

“requirement consultee” means any body named in a requirement which is the subject of an appeal as a body to be consulted by the relevant planning authority in discharging that requirement.

SCHEDULE 8

Article 31

REMOVAL OF IMPORTANT HEDGEROWS

Table 4

<i>(1) Important hedgerow reference number</i>	<i>(2) Pole number</i>	<i>(3) Plan of important hedgerows affected, sheet number</i>
IH1	9	1
IH2	11	1
IH3	17	2
IH4	21	2
IH5	22	2
IH6	29	2
IH7	42	3
IH8	84	5
IH9	92	5
IH10	100	6
IH11	108	6
IH12	112	7
IH13	113	7
IH14	115	7
IH15	120	7
IH16	127	7
IH17	140	8
IH18	143	8
IH19	146	8
IH20	150	8
IH21	162	9
IH22	172	9
IH23	176	9

SCHEDULE 9

Article 36

DOCUMENTS TO BE CERTIFIED

The Book of Reference listed below—

Table 5

<i>(1) Application Document No.</i>	<i>(2) Document Description</i>
4.3	Book of Reference Parts 1-5

The Land Plans listed below—

Table 6

<i>(1) Application document no.</i>	<i>(2) Drawing number</i>	<i>(3) Document description</i>
2.2.0	Sheet 0 of 16	Overall Location Plan and Master Key Plan
2.2.1	Sheet 1 of 16	Sheet 1
2.2.2	Sheet 2 of 16	Sheet 2
2.2.3	Sheet 3 of 16	Sheet 3
2.2.4	Sheet 4 of 16	Sheet 4
2.2.5	Sheet 5 of 16	Sheet 5
2.2.6	Sheet 6 of 16	Sheet 6
2.2.7	Sheet 7 of 16	Sheet 7
2.2.8	Sheet 8 of 16	Sheet 8
2.2.9	Sheet 9 of 16	Sheet 9
2.2.10	Sheet 10 of 16	Sheet 10
2.2.11	Sheet 11 of 16	Sheet 11
2.2.12	Sheet 12 of 16	Sheet 12
2.2.13	Sheet 13 of 16	Sheet 13
2.2.14	Sheet 14 of 16	Sheet 14
2.2.15	Sheet 15 of 16	Sheet 15
2.2.16	Sheet 16 of 16	Sheet 16

The Works Plans listed below—

Table 7

<i>(1) Application documents no.</i>	<i>(2) Drawing number</i>	<i>(3) Document description</i>
2.3.0	Sheet 0 of 16	Overall Location Plan and Master Key Plan
2.3.1	Sheet 1 of 16	Sheet 1
2.3.2	Sheet 2 of 16	Sheet 2
2.3.3	Sheet 3 of 16	Sheet 3
2.3.4	Sheet 4 of 16	Sheet 4
2.3.5	Sheet 5 of 16	Sheet 5
2.3.6	Sheet 6 of 16	Sheet 6
2.3.7	Sheet 7 of 16	Sheet 7
2.3.8	Sheet 8 of 16	Sheet 8
2.3.9	Sheet 9 of 16	Sheet 9
2.3.10	Sheet 10 of 16	Sheet 10
2.3.11	Sheet 11 of 16	Sheet 11
2.3.12	Sheet 12 of 16	Sheet 12
2.3.13	Sheet 13 of 16	Sheet 13
2.3.14	Sheet 14 of 16	Sheet 14

2.3.15	Sheet 15 of 16	Sheet 15
2.3.16	Sheet 16 of 16	Sheet 16

The Access and Rights of Way Plans listed below—

Table 8

<i>(1) Application document no.</i>	<i>(2) Drawing number</i>	<i>(3) Document description</i>
2.4.0	Sheet 0 of 16	Overall Location Plan and Master Key Plan
2.4.1	Sheet 1 of 16	Sheet 1
2.4.2	Sheet 2 of 16	Sheet 2
2.4.3	Sheet 3 of 16	Sheet 3
2.4.4	Sheet 4 of 16	Sheet 4
2.4.5	Sheet 5 of 16	Sheet 5
2.4.6	Sheet 6 of 16	Sheet 6
2.4.7	Sheet 7 of 16	Sheet 7
2.4.8	Sheet 8 of 16	Sheet 8
2.4.9	Sheet 9 of 16	Sheet 9
2.4.10	Sheet 10 of 16	Sheet 10
2.4.11	Sheet 11 of 16	Sheet 11
2.4.12	Sheet 12 of 16	Sheet 12
2.4.13	Sheet 13 of 16	Sheet 13
2.4.14	Sheet 14 of 16	Sheet 14
2.4.15	Sheet 15 of 16	Sheet 15
2.4.16	Sheet 16 of 16	Sheet 16

The Plans of Important Hedgerows Affected

Table 9

<i>(1) Application document no.</i>	<i>(2) drawing number</i>	<i>(3) Document description</i>
2.5	Sheet 1 of 9	Sheet 1
2.5	Sheet 2 of 9	Sheet 2
2.5	Sheet 3 of 9	Sheet 3
2.5	Sheet 4 of 9	Sheet 4
2.5	Sheet 5 of 9	Sheet 5
2.5	Sheet 6 of 9	Sheet 6
2.5	Sheet 7 of 9	Sheet 7
2.5	Sheet 8 of 9	Sheet 8
2.5	Sheet 9 of 9	Sheet 9

The additional documents listed below—

Table 10

<i>(1) Application documents no.</i>	<i>(2) Document description</i>
6.3.2	Draft Construction Environmental Management Plan including— outline hedgerow management plan and outline construction traffic management plan
7.2	Construction Report
6.1 – 6.16	Environmental Statement

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises SP Manweb PLC (referred to in this Order as the undertaker) to install and keep installed, use and maintain, a 132 kV underground cable, 1.2 km in length and a 132kV electric line above ground, 21.3 km in length in Shropshire and to undertake lower voltage line diversions and works to the Oswestry and Wem substations. The Order permits the undertaker to acquire, compulsorily or by agreement, rights in land and to use land for this purpose.

A copy of the land plans and the works plans and the book of reference mentioned in this Order and certified in accordance with article 35 of this Order (certification of plans etc.) may be inspected free of charge during working hours at Wem Library, High Street, Wem SY4 5AA