



AQUIND Limited

AQUIND INTERCONNECTOR

Updated Draft DCO – Clean

The Planning Act 2008

Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009
Regulation 5(2)(h)

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INFRASTRUCTURE PLANNING

The AQUIND Interconnector Order 202[]

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An application has been made to the Secretary of State under section 37 of the Planning Act 2008 (the “2008 Act” (a)) and in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(b) for an Order under sections 114, 115 and 120 of the 2008 Act.

The application was examined by a panel of [] members (“the Panel”) in accordance with Chapter 4 of Part 6 of the 2008 Act and the Infrastructure Planning (Examination Procedure) Rules(c).

The Panel, having considered the application together with the documents that accompanied it and the representations made, in accordance with section 83 of the 2008 Act, has submitted a report to the Secretary of State setting out its findings, conclusions and recommendations in respect of the application.

The Secretary of State, having considered the report and recommendations of the Panel, has decided to make an Order granting development consent for the development described in the application [with modifications which in the opinion of the Secretary of State do not make any substantial change to the proposals comprised within the application].

The Secretary of State is also satisfied that the parcels of common, open space or fuel or field allotment land comprised within the Order limits (as identified in the Book of Reference), when burdened with rights and restrictive covenants imposed by this Order, will be no less advantageous than they were before to persons in whom they are 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 in exercise of the powers conferred by section 114, 115 and 120 of the 2008 Act, makes the following Order:

PART 1

General provisions

Preliminary

Citation and commencement

1. This Order may be cited as the AQUIND Interconnector Order 202[] and comes into force on [] 202[].

Interpretation

2.—(1) In this Order, unless the context requires otherwise—

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

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

(a) 2008 c.29. Parts 1 to 7 were amended by Chapter 6 of Part 6 of the Localism Act 2011 (c.20)

(b) S.I. 2009/2264, to which there are amendments not relevant to this Order.

(c) S.I. 2010/103, amended by S.I. 2012/635.

(d) 1961 c. 33. Section 2(2) was amended by section 193 of, and paragraph 5 of Schedule 33 to, the Local Government, Planning and Land Act 1980 (c. 65). There are other amendments to the 1961 Act which are not relevant to this Order.

(e) 1965 c. 56. Section 3 was amended by section 70 of, and paragraph 3 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34). Section 4 was amended by section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential

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

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

“the 1984 Act” means the Road Traffic Regulations Act 1984(c);

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

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

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

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

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

“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 43 (Certification of plans, etc.) for the purposes of this Order and identified in Schedule 6;

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

“apparatus” unless otherwise provided for, has the same meaning as in Part 3 of the 1991 Act;

“area of seaward construction activity” means the area of the sea within the Order limits seaward of MHWS shown on the work plans;

“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;

“book of reference” means the document certified by the Secretary of State as the book of reference under article 43 (Certification of plans, etc.) for the purposes of this Order;

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

Provisions) Act 1985 (c. 71). Section 5 was amended by sections 67 and 80 of, and Part 2 of Schedule 18 to, the Planning and Compensation Act 1991 (c. 34). Subsection (1) of section 11 and sections 3, 31 and 32 were amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67) and by section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). Section 12 was amended by section 56(2) of, and Part 1 to Schedule 9 to, the Courts Act 1971 (c. 23). Section 13 was amended by section 139 of the Tribunals, Courts and Enforcement Act 2007 (c. 15). Section 20 was amended by section 70 of, and paragraph 14 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34). Sections 9, 25 and 29 were amended by the Statute Law (Repeals) Act 1973 (c. 39). Section 31 was also amended by section 70 of, and paragraph 19 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34) and by section 14 of, and paragraph 12(2) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). There are other amendments to the 1965 Act which are not relevant to this Order.

- (a) 1980 c. 66. Section 1(1) was amended by section 21(2) of the New Roads and Street Works Act 1991 (c. 22); sections 1(2), 1(3) and 1(4) were amended by section 8 of, and paragraph (1) of Schedule 4 to, the Local Government Act 1985 (c. 51); section 1(2A) was inserted, and section 1(3) was amended, by section 259 (1), (2) and (3) of the Greater London Authority Act 1999 (c. 29); sections 1(3A) and 1(5) were inserted by section 22(1) of, and paragraph 1 of Schedule 7 to, the Local Government (Wales) Act 1994 (c. 19). Section 36(2) was amended by section 4(1) of, and paragraphs 47(a) and (b) of Schedule 2 to, the Housing (Consequential Provisions) Act 1985 (c. 71), by S.I. 2006/1177, by section 4 of, and paragraph 45(3) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11), by section 64(1), (2) and (3) of the Transport and Works Act (c. 42) and by section 57 of, and paragraph 5 of Part 1 of Schedule 6 to, the Countryside and Rights of Way Act 2000 (c. 37); section 36(3A) was inserted by section 64(4) of the Transport and Works Act 1992 and was amended by S.I. 2006/1177; section 36(6) was amended by section 8 of, and paragraph 7 of Schedule 4 to, the Local Government Act 1985 (c. 51); and section 36(7) was inserted by section 22(1) of, and paragraph 4 of Schedule 7 to, the Local Government (Wales) Act 1994 (c. 19). Section 329 was amended by section 112(4) of, and Schedule 18 to, the Electricity Act 1989 (c. 29) and by section 190(3) of, and Part 1 of Schedule 27 to, the Water Act 1989 (c. 15). There are other amendments to the 1980 Act which are not relevant to this Order.
- (b) 1981 c.66
- (c) 1984 c.27
- (d) 1989 c.29
- (e) 1990 c. 8. Section 56(4) was amended by section 32 of, and paragraph 10(2) of Schedule 7 to, the Planning and Compensation Act 1991 (c. 34). Section 106 was substituted, and section 106A inserted, by section 12(1) of the Planning and Compensation Act 1991. Section 206(1) was amended by section 192(8) of, and paragraphs 7 and 11 of Schedule 8 to, the 2008 Act. Sections 272 to 274 and section 279 were amended by section 406(1) of, and paragraph 103 of Schedule 17 to, the Communications Act (c. 21), and section 280 was amended by section 406(1) of, and paragraph 104 of Schedule 17 to, that Act. Sections 272 to 274 were also amended by S.I. 2011/741 and S.I. 2012/2590. Section 282 was amended by S.I. 2009/1307. There are other amendments to the 1990 Act which are not relevant to this Order.
- (f) 1991 c. 22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c. 26). Part 3 of the 1991 Act was amended by Part 4 of the Traffic Management Act 2004 (c. 18). Section 74 was amended, and sections 74A and 74B inserted, by sections 255 and 256 of the Transport Act 2000 (c. 38). There are other amendments to the 1991 Act but they are not relevant to this Order.
- (g) 2008 c.29
- (h) 2009 c.23

“cable circuit” means a number of electrical conductors necessary to transmit electricity between two points within the authorised development; this comprises in the case of a HVAC cable circuit, three conductors and in the case of a HVDC cable circuit, two conductors;

“cable protection” means physical measures for the protection of cables including grout bags, concrete or frond mattresses, and/or rock placement and any other physical measures for the protection of cables which are unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement;

“carriageway” has the meaning given in section 329 of the 1980 Act (interpretation);

“commence” means (a) in relation to any works seaward of MHWS, the first carrying out of any licensed marine activity authorised by the deemed marine licence save for pre-construction surveys approved by the deemed marine licence and (b) in respect of any other works comprised in the authorised development beginning to carry out any material operation, as defined in section 155 of the 2008 Act (when development begins), forming part, or carried out for the purposes, of the authorised development other than operations consisting of onshore site preparation works and the words “commencement” and “commenced” are to be construed accordingly;

“construction compound” means a site used temporarily in connection with construction of the authorised development which may include central offices, welfare facilities and storage;

“converter station” means the HVDC converter station containing apparatus and equipment required for the operation and maintenance of an electric power HVDC interconnector including (but not limited to) equipment required to transmit, switch, transform and convert electricity, including backups, spares and apparatus with external landscaping and means of access and more particularly described in Schedule 1;

“deemed marine licence” means the marine licence set out at Schedule 15;

“design and access statement” or “DAS” means the document certified as the design and access statement by the Secretary of State under article 43 (Certification of plans, etc.) for the purposes of this Order;

“discharging authority” means the body responsible for giving any agreement or approval required by a requirement;

“disposal” means the deposit of dredged material at disposal sites with reference WI048 and WI049 within the extent of the Order limits seaward of MHWS and “dispose” and cognate expressions are to be construed accordingly;

“electronic transmission” means a communication transmitted—

- (a) by means of an electronic communications network; or
- (b) by other means but while in electronic form;

“environmental statement” means the document submitted by the undertaker to support its application for development consent and certified as the environmental statement by the Secretary of State under article 43 (Certification of plans, etc.) for the purposes of this Order;

“framework traffic management strategy” means the document certified as the framework traffic management strategy by the Secretary of State under article 43 (Certification of plans, etc.) for the purposes of this Order;

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

“hedgerow and tree preservation order plans” means the plans certified as the hedgerow and tree preservation order plans by the Secretary of State under article 43 (Certification of plans, etc.) for the purposes of this Order

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

“horizontal directional drilling” and “HDD” means a trenchless technique for installing an underground duct between two points without the need to excavate vertical shafts;

“HVAC” means high voltage alternating current;

“HVDC” means high voltage direct current;

“intrusive activities” means activities including but not limited to anchoring of vessels, jacking up of vessels, seabed clearance and disposal;

“joint bay” means the underground transition location between sections of cable containing the cable joint and ancillary equipment and parts required to make the joint;

“land” includes land covered by water, any interest in land or right in, to or over land;

“land plans” means the plans certified as the land plans by the Secretary of State under article 43 (Certification of plans, etc.) for the purposes of this Order and identified in Schedule 4;

“link box” means an underground metal box placed within a plastic or concrete pit where cable sections are connected and earthed;

“link pillar” means an above ground building where cable sections are connected and earthed;

“local planning authority” has the same meaning as in the 1990 Act;

“maintain” includes inspect, upkeep, repair, adjust, alter, improve, preserve and further includes remove, reconstruct and replace any part of 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 “maintenance” must be construed accordingly;

“marine HVDC cables” means two 320 kilovolt HVDC cable circuits for the transmission of electricity which may be bundled as two pairs of cables or take the form of single cables, together with: (i) fibre optic data transmission cables accompanying each HVDC cable circuit, for the purpose of control, monitoring, and protection of the HVDC cable circuits and converter station, and for commercial telecommunications uses; and (ii) one or more cable crossing;

“marine works” means Works No’s 6 and 7 described in Schedule 1 and any other works seaward of MHWS in connection with those Works authorised by this Order or, as the case may require, any part of those works and “marine work” refers to any one of the marine works;

“Maritime and Coastguard Agency” means the executive agency of the Department for Transport;

“master” in relation to a vessel means any person for the time being having or taking the command, charge or management of the vessel;

“mean high water springs” or “MHWS” means the average throughout the year of two successive high waters during a 24-hour period in each month when the range of the tide is at its greatest;

“mean low water springs” or “MLWS” means the average throughout the year, of two successive low waters, during a 24-hour period in each month when the range of the tide is at its greatest;

“National Grid” means National Grid Electricity Transmission plc. (Company No. 02366977) and their successors in title, assigns and any other person exercising their powers or performing the same functions;

“onshore HVAC cables” means two 400 kilovolt HVAC cable circuits for the transmission of electricity, together with: (i) fibre optic data transmission cable for the purpose of control, monitoring and protection and an earth continuity conductor with each cable circuit; and (ii) one or more cable crossing;

“onshore HVDC cables” means two 320 kilovolt HVDC cable circuits for the transmission of electricity together with: (i) fibre optic data transmission cables accompanying each HVDC cable circuit for the purpose of control, monitoring and protection of the HVDC cable circuits and the converter station, and for commercial telecommunications; and (ii) one or more cable crossing;

“onshore site preparation works” means:

- (a) pre-construction archaeological investigations;
- (b) environmental surveys and monitoring;

- (c) site clearance;
- (d) removal of hedgerows, trees and shrubs;
- (e) investigations for the purpose of assessing ground conditions;
- (f) remedial work in respect of any contamination or adverse ground conditions;
- (g) receipt and erection of construction plant and equipment;
- (h) the temporary display of site notices and advertisements; and
- (i) erection of temporary buildings, structures or enclosures,

“onshore works” means Works No’s 1 to 5 (inclusive) described in Schedule 1 and any other works landwards of MLWS in connection with those Works authorised by this Order or, as the case may require, any part of those works and “onshore work” refers to any one of the onshore works;

“Order land” means the land which is within the limits of the land to be acquired shown on and identified by plot number on the land plans and described in the book of reference;

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

“operational period” means the period of time that the relevant part of the authorised development is in operation after construction and commissioning is complete pursuant to the relevant construction contract or contracts and “operation” and “operational” should be construed accordingly;

“optical regeneration station” means signal amplification and control equipment associated with fibre optic data transmission cables required to ensure an adequate signal strength housed within a building;

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

“parameter plans” means the plans certified as the parameter plans by the Secretary of State under article 43 (Certification of plans, etc.) for the purposes of this Order and identified in Schedule 7;

“permanent limits” means the limits of land for the purpose of article 20 (Compulsory acquisition of land) as shown shaded pink on the land plans;

“the permit schemes” means the following schemes made under part 3 of the Traffic Management Act 2004(a) as in force at the date on which this Order is made—

- (a) The Traffic Management (Hampshire County Council) Permit Scheme Order; and
- (b) The Portsmouth City Council Permit Scheme Order 2020.

“plot 10-14” means plot 10-14 as shown on the land plans and described in the book of reference;

“provisional advance authorisation” has the same given in regulation 2 of the Traffic Management Permit Scheme Regulations 2007(b);

“relevant highway authority” means, in any given provision of this Order, the highway authority for the highway that the provision relates to i.e. Hampshire County Council or Portsmouth City Council, as the case may be;

“relevant street authority” means, in any given provision of this Order, the street authority for the street that the provision relates to i.e. Hampshire County Council or Portsmouth City Council, as the case may be;

“relevant planning authority” means, in any given provision of this Order, the local planning authority for any area of land that the provision relates to, i.e. Winchester City Council,

(a) 2004 c.18
(b) S.I. 2007/3372

Havant Borough Council, Portsmouth City Council or East Hampshire District Council, as the case may be, or in respect of the marine works the Marine Management Organisation;

“requirement” means a requirement set out in Schedule 2, and a reference to a numbered requirement is a reference to the requirement set out in the paragraph of the same number in that Schedule;

“SSE” means SSE Electricity Limited (Company No. 04094263) and their successors in title, assigns and any other person exercising their powers or performing the same functions;

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

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

“street authority”, in relation to a street, has the meaning given in Part 3 of the 1991 Act (the street authority and other relevant authorities);

“subsoil” means any part of the substrata which is below the surface of the ground;

“telecommunications building” means telecommunications apparatus and ancillary equipment related to the termination of and for the commercial use of the fibre optic data transmission cables housed within a building;

“traffic authority” has the same meaning as in the 1984 Act;

“traffic management strategy” means a strategy containing details of the traffic management measures to be implemented in connection with the carrying out of works on any street to be approved pursuant to requirement 25;

“traffic signs” has the meaning given in section 64(1) of the 1984 Act (General provisions as to traffic signs);

“transitional joint bay” means the underground concrete bays forming part of Work No. 5, where the marine HVDC cable in Works No. 6 and 7 is jointed to the onshore HVDC cable in Works No. 4

“tree preservation order” has the meaning given in section 198 of the 1990 Act (power to make tree preservation orders);

“trenchless installation techniques” means techniques for installing an underground duct between two point, without excavating and back-filling a trench;

“tribunal” means the Upper Tribunal (Lands Chamber);

“undertaker” means AQUIND Limited (company number 06681477) or the person who has the benefit of this Order in accordance with article 6 (Benefit of Order) and 7 (Consent to transfer benefit of Order);

“undertaking” mean the transmission of electricity and provision of telecommunications services by the undertaker as authorised from time to time;

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

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

“Work” means a work identified as part of the authorised development in Schedule 1 (Authorised Development);

“work plans” means the plans certified by the Secretary of State as Works Plans under article 43 (Certification of plans, etc.) for the purposes of this Order and identified in Schedule 5; and

(a) 2003 c.21

“working day” means Monday to Friday excluding bank holidays and other public holidays.

(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 restrictive covenants over land which interfere with the interests or rights of another and are for the benefit of land which is acquired, or rights over which are acquired, under this Order.

(3) All distances, directions and lengths referred to in this Order are approximate and distances between points on a Work comprised in the authorised and shown on the works plans or access and rights of way plans are to be taken to be measured along that Work.

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

(5) References to any statutory body includes that body’s successor bodies from time to time that have jurisdiction over the authorised development.

(6) References in the Schedules to points identified by letters or numbers are to be constructed as references to points so lettered or numbered on the access and rights of way plans or land plans.

(7) Grid references in the Schedules are references to points on the Ordnance Survey National Grid.

(8) In this Order, the expression “includes” or “include” is to be construed without limitation.

PART 2

Principal powers

Development consent etc. granted by Order

3.—(1) Subject to the provisions of this Order and Schedule 2, the undertaker is granted development consent for the authorised development to be carried out within the Order limits.

(2) Subject to the requirements Works Nos. 1 to 5 must be constructed within the Order limits landward of MHWS and Work Nos. 6 to 7 must be constructed within the Order limits seaward of MHWS.

Authorisation of use

4.—(1) The undertaker is authorised to operate and use the authorised development for which development consent is granted by this Order.

(2) Paragraph (1) does not relieve the undertaker of any requirement to obtain any permit, licence or other obligation under any other legislation that may be required from time to time to authorise the operation of any part of the authorised development.

Power to construct and maintain authorised development

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

(2) The power to maintain conferred under paragraph (1) does not relieve the undertaker of any requirement to obtain any further licence under Part 4 of the 2009 Act (marine licensing) for marine works not covered by the deemed marine licence.

Benefit of the Order

6.—(1) Subject to article 7 (Consent to transfer benefit of Order), the provisions of this Order have effect solely for the benefit of the undertaker.

Consent to transfer the benefit of Order

7.—(1) Subject to paragraph (3) the undertaker may with the written consent of the Secretary of State –

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

except where paragraph (6) applies in which case no consent of the Secretary of State is required.

(2) Where a transfer or grant has been made in accordance with paragraphs (1) and (6) references in this Order to the undertaker, except in paragraphs (4), (5) and (7) include references to the transferee or the lessee.

(3) The Secretary of State must consult the MMO before giving consent to transfer or grant to another person the whole or part of the benefit of the provisions of the deemed marine licence.

(4) The Secretary of State must determine an application made under this article within a period of no more than 8 weeks commencing on the date the application is received by the Secretary of State, unless otherwise agreed in writing with the undertaker.

(5) Where the undertaker has transferred any benefit, or for the duration of any period during which the undertaker has granted any benefit, under paragraph (1) –

- (a) the benefit transferred or granted (“the transferred benefit”) must include any rights that are conferred and any obligations that are imposed, by virtue of the provisions to which the benefit relates; and
- (b) 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.

(6) This paragraph applies to any provisions of this Order and its related statutory rights where –

- (a) the transferee or lessee is the holder of a licence under section 6(1)(e) of the 1989 Act;
- (b) in respect of the benefit of the Order in so far as it relates to Work No. 1 the transferee is National Grid;
- (c) in respect of the benefit of the Order in so far as it relates to the commercial telecommunications use of the fibre optic data transmission cables any person who Ofcom have directed the electronic communications code is to have effect in relation to pursuant to section 106 of the Telecommunications Act 2003;
- (d) in respect of the benefit of the Order in so far as it relates to Work No. 2 (w) the transferee is SSE; or
- (e) the time limits for 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 claim has been made and has been compromised or withdrawn;
 - (iii) compensation has been paid in final settlement of any such claim;
 - (iv) payment of compensation into court has taken place in lieu of settlement of any such claim; or
 - (v) it has been determined by a tribunal or court of competent jurisdiction in respect of any such claim that no compensation is repayable.

(7) Prior to any transfer or grant under this article taking effect the undertaker must give notice in writing to the Secretary of State and if such transfer or grant relates to the exercise of powers in their area to the MMO and the relevant planning authority.

(8) The notices required under paragraph (7) must –

(a) state –

- (i) the name and contact details of the person to whom the benefit of the provisions will be transferred or granted;
- (ii) subject to paragraph (9) the date on which the transfer will take effect;
- (iii) the provisions to be transferred or granted; and
- (iv) the restrictions, liabilities and obligations that in accordance with paragraphs (5)(c) will apply to the person exercising the powers transferred or granted; and
- (v) where paragraph (6) does not apply confirmation of the availability and adequacy of funds for compensation associated with the compulsory acquisition of the Order Land.

(b) be accompanied by –

- (i) where relevant a plan showing the works or areas to which the transfer or grant relates; and
- (ii) a copy of the document effecting the transfer or grant signed by the undertaker and the person to whom the benefit of the powers will be transferred or granted.

(9) The date specified under paragraph (8)(a)(ii) must not be earlier than the expiry of five working days from the date of receipt of the notice.

(10) The notice given under paragraph (7) must be signed by the undertaker and the person to whom the benefit of the powers will be transferred or granted as specified in that notice.

(11) Section 72(7) and (8) of the 2009 Act do not apply to a transfer or grant of the whole or part of the benefit of the provisions of the deemed marine licence to another person by the undertaker pursuant to an agreement under paragraph (1).

Application, exclusion and modification of legislative provisions

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

(a) “or (k) for the carrying out of development which has been authorised by an order granting development consent pursuant to the Planning Act 2008.”.

(2) The provisions of the Neighbourhood Planning Act 2017 insofar as they relate to temporary possession of land under articles 29 (temporary use of land for carrying out the authorised development) and 31 (temporary use of land for maintaining the authorised development) of this Order do not apply in relation to of the works carried out for the purpose of, or in connection with, the construction or maintenance of the authorised development.

(3) The Town and Country Planning (Border Facilities and Infrastructure) (EU Exit) (England) Special Development Order 2020 does not apply in relation to any land that is within the Order limits.

Defence to proceedings in respect of statutory nuisance

9.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(a) (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) (noise emitted from premises so as to be prejudicial to health or a nuisance) and (ga) (noise that is prejudicial to health or a nuisance and is emitted or caused by a vehicle, machinery or equipment on a street) of section 79(1) of that Act no order may be made and no fine may be imposed under section 82(2) of that Act if –

(a) the defendant shows that the nuisance –

(a) 1990 c. 43. There are amendments to this Act which are not relevant to this Order.

- (i) relates to premises, vehicles, machinery or equipment used by the undertaker for the purposes of or in connection with the construction, maintenance or operation of the authorised development and that the nuisance is attributable to the carrying out or use of the authorised development in accordance with a notice served under section 60 (control of noise on construction site) or a consent given under section 61 (prior consent for work on construction site) of the Control of Pollution Act 1974(a); or
 - (ii) 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 the controls and measures relating to noise as described in a construction environmental management plan approved pursuant to requirement 15 or in accordance with the noise levels set out in a noise management plan approved pursuant to requirement 20; or
 - (iii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided.
- (b) the defendant shows that the nuisance is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) For the purpose of paragraph (1) above, compliance with the controls and measures relating to noise described in an approved construction environmental management plan or noise management plan will be sufficient, but not necessary, to show that an alleged nuisance could not be reasonably avoided.

(3) Where a relevant planning authority is acting in accordance with section 60(4) and section 61(4) of the Control of Pollution Act 1974 in relation to the construction of the authorised development then the local authority must also have regard to the controls and measures relating to noise referred to in a relevant construction environment management plan approved pursuant to requirement 15.

(4) Section 61(9) (consent for work on construction sites) of the Control of Pollution Act 1974 as it relates to proceedings under Section 82 of the Environmental Protection Act 1990 and section 65(8) of that Act (corresponding provision in relation to consent for registered noise level to be exceeded), will not apply where the consent relates to the use of the premises by the undertaker for purposes of or in connection with the construction, maintenance or operation of the authorised development.

(5) In this article “premises” has the same meaning as in section 79 of the Environmental Protection Act 1990(b).

PART 3

STREETS

Application of the permit scheme

9A –

(1) The permit schemes apply to the construction and maintenance of the authorised development and will be used by the undertaker in connection with the exercise of any powers conferred by this Part.

(2) For the purposes of this Order–

- (a) a permit may not be granted subject to conditions which conflict with the framework traffic management strategy or require the authorised development to be carried out in a manner which conflicts with any approvals granted pursuant to this Order (including any

(a) 1974 c.40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990, c.25. There are other amendments to the 1974 Act which are not relevant to the Order.

(b) 1990 c. 43.

relevant approved traffic management strategy) or where the undertaker would be unable to comply with those conditions through the exercise of the powers conferred by this Order;

- (b) a permit may not be refused where the proposed reason for refusal is the inability to impose a condition which will not comply with paragraph 2(a);
- (c) a permit may not be refused or granted subject to conditions which relate to the imposition of a moratoria; and
- (d) where a provisional advance authorisation has been granted to the undertaker in advance of the grant of a permit the relevant street authority may not grant a permit for any other works in the location during the time period to which that provisional advance authorisation relates save that nothing will restrict the ability of the local highway authority to grant a permit for emergency works.

(3) Irrespective of anything which is stated to the contrary within the permit schemes, where the undertaker submits an application for a permit subject to proposed conditions and the relevant highway authority wishes for different conditions to be imposed on the permit the relevant highway authority must seek to reach agreement with the undertaker on the conditions subject to which the permit is to be granted and provide alternative permit conditions to the undertaker within 10 working days following the date on which the application for the permit is made by the undertaker and must not refuse an application for a permit before the end of the period which is 5 working days following the date on which the alternative permit conditions are provided to the undertaker.

(4) Where the undertaker confirms its agreement to the alternative permit conditions provided by the relevant highway authority pursuant to paragraph (3) before the expiry of 5 working days following the date on which any such alternative permit conditions are provided to the undertaker, the relevant highway authority must grant the permit subject to those conditions.

(5) Any alternative permit conditions provided by a relevant highway authority in accordance with paragraph (3) must comply with paragraph 2(a).

(6) References to moratoria in paragraph (2)(c) mean restrictions imposed under section 58 (restrictions on works following substantial road works) or section 58A (restrictions on works following substantial street works) of the 1991 Act.

(7) Reference to emergency works in paragraph 2(d) means works whose execution at the time when they are executed is required in order to put an end to, or to prevent the occurrence of, circumstances then existing or imminent (or which the person responsible for the works believes on reasonable grounds to be existing or imminent) which are likely to cause danger to persons or property.

(8) Without restricting the undertaker's recourse to any alternative appeal mechanism which may be available under the permit schemes or otherwise, the undertaker may appeal any decision to refuse to grant a permit, or to grant a permit subject to conditions, in accordance with the mechanism set out in Schedule 3 of this Order.

Power to alter layout etc. of streets

10.—(1) Subject to paragraph (3), the undertaker may for the purpose of constructing and maintaining the authorised development, permanently or temporarily alter the layout of any street (and carry out works ancillary to such alterations) whether or not within the Order limits and the layout of any street having a junction with such a street and, without limiting the scope of this paragraph, the undertaker may—

- (a) increase the width of the carriageway of the street by reducing the width of any kerb, footpath, footway, cycle track, central reservation or verge within a street;
- (b) alter the level or increase the width of any such street, kerb, footpath, footway, cycle track, central reservation or verge;
- (c) reduce the width of the carriageway of the street;
- (d) execute any works to widen or alter the alignment of pavements;

- (e) make and maintain crossovers and passing places;
- (f) execute any works of surfacing or resurfacing of the street;
- (g) carry out works for the provision or alteration of parking places, loading bays and cycle tracks;
- (h) carry out works necessary to alter or provide facilities for the management and protection of pedestrians; and
- (i) execute any works to provide or improve sight lines required by the relevant street authority.

(2) The undertaker must restore to the reasonable satisfaction of the street authority any street that has been temporarily altered pursuant to this article.

(3) The powers conferred by paragraph (1) must not be exercised without the approval of the relevant street authority and such approval is not to be unreasonably withheld or delayed.

(4) If a street authority which receives an application for approval under paragraph (3) fails to notify the undertaker of its decision before the end of the period of twenty working days beginning with the date on which the application was made, it is deemed to have granted consent.

Street works

11.—(1) The undertaker may, for the purpose of constructing and maintaining the authorised development, enter on so much of any of the streets as is within the Order limits without the consent of the relevant street authority and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) tunnel or bore under the street or carry out works to strengthen or repair the carriageway;
- (c) place or keep apparatus in, on or under the street;
- (d) maintain, renew or alter apparatus in, on or under the street or change its position;
- (e) execute and maintain any works to provide hard and soft landscaping;
- (f) carry out re-lining and placement of road markings;
- (g) removal and installation of temporary and permanent signage;
- (h) remove, replace and relocate any street furniture; and
- (i) execute any works required for or incidental to any works referred to in sub-paragraphs (a) to (h).

(2) Without limiting the scope of the powers conferred by paragraph (1) but subject to the consent of the relevant street authority, which consent must not be unreasonably withheld or delayed, the undertaker may, for the purposes of the authorised development, enter on so much of any other street whether or not within the Order limits, for the purposes of carrying out the works set out at paragraph (1) above.

(3) If a relevant street authority that receives an application for consent under paragraph (2) fails to notify the undertaker of its decision within 20 working days beginning with the date on which the application was made, that authority will be deemed to have granted consent.

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

(5) In this article “apparatus” has the same meaning as in Part 3 of the 1991 Act and also expressly includes Work No. 4 and Work No. 5.

Application of the 1991 Act

12.—(1) The provisions of the 1991 Act mentioned in paragraph (2) that apply in relation to the carrying out of street works under that Act and any regulations made or code of practice issued or approved under those provisions apply (with all necessary modifications) in relation to—

(a) carrying out of works under article 11 (Street works);
(b) the temporary stopping up, temporary alteration or temporary diversion of a street by the undertaker under article 13 (Temporary stopping up of streets and public rights of way),
whether or not the carrying out of the works or the stopping up, alteration or diversion constitutes street works within the meaning of that Act.

(2) The provisions of the 1991 Act are –

- (a) subject to paragraph (3), section 55 (notice of starting date of works);
- (b) section 57 (notice of emergency works);
- (c) section 59 (general duty of street authority to co-ordinate works);
- (d) section 60 (general duty of undertakers to co-operate);
- (e) section 65 (safety measures);
- (f) section 67 (qualifications of supervisors and operatives);
- (g) section 68 (facilities to be afforded to street authority);
- (h) section 69 (works likely to affect other apparatus in the street);
- (i) section 70 (duty of undertaker to reinstate);
- (j) section 71 (materials, workmanship and standard of reinstatement);
- (k) section 72 (powers of streets authority in relation to reinstatement);
- (l) section 73 (reinstatement affected by subsequent works);
- (m) section 76 (liability for cost of temporary traffic regulation);
- (n) section 77 (liability for cost of use of alternative route);
- (o) section 79 (records of location of apparatus);
- (p) section 80 (duty to inform undertakers of location of apparatus);
- (q) section 81 (duty to maintain apparatus);
- (r) section 82 (liability for damage or loss caused);
- (s) all provisions of that Act that apply for the purposes of the provisions referred to in subparagraphs (a) to (q)

(3) Section 55 of the 1991 Act has effect as if references in section 57 of that Act to emergency works included a reference to a stopping up, alteration or diversion (as the case may be) required in a case of emergency.

Temporary stopping up of streets and public rights of way

13.—(1) The undertaker, during and for the purpose of constructing and maintaining the authorised development, may temporarily stop up, alter or divert any street, public right of way or permissive path within the Order limits and may for any reasonable time—

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

(2) Without limitation on the scope of paragraph (1), the undertaker may use as a temporary working site any street or public right of way which has been temporarily stopped up, altered or diverted under the powers conferred by this article.

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

(4) Without prejudice to the generality of paragraph (1), the undertaker may temporarily stop up, alter or divert the streets or public rights of way specified in column (1) of Schedule 8 (Streets and public rights of way to be temporarily stopped up) to the extent specified, by reference to the letters and numbers shown on the access and rights of way plans and stated in column (2) of Schedule 8.

- (5) The undertaker must not temporarily stop up, alter, divert or restrict;
- (a) any street, public right of way or permissive path as mentioned in paragraph (4) without first consulting the relevant street authority; and
 - (b) any other street, public right of way or permissive path without the consent of the street authority which may attach reasonable conditions to any consent, but such consent may not be unreasonably withheld or delayed.

(6) Where the undertaker provides a temporary diversion under paragraph (3), the temporary alternative route is not required to be of a higher standard than the temporarily stopped up street or public right of way.

(7) 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 the case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(8) If a relevant street authority that receives an application for consent under paragraph (5)(b) fails to notify the undertaker of its decision within 20 working days of receiving the application, that relevant street authority will be deemed to have granted consent.

Access to works

14.—(1) The undertaker may, for the purposes of the authorised development and with the approval of the relevant highway authority following consultation with the relevant planning authority in accordance with requirement 10 (highway accesses), form and lay out such means of access (permanent or temporary) or improve any existing means of access at such locations shown within the Order limits (including in the locations identified on the access and rights of way plans) as the undertaker reasonably requires for the purposes of the authorised development.

(2) An application for approval under paragraph (1) is to be determined in accordance with the mechanism set out in Schedule 3 of this Order

Agreements with street authorities

15.—(1) A street authority and the undertaker may enter into agreements with respect to—

- (a) any stopping up, alteration or diversion of a street authorised by this Order; or
- (b) the carrying out in the street of any of the works referred to in article 10 (power to alter layout etc. of streets) and article 11 (street works); and
- (c) such other works as the parties may agree.

(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) specify a reasonable time for the completion of the works; and
- (c) contain such terms as to payment and other matters as the parties consider appropriate.

Traffic regulation measures

16.—(1) Subject to the provisions of this article and the consent of the relevant traffic authority in whose area the street is situated, which consent may not to be unreasonably withheld or delayed, the undertaker may, for the purposes of or in connection with the authorised development—

- (a) revoke, amend or suspend in whole or in part any order made, or having effect as if made, under the 1984 Act in so far as it is inconsistent with any prohibition, restriction or other provision made by the undertaker under this article;
- (b) permit, prohibit or restrict the stopping, parking, waiting, loading or unloading of vehicles on any road;
- (c) authorise the use as a parking place of any road;

- (d) make provision as to the direction or priority of vehicular traffic on any road; and
- (e) permit or prohibit vehicular access to any road;
- (f) place traffic signs on or near a street, subject to and in conformity with the directions issued by the Secretary of State pursuant to powers conferred by section 64, 65 and 85 of the 1984 Act.

either at all times or at times, on days or during such periods as may be specified by the undertaker.

(2) Before complying with the provisions of paragraph (3) the undertaker must consult the chief officer of police and the relevant highway authority in whose area the street is situated.

(3) The undertaker must not exercise the powers in paragraphs (1) unless it has—

- (a) given not less than 20 working days' notice in writing of its intention so to do to the chief officer of police and to the relevant traffic authority in whose area the street is situated; and
- (b) advertised its intention in such manner as the relevant traffic authority may specify in writing within 5 working days of its receipt of notice of the undertaker's intention as provided for in sub-paragraph (a).

(4) Any prohibition, restriction or other provision made by the undertaker under paragraph (1)

— (a) has effect as if duly made by—

- (i) the relevant traffic authority in whose area the street is situated as a traffic regulation order under the 1984 Act; or
- (ii) the local authority in whose area the street is situated as an order under section 32 (Power of local authorities to provide parking spaces) of the 1984 Act(a), and the instrument by which it is effected may specify savings and exemptions to which the prohibition, restriction or other provision is subject; and

(b) is deemed to be a traffic order for the purposes of Schedule 7 (road traffic contraventions subject to civil enforcement) to the Traffic Management Act 2004(b)

(5) Any prohibition, restriction or other provision made under this article may be suspended, varied or revoked by the undertaker from time to time by subsequent exercise of the powers of paragraph (1) at any time.

(6) Expressions used in this article and in the 1984 Act have the same meaning in this article as in that Act.

(7) If the relevant traffic authority fails to notify the undertaker of its decision within 20 working days of receiving an application for consent under paragraph (1) the relevant traffic authority is deemed to have granted consent.

PART 4

Supplemental powers

Discharge of water

17.—(1) Subject to paragraphs (3) and (4), the undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out, operation or maintenance of the authorised development and for that purpose may inspect, 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.

(a) As amended by section 102 of, and Schedule 7 to, the Local Government Act 1985 (c. 51) and section 168(1) of, and paragraph 39 of Schedule 8 to, the 1991 Act.

(b) 2004 c.18.

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

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

(4) The undertaker must not make any opening into any public sewer or drain pursuant to paragraph (1) except—

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

(5) Where the person receives an application for consent under paragraphs (3) or approval under paragraph (4)(a) and fails to notify the undertaker of its decision within 20 working days of receiving an application, that person will be deemed to have granted consent or given approval, as the case may be.

(6) The undertaker must not, in carrying out or maintaining the authorised development pursuant to this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.

(7) 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.

(8) This article does not authorise entry into controlled waters of any matter whose entry or discharge into controlled waters is prohibited by regulations 12 of the Environmental Permitting (England and Wales) Regulations 2016(b)

(9) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to a sewerage undertaker, the Environment Agency, an internal drainage board or a local authority; and
- (b) except as provided in article 2 (Interpretation), other expressions used both in this article and in the Environmental Permitting (England and Wales) Regulations 2016 have the same meaning as in those Regulations.

Protective work to buildings

18.—(1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any building lying within the Order limits as the undertaker considers necessary or expedient.

(2) Protective works may be carried out—

- (a) at any time before or during the carrying out in the vicinity of the building of any part of the authorised development; or
- (b) after the completion of that part of the authorised development in the vicinity of the building at any time up to the end of the period of five years beginning with the day on which that part of the authorised development is first brought into operational use.

(3) For the purpose of determining how the functions under this article are to be exercised the undertaker may enter and survey any building falling within paragraph (1) and any land within its curtilage.

(a) 1991 c.56. Section 106 was amended by section 35(8)(a) of the Compensation and Service (Utilities) Act 1992 (c.43) and sections 36(2) and 99 of the water Act 2003 (c.37). There are other amendments to this section which are not relevant to this Order.

(b) S.I. 2016/1154

(4) For the purpose of carrying out protective works under this article to a building the undertaker may (subject to paragraphs (5) and (6))—

- (a) enter the building and any land within its curtilage; and
- (b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building but outside its curtilage, enter the adjacent land (but not any building erected on it) within the Order limits.

(5) Before exercising—

- (a) a right under paragraph (1) to carry out protective works to a building;
- (b) a right under paragraph (3) to enter a building and land within its curtilage;
- (c) a right under paragraph (4)(a) to enter a building and land within its curtilage; or
- (d) a right under paragraph (4)(b) to enter land,

the undertaker must, except in the case of emergency, serve on the owners and occupiers of the building or land not less than 10 working days' notice of its intention to exercise that right and in a case falling within sub-paragraph (a) or (c), specifying the protective works proposed to be carried out.

(6) Where a notice is served under paragraph (5) the owner or occupier of the building or land concerned may by serving a counter-notice within the period of 10 working days beginning with the day on which the notice was served require the question of whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 45 (arbitration).

(7) The undertaker must compensate the owners and occupiers of any building or land in relation to which rights under this article have been exercised for any loss or damage arising to them by reason of the exercise of those rights.

(8) Where—

- (a) protective works are carried out under this article to a building; and
- (b) within the period of five years beginning with the day on which the part of the authorised development carried out in the vicinity of the building is first opened for use it appears that the protective works are inadequate to protect the building against damage caused by the carrying out or use of that part of the authorised development,

the undertaker must compensate the owners and occupiers of the building for any loss or damage sustained by them.

(9) Nothing in this article relieves the undertaker from any liability to pay compensation under section 152 (compensation in a case where no right to claim nuisance) of the 2008 Act.

(10) Any compensation payable under paragraph (8) or (9) must be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(11) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the entry onto, or possession of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

(12) In this article “protective works” in relation to a building means—

- (a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the carrying out, maintenance or use of the authorised development; and
- (b) any works the purpose of which is to remedy any damage which has been caused to the building by the carrying out, maintenance or use of the authorised development.

Authority to survey and investigate the land

19.—(1) The undertaker may for the purposes of this Order enter on any land within the Order limits landwards of MLWS or which may be affected by the authorised development within Works Nos. 1 to 5 (inclusive) and—

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

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 10 working days' notice has been served on every occupier of the land.

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

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

(4) No trial holes are to be made under this article—

- (a) in land forming a railway without the consent of Network Rail^(a)
- (b) in land by or in right of the Crown without the consent of the Crown;
- (c) in land located within the highway boundary without the consent of the relevant highway authority; or
- (d) in a private street without the consent of the relevant street authority

but such consent must not be unreasonably withheld or delayed.

(5) The undertaker must make good any damage done to the land when exercising any powers conferred by this article and where any damage is caused to land which is not made good any person interested in the land may recover compensation 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 (determination of questions of disputed compensation) of the 1961 Act.

(6) If either a relevant highway authority or a relevant street authority which has received an application for consent under paragraph (4) of this article fails to notify the undertaker of its decision within 20 working days of receiving the application, that authority is deemed to have granted the consent.

(7) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the entry onto, or possession of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

PART 5

Powers of acquisition

Compulsory acquisition of land

20.—(1) The undertaker may—

- (a) acquire compulsorily so much of the Order land within the permanent limits and described in the book of reference as is required for the construction, operation or maintenance of the authorised development or to facilitate it, or as is incidental to it; and

(a) As defined in Part 4 of Schedule 13 (For Protection of Railway Interests)

- (b) use any land so acquired for the purposes authorised by this Order or for any other purposes in connection with or ancillary to the undertaking.

(2) This article is subject to article 22 (Time limit for the exercise of the Order, article 23 (Compulsory acquisition of rights and the imposition of restrictive covenants), article 27 (Acquisition of subsoil and airspace only), article 29 (Rights under or over streets), article 30 (Temporary use of land for carrying out authorised development) and article 47 (Crown rights).

Statutory authority to override easements and other rights

21.—(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) (nuisance: statutory authority) of the 2008 Act, 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 user 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 user of land arising by virtue of contract,

authorised by virtue of this Order 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 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 is to be applied to the construction of paragraph (2) (with any necessary modifications).

Time limit for exercise of authority to acquire land compulsorily

22.—(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 is to be served under Part 1 of the 1965 Act (which makes provision for compulsory acquisition under the Acquisition of Land Act 1981); and
- (b) no declaration is to be executed under section 4 of the 1981 Act as applied by article 25 (Application of the Compulsory Purchase (Vesting Declarations) Act 1981)(a),

in respect of the acquisition by the undertaker of land for the authorised development under this Order.

Compulsory acquisition of rights and the imposition of restrictive covenants

23.—(1) Subject to the provisions of this article, the undertaker may acquire compulsorily the rights, and impose the restrictions, over so much of the Order land described in the book of reference and shown on the land plans as is required for the construction, operation or

(a) 1981 c. 66. Sections 2(3), 6(2) and 11(6) were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11). Sections 10 and 11 and Schedule 1 were amended by S.I. 2009/137. Section 15 was amended by sections 56 and 321(1) of, and Schedules 8 and 16 to, the Housing and Regeneration Act 2008 (c. 17). Paragraph 1 of Schedule 2 was amended by section 76 of, and Part 2 of Schedule 9 to, the Housing Act 1988 (c. 50); section 161(4) of, and Schedule 19 to, the Leasehold Reform, Housing and Urban Development Act 1993 (c. 28); and sections 56 and 321(1) of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 3 of Schedule 2 was amended by section 76 of, and Schedule 9 to, the Housing Act 1988 and section 56 of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 2 of Schedule 3 was repealed by section 277 of, and Schedule 9 to, the Inheritance Tax Act 1984 (c. 51). There are other amendments to the 1981 Act which are not relevant to this Order.

maintenance of the authorised development or to facilitate it, or as is incidental to it, by creating them as well as by acquiring rights and benefits of restrictions already in existence.

(2) Subject to section 8 of the 1965 Act (provisions as to divided land), as substituted by article 28 (Acquisition of part of certain properties), where the undertaker acquires a right over land or imposes a restriction under paragraph (1), the undertaker is not to be required to acquire a greater interest in that land.

(3) Schedule 9 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 over land by the creation of a new right or the imposition of a restrictive covenant.

(4) In any case where the acquisition of rights or imposition of a restrictive covenant 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 acquire such rights or impose such restrictive covenants to the statutory undertaker in question.

(5) The exercise by a statutory undertaker of any power in accordance with 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 over, or the imposition of restrictions affecting, an interest which is for the time being held by or on behalf of the Crown.

Private rights of way

24.—(1) Subject to the provisions of this article, all private rights of way over land subject to compulsory acquisition under this Order will be extinguished—

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

whichever is the earlier.

(2) Subject to the provisions of this article, all private rights of way over land owned by the undertaker which, being within the Order limits, is required for the purposes of this Order will be extinguished on the appropriation of the land by the undertaker for any of those purposes.

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

(4) Any person who suffers loss by the extinguishment or suspension of any private right under this article is entitled to compensation in accordance with the terms of section 152 (compensation in case where no right to claim nuisance) of the 2008 Act to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(5) 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 33 (Statutory undertakers) applies.

(6) Paragraphs (1) to (3) have effect subject to—

- (a) any notice given by the undertaker before—
 - (i) the completion of the acquisition of the land or acquisition of rights or the imposition of restrictive covenants 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 will 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 of way in question is vested or belongs.
- (7) If any such agreement as is referred to in paragraph (6)(b)—
 - (a) is made with a person in or to whom the right is vested or belongs; and
 - (b) is expressed to have effect also for the benefit of those deriving title from or under that person,

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

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

- 25.**—(1) The 1981 Act applies as if this Order were a compulsory purchase order.
- (2) The 1981 Act, as so applied, has effect with the following modifications.
- (3) In section 1 (Application of Act) for subsection (2) there is substituted—
- (a) “(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) Section 5A (Time limit for general vesting declaration) is omitted(a).
- (5) In section 5B (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 of the Planning Act (Legal challenges relating to applications for orders granting development consent)”; and
 - (b) for “the three year period mentioned in section 4” substitute “the 7 year period mentioned in article 22 of the AQUIND Interconnector Order 202[*]”.
- (6) In section 6 (Notices after execution of declaration) for subsection (1)(b) there is substituted—
- (a) “(1) (b) on every other person who has given information to the acquiring authority with respect to any of that land further to the invitation published and served under section 134 of the Planning Act 2008.”
- (7) 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.
- (8) In Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration), omit paragraph 1(2).
- (9) References to the 1965 Act in the Compulsory Purchase (Vesting Declarations) Act 1981 are to be construed as references to the 1965 Act as applied by section 125 of the 2008 Act (application of compulsory acquisition provisions) to the compulsory acquisition of land under this Order.

Modification of Part 1 of the Compulsory Purchase Act 1965

- 26.**—(1) Part 1 of the 1965 Act, as applied to this Order by Section 125 (application of compulsory acquisition provisions) of the 2008 Act, is modified as follows:
- (2) In section 4 (time limit for giving notice to treat) for “after the end of the period of 3 years beginning the day on which the compulsory purchase order becomes operative” substitute “after the end of the period stated in article 22 (Time limit for exercise of authority to acquire compulsorily) of the AQUIND Interconnector Order 202[]”
- (3) In section 4A (1) (extension of time limit during challenge) –

(a) Section 5A to the 1981 Act was inserted by Section 182 of the Housing and Planning Act 2016 (c.22).

- (a) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order” substitute “section 118 of the 2008 Act (legal challenges relating to applications for orders granting development consent)”); and
 - (b) for “the three year period mentioned in section 4” substitute “the 7 year period mentioned in article 22 (Time limit for exercise of authority to acquire land compulsorily) of the AQUIND Interconnector Order 202[]”.
- (4) In section 11A (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”.
- (5) In section 22(2) (interests omitted from purchase), for “section 4 of this Act” substitute “article 22 (Time limit for exercise of authority to acquire land compulsorily) of the AQUIND Interconnector Order 202[*]”
- (6) In Schedule 2A (counter-notice requiring purchase of land not in notice to treat) –
- (a) for paragraphs 1(2) and 14(2) substitute –
 - (b) “(2) But see article 26(3) (acquisition of subsoil only) of the AQUIND Interconnector Order 202[*], which excludes the acquisition of subsoil from this Schedule”; and
 - (c) at the end insert –

“Part 4

Interpretation

30. In this Schedule, references to entering on and taking possession of land do not include doing so under article 18 (protective work to buildings), article 30 (temporary use of land for carrying out the authorised development) or article 32 (temporary use of land for maintaining the authorised development) of the AQUIND Interconnector Order 202[].”

Acquisition of subsoil and airspace only

27.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of and the airspace over the land referred to in paragraph (1) of article 20 (compulsory acquisition of land) or article 23 (Compulsory acquisition of rights and the imposition of restrictive covenants) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(2) Where the undertaker acquires any part of or rights in the subsoil of or the airspace over any land under paragraph (1) the undertaker will 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 or 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 Town and Country Planning Act 1990.

(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.

Acquisition of part of certain properties

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

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

(2) In such a case, the owner may, within the period of 15 working days beginning with the day on which the notice was served, serve on the undertaker a counter-notice objecting to the sale of the land subject to the notice to treat which states that the owner is willing and able to sell the whole (“the land subject to the counter-notice”).

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

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

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

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

the owner must sell the land subject to the notice to treat.

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

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

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

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

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

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

(8) If the undertaker agrees to take the land subject to the counter-notice, or if the Tribunal determines that—

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

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

(9) Where by reason of a determination by the Tribunal under this article a notice to treat is deemed to be a notice to treat for less land or more land than that specified in the notice the

undertaker may within the period of 6 weeks beginning with the day on which the determination is made withdraw the notice to treat; and in that event, pay the owner compensation for any loss or expense occasioned to the owner by the giving and withdrawal of the notice to be determined in case of dispute by the Tribunal.

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

Rights under or over streets

29.—(1) The undertaker may enter on and appropriate and use 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) does not apply in relation to—

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

(4) Subject to paragraph (5), any person who is an owner or occupier of land appropriated under paragraph (1) without the undertaker acquiring any part of that person's interest in the land, and who suffers loss as a result, will be entitled to compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(5) Compensation is not 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

30.—(1) Subject to paragraph (5), the undertaker may in connection with the carrying out of the authorised development—

- (a) enter on and take temporary possession of—
 - (i) the land specified in column (2) of Schedule 10 for the purpose specified in relation to that land in column (1) 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) and no declaration has been made under section 4 (execution of declaration) of the 1981 Act;
- (b) remove any buildings and vegetation from that land;
- (c) construct temporary works (including the provision of means of access), haul roads, security fencing, buildings and structures on that land;
- (d) use the land for the purposes of a construction compound with access to the construction compound in connection with the authorised development; and
- (e) construct any works specified in relation to that land in column (1) of Schedule 10 (land of which temporary possession may be taken), or any other mitigation works.

(2) Subject to paragraph (5), not less than 10 working 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 under this article—

- (a) in the case of land specified in paragraph 1(a)(i) above (excluding plot 10-14) after the end of the period of 1 year beginning with the date of completion of the part of the authorised development specified in relation to that land in column (1) of Schedule 10 unless and to the extent that it is authorised to do so by the acquisition of rights over land or the creation of new rights over land pursuant to article 23 (Compulsory acquisition of rights and the imposition of restrictive covenants);
- (b) in the case of plot 10-14 and in relation to any and all times temporary possession is taken of that plot, once the purposes for which temporary possession may be taken have been achieved; or
- (c) in the case of land referred to in paragraph 1(a)(ii), after the end of the period of 1 year beginning with the date of completion of the work for which temporary possession of the land was taken unless the undertaker has, by the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act in relation to that land.

(4) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must either acquire the land or rights over the land subject to the temporary possession or, unless otherwise agreed with the owners of the land, remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land, but the undertaker is not required to—

- (a) replace a building removed under this article;
- (b) remove any drainage works installed by the undertaker under this article;
- (c) remove any new road surface or other improvements carried out under this article to any street specified in Schedule 8 (Streets subject to street works);
- (d) restore the land to a condition better than the relevant land was in before temporary possession;
- (e) remove any ground strengthening works which have been placed on the land to facilitate construction and operation of the authorised development;
- (f) remove any measures installed over or around statutory undertakers' apparatus to protect that apparatus from the authorised development; or
- (g) remove or reposition any apparatus belonging to statutory undertakers or necessary mitigation works.

(5) In exercising the powers of the article in respect of plot 10-14 the undertaker may not undertake any of the activities listed in paragraph (1) (b), (c), (d) or (e) and must when entering on and taking temporary possession of any part of plot 10-14 provide so much notice to the owners and occupiers of the land (which may include notification following the taking of temporary possession where necessary) as is reasonably practicable in the circumstances.

(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 any power conferred by this article.

(7) Any dispute as to the persons entitlement to compensation under paragraph (5), or as to the amount of compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(8) Nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act 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).

(9) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i) nor acquire compulsorily any new rights or impose any restrictive covenants over that land except that the undertaker is not precluded from—

- (a) acquiring any part of the subsoil (or rights in the subsoil) of that land under article 27 (Acquisition of subsoil or airspace only); or

(b) carrying out a survey of that land under article 19 (Authority to survey and investigate the land).

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

(11) Section 13 of the 1965 Act (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).

(12) Nothing in this article prevents the taking of temporary possession more than once in relation to any land specified in paragraph (1).

Time limit for exercise of authority to temporarily use land for carrying out the authorised development

31.—(1) Subject to paragraph (2), the authority to enter onto land pursuant to article 30 (Temporary use of land for carrying out authorised development) ceases to apply at the end of the period of 5 years beginning on the day on which this Order is made.

(2) Nothing in paragraph (1) 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 the period.

Temporary use of land for maintaining the authorised development

32.—(1) Subject to paragraph (2), and without prejudice to any other rights enjoyed by the undertaker from time to time, 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 landwards of MLWS 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 and buildings on the land as may be reasonably necessary for that purpose;
- (c) enter onto any land within the Order limits landwards of MLWS 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 20 working days before entering on and taking temporary possession of land under this article the undertaker is required to serve notice of the intended entry on the owners and occupiers of the land.

(4) The undertaker is not required to serve notice under paragraph (3) where the undertaker has identified a potential risk to the safety of—

- (a) the authorised development or any of its parts;
- (b) the public; or
- (c) the surrounding environment,

and in such circumstances, the undertaker may enter the land under paragraph (1) subject to giving such period of notice as is reasonably practical in the circumstances.

(5) 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.

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

(7) 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.

(8) Any dispute as to the persons entitlement to compensation under this article, or as to the amount of compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(9) Nothing in this article affects any liability to pay compensation under section 10(2) of the 1965 Act (Further provisions as to compensation for injurious affection) or under any other enactment in respect of loss or damage arising from the maintenance of the authorised development, other than loss or damage for which compensation is payable under paragraph (7).

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

(11) Section 13 of the 1965 Act (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).

(12) 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 on which that part of the authorised development is brought into operational use, except where the authorised development is replacement or landscape planting where “the maintenance period” means the period of 5 years beginning with the date on which that part of the replacement or landscape planting is completed.

Statutory undertakers

33.—(1) Subject to the provisions of Schedule 13 (Protective provisions), the undertaker may—

- (a) acquire compulsorily or acquire new rights or impose restrictive covenants over the land belonging to statutory undertakers within the Order limits landwards of MLWS and described in the book of reference;
- (b) extinguish or suspend the rights of, remove, alter, renew, relocate or reposition the apparatus belonging to statutory undertakers over or within the Order limits landwards of MLWS; and
- (c) construct the authorised development in such a way as to cross underneath or over apparatus belonging to statutory undertakers and other like bodies within the Order limits landwards of MLWS.

(2) Subject to the provisions of Schedule 13 (Protective provisions) the undertaker may for the purposes of article 11 (Street works) remove or reposition apparatus belonging to statutory undertakers which is laid beneath any of the streets within the Order limits.

Recovery of costs of new connections

34.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 33 (Statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 32 (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 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) This article does not have effect in relation to apparatus to which Part 3 of the 1991 Act applies.

(4) In this article—

“public communications provider” has the meaning given in section 151(1) of the Communications Act 2003; and

“public utility undertaker” has the meaning given in section 329 of the 1980 Act.

No double recovery

35.—(1) Compensation will not be payable in respect of the same matter both under this Order and under any other enactment, any contract or any rule of law, or under two or more provisions of this Order.

Special category land

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

(2) So far as the temporary use of land under either article 30 (Temporary use of land for carrying out the authorised development) and article 32 (Temporary use of land for maintaining the authorised development) is concerned, then the discharge in paragraph (1) is only for such time as any land required only temporarily is being used under either of those articles.

(3) In this article—

“Order rights” means rights and powers exercisable over the special category land by the undertaker under article 23 (Compulsory acquisition of rights), article 30 (Temporary use of land for carrying out the authorised development) and article 32 (Temporary use of land for maintaining the authorised development); and

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

PART 6

Operations

Deemed marine licence under the 2009 Act

37.—(1) The deemed marine licence set out in Schedule 15 (deemed marine licence under the 2009 Act) is deemed to be granted on the date this Order comes into force to the undertaker under Part 4 (marine licensing) of the 2009 Act for the licensed marine activities set out in Part 1, and subject to the conditions set out in Part 2 of that Schedule.

PART 7

Miscellaneous and general

Protective provisions

38.—(1) Schedule 13 (Protective provisions) to this Order has effect.

Application of landlord and tenant law

39.—(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 operate 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 is to prejudice 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
- (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 purposes of the 1990 Act

40.—(1) Development consent granted by this Order is to 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).

Felling or lopping of trees and removal of hedgerows

41.—(1) The undertaker may fell or lop any tree within or overhanging the Order limits landwards of MLWS or shrub near any part of the Order limits, or cut back its roots, 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 operation 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 not do any unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity for that loss or damage.

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, must be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(4) The undertaker may, for the purposes of and in so far as it reasonably believes is necessary in connection with the authorised development—

- (a) subject to paragraph (2), remove any hedgerows within the Order limits landwards of MLWS that may be required for the purposes of carrying out the authorised development; and
- (b) remove important hedgerows as are within the Order limits landwards of MLWS and identified in Schedule 12.

(5) The power conferred by paragraph (4) removes any obligation upon the undertaker to secure any consent under the Hedgerow Regulations 1997(a).

(6) Nothing in this article authorises any works to any tree subject to a Tree Preservation Order.

(7) In this article “hedgerow” and “important hedgerow” have the meaning given in the Hedgerow Regulations 1997.

Trees subject to tree preservation orders

42.—(1) The undertaker may fell or lop any tree described in column (1) of Schedule 11, or cut back its roots if it reasonably believes it to be necessary in order to do so to prevent the tree from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development.

(2) In carrying out any activity authorised by paragraph (1)—

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

(3) The authority given by paragraph (1) constitutes a deemed consent under the relevant tree preservation order.

(4) 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 (determination of questions of disputed compensation) of the 1961 Act.

Certification of plans, etc.

43.—(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 and plans identified in Schedule 14 (Certified Documents) of this Order for certification that they are true copies of the documents referred to in this Order.

(2) A plan or document identified in Schedule 14 so certified is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

(3) Where a plan or document certified under paragraph (1)—

- (a) refers to a provision of this Order (including any specified requirement) when it was in draft form;
- (b) identifies the provision by number or combination of numbers and letters, which is different from the number or combination of numbers and letters by which the corresponding provision of this Order is identified in the Order as made; and
- (c) the reference in the plan or document concerned must be construed for the purposes of this Order as referring to the provision (if any) corresponding to that provision in the Order as made.

Service of notices

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

- (a) by post; or
- (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 (9), by electronic transmission.

(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^(a) (references to service by post) 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 a body corporate, the registered or principal office of that body; and
- (b) in any other case, the last known address of that person at the 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 name or 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 a 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) Paragraphs (6) to (9) apply where a person (“A”) is required or authorised to serve or send a notice or other document for the purposes of this Order on or to another person (“B”).

(6) A may serve or send the notice or other document by electronic transmission if—

- (a) B has sent A notice that B agrees to receive that notice or document (or notices and documents of a description including that notice or document) by electronic transmission;
- (b) B has not subsequently withdrawn that agreement in accordance with paragraph (8); and
- (c) A complies with any conditions as to addressing or mode of transmission that B has specified in agreeing to receive notices or other documents by electronic transmission.

(7) If B notifies A within 5 working days of receiving a notice or other document by electronic transmission that B requires a paper copy of all or any part of the notice or other document, A must provide B with such a copy as soon as reasonably practicable.

(8) B may withdraw agreement to receive a notice or document (or notices or documents of a specified description) by electronic transmission by sending a notice to that effect to A.

(9) Notice under paragraph (8) is final and takes effect on a date specified by B in the notice but that date must not be less than 5 working days after the date on which the notice is given.

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

Arbitration

45.—(1) Subject to article 49 (saving provisions for Trinity House), except where otherwise expressly provided for in this Order and unless otherwise agreed in writing between the parties, any difference under any provision of this Order (other than a difference which falls to be determined by the Tribunal) must be referred to and settled by a single arbitrator to be agreed between the parties within 14 days of receipt of a notice of arbitration 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.

(2) Should the Secretary of State fail to make an appointment under paragraph (1) within 10 working days of a referral, the referring party may refer to the Centre for Effective Dispute Resolution for appointment of an arbitrator.

(a) 1978 c. 30. There are amendments to this Act which are not relevant to this Order.

Procedure in relation to requirements, appeals, etc.

46.—(1) Schedule 3 (Procedure for approvals, consents and appeals) is to have effect in relation to all consents, agreement or approvals granted, refused or withheld in relation to the requirements unless otherwise agreed between the undertaker and the discharging authority.

(2) The procedure set out in paragraph (1) relating to the appeal process of Schedule 3 has effect in relation to any other consent, agreement or approval required under this Order (including the requirements) where such consent, agreement or approval is granted subject to any condition to which the undertaker objects, or is refused or is withheld.

Crown rights

47.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular, nothing in this Order authorises the undertaker or any lessee or licensee—

- (a) to take, use enter upon, carry out the authorised development on or in any manner interfere with any land or rights of any description (including a portion of the shore or bed of the sea or any river, channel, creek, bay or estuary) —
 - (i) belonging to Her Majesty in right of the Crown and forming part of the Crown Estate without the consent in writing of the Crown Estate Commissioners;
 - (ii) belonging to Her Majesty in right of the Crown and not forming part of the Crown Estate without the consent in writing of the Government Department having the management of that land; or
 - (iii) belonging to a Government Department or held in trust for Her Majesty for the purposes of a Government Department without the consent in writing of that Government Department; or
- (b) to exercise any right under this Order compulsorily to acquire an interest in any land which is Crown land (as defined in the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown without the consent in writing of the appropriate Crown authority (as defined in the 2008 Act).

(2) A consent under paragraph (1) may be given unconditionally or subject to terms and conditions and will be deemed to have been given in writing where it is sent electronically.

Removal of human remains

48.—(1) In this article “the specified land” means land within the Order limits which the undertaker reasonably considers contains human remains.

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

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

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

(4) As soon as reasonably practicable after the first publication of a notice under paragraph (3) the undertaker will send a copy of the notice to relevant discharging authority for the area in which the land is located.

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

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

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

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

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

(8) The undertaker will pay the reasonable expenses of removing and re-interring or cremating the remains of any deceased person under this article 48.

(9) If—

- (a) within the period of 56 days referred to in paragraph (5) no notice under that paragraph has been given to the undertaker in respect of any remains in the specified land; or
- (b) such notice is given and no application is made under paragraph (7) within 56 days after the giving of the notice but the person who gave the notice fails to remove the remains within a further period of 56 days; or
- (c) within 56 days after any order is made by the county court under paragraph (7) any person, other than the undertaker, specified in the order fails to remove the remains; or
- (d) it is determined that the remains to which any such notice relates cannot be identified, subject to paragraph (10) the undertaker will remove the remains and cause them to be re-interred in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose; and, so far as possible, remains from individual graves will be re-interred in individual containers which will be identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

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

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

- (a) a certificate of re-interment or cremation will be sent by the undertaker to the Registrar General by the undertaker giving the date of re-interment or cremation and identifying the place from which the remains were removed and the place in which they were re-interred or cremated; and
- (b) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (9) will be sent by the undertaker to the relevant discharging authority for the area in which the land is located mentioned in paragraph (4).

(12) No notice is required under paragraph (3) before the removal of any human remains where the undertaker is satisfied that—

- (a) that the remains were interred more than 100 years ago; and
- (b) that no relative or personal representative of the deceased is likely to object to the remains being removed in accordance with this article.

(13) In this article—

- (a) references to a relative of the deceased are to a person who—
 - (i) is a husband, wife, civil partner, parent, grandparent, child or grandchild of the deceased; or

- (ii) is, or is a child of, a brother, sister, uncle or aunt of the deceased.
- (b) references to personal representative of the deceased are to person who—
 - (i) is the lawful executor or executrix of the estate of the deceased; or
 - (ii) is the lawful administrator of the estate of the deceased.

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

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

(16) Section 25 of the Burial Act 1857(a) (bodies not to be removed from burial grounds, save under faculty, without licence of Secretary of State) does not apply to a removal carried out in accordance with this article.

(17) Section 239 (use and development of burial grounds) of the 1990 Act applies—

- (a) In relation to land, other than a right over land, acquired for the purposes of the authorised development (whether or not by agreement), so as to permit use by the undertaker in accordance with the provisions of the Order; and
- (b) In relation to a right over land so acquired (whether or not by agreement), or the temporary use of land pursuant to article 30 (Temporary use of land for carrying out the authorised development) and article 32 (Temporary use of land for maintaining the authorised development), so as to permit the exercise of that right or the temporary use by the undertaker in accordance with the provisions of this Order,

And in section 240(1) (provisions supplemental to ss.238 and 239) of the 1990 Act reference to “regulations made for the purposes of section 283(3) and (4) and 239(2) means, so far as applicable to land or a right over land acquired under this Order, paragraphs (2) to (15) of this article and in section 240(3) of the 1990 Act reference to a “statutory undertaker” includes the undertaker and reference to “any other enactment” includes this Order.

(18) The Town and Country Planning Act (Churches, Places of Worship and Burial Grounds) Regulations 1950(b) do not apply to the authorised development.

Saving provisions for Trinity House

49.—(1) Nothing in this Order prejudices or derogates from any of the rights, duties or privileges of Trinity House.

Signed by Authority of the Secretary of State for Business, Energy and Industrial Strategy
Head of [x]
 Address Department for Business, Energy and Industrial Strategy
 Name
 Date

(a) 1857 c.81.
 (b) S.I. 1950/792.

SCHEDULE 1

Article 3

Authorised Development

1. Development which is to be treated as development for which development consent is required as directed by the Secretary of State in the direction issued pursuant to section 35 of the 2008 Act dated 30 July 2018 and associated development within the meaning of section 115(2) of the 2008 Act which is located approximately 13.5 kilometres north of the south coast near Lovedean to the exclusive economic zone boundary between the UK and France, comprising -

Work No.1 – substation connection works consisting of -

- (a) onshore HVAC cables of up to 1 kilometre in length (each cable circuit);
- (b) up to 2 400 kilovolt air and or gas insulated switchgears and associated equipment;
- (c) up to 5 link boxes per cable circuit with dimensions of up to 0.8 metres in length by 0.8 metres in width by 0.6 metres in height;

Work No. 2 – works to construct the converter station and associated equipment consisting of -

- (a) Site clearance, preparation, establishment and earth works;
- (b) onshore HVDC cables of up to 400 metres in length (each cable circuit);
- (c) 2 converter hall buildings;
- (d) 1 control building associated with the converter hall buildings;
- (e) 6 transformers;
- (f) a spare transformer;
- (g) HVAC cable termination equipment including two 400 kilovolt air and or gas insulated switchgears and busbars;
- (h) HVDC cable termination equipment including two 400 kilovolt air and or gas insulated switchgears and busbars;
- (i) 2 valve cooling systems;
- (j) 1 spares building with an internal perimeter fence;
- (k) up to 2 standby back-up diesel generator with a capacity of up to 800 kilowatt;
- (l) up to 2 distribution transformers (supplied from two individual DNO connections at 11 kilovolt), one per pole each 1680 kilowatt
- (m) up to 2 auxiliary transformers (supplied from tertiary winding of main transformer), one per pole, each 1680 kilowatt
- (n) 6 valve reactors;
- (o) up to 6 AC filter banks. Each filter bank will typically contain reactor, resistor and capacitor banks
- (p) up to 8 lightning masts;
- (q) up to 40 lighting columns;
- (r) HVAC cables of up to 100 metres in length (each cable circuit);
- (s) Up to 5 link boxes per cable circuit with dimensions of up to 0.8 metres in length by 0.8 metres in width by 0.6 metres in height;
- (t) converter station building outer security perimeter fence and inner electrified fence separated by a sterile zone including up to 2 security gates;
- (u) up to 2 telecommunications buildings with a security perimeter fence including a security gate and in-between sterile zone and parking for up to 2 vehicles at any one time and associated fibre optic data transmission cables; and
- (v) an access road;

- (w) works required to replace an 11 kilovolt overhead electricity line with an 11 kilovolt underground electricity cable to facilitate the safe passage of construction vehicles along the proposed access road;
- (x) up to 2 attenuation ponds and associated landscaping with a combined capacity of up to 2,500m³;
- (y) up to 2 fire protection deluge systems;
- (z) permanent car parking for up to 10 vehicles;
- (aa) soft and hard landscaping including bunds and haul roads to facilitate their construction;
- (bb) access junction and associated gated highway link;

Work No. 3 – a temporary work area of up to five hectares associated with Work No. 1, Work No. 2 and Work No. 4 consisting of –

- (a) a construction and laydown compound;
- (b) car parking for up to 206 vehicles including associated vegetation removal and groundworks;

Work No. 4 – works to lay the onshore HVDC cables consisting of –

- (a) onshore HVDC cables of up to 20,000 metres in length (each cable circuit);
- (b) up to 25 joint bays per cable circuit with dimensions of up to 6 metres in length by 3 metres in width by 1.85 metres in depth;
- (c) up to 6 link boxes per cable circuit with dimension of up to 0.8 metres in length by 0.8 metres in width by 0.6 metres in height;
- (d) up to 6 link pillars per cable circuit with dimensions of up to 1 metres in length by 1 metres in width by 0.6 metres in height;
- (e) 4 HDD crossings including entry/exit pits and associated temporary construction compounds;
- (f) 1 trenchless installation technique crossing including an entry/exit pit and associated temporary construction compounds;
- (g) temporary work areas and laydown areas associated with the installation and pulling of the onshore HVDC cables;

Work No. 5 – onshore connection works

- (a) onshore HVDC cables of up to 50 metres in length (each cable circuit) from Work No. 4 to the transitional joint bays;
- (b) 2 transitional joint bays with dimensions of up to 8 metres in length by 3 metres in width by 2 metres in depth with an excavation of up to 15 metres in length by 5 metres in width by 2 metres in depth;
- (c) associated constructions working and pulling area;
- (d) 1 HDD with up to 4 entry/exit pits and associated temporary construction compounds;
- (e) onshore HVDC cables to Work No. 6 of up to 250 metres in length (each cable circuit);
- (f) up to 1 link box per cable circuit with dimension of up to 0.8 metres in length by 0.8 metres in width by 0.6 metres in height;
- (g) up to 1 link pillar per cable circuit with dimensions of up to 1 metres in length by 1 metres in width by 0.6 metres in height;
- (h) 2 optical regeneration stations;
- (i) compound for 2 optical regeneration stations with secure fencing, access and parking for up to two vehicles at any one time;
- (j) auxiliary power supply equipment for the optical regeneration stations and fuel storage in relation to that equipment;

Work No. 6 – marine HVDC cables within the Order limits seaward of MHWS and landward of MLWS between Work No. 5 and Work No. 7 including where required works to facilitate HDD.

Work No. 7 – marine HVDC cable works consisting of –

- (a) marine HVDC cables of up to 109 kilometres (each cable circuit) between the UK exclusive economic zone with France and Works No. 6 including where required works to facilitate HDD; and
- (b) 1 HDD with up to 4 entry/exit pits; and
- (c) a temporary work area for vessels to carry out intrusive activities.

2. In connection with Work Nos. 1 to 5 and to the extent that they do not otherwise form part of any such work, further associated development comprising such other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised development and which fall within the scope of the work assessed by the environmental statement, including but not limited to -

- (a) ramps, means of access and footpaths;
- (b) bunds, embankments, swales, landscaping, fencing and boundary treatments;
- (c) cable ducts, cable protection, joint protection, manholes, marker posts, underground cable maker, tiles and tape and lighting and all other works associated with cable laying;
- (d) works for the provision of apparatus, including cabling, water and electricity supply works, foul drainage provision, surface water management systems and culverting;
- (e) works to alter the position of apparatus, including mains, sewers, drains and cables;
- (f) works to alter the course or otherwise interfere with, non-navigable rivers, streams or watercourses;
- (g) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised development;
- (h) works for the benefit of the protection of land affected by the authorised development;
- (i) working sites in connection with the construction of the authorised development, lay down areas and works compounds, storage compounds and their restoration;
- (j) permanent and temporary works for the benefit or protection of land, structures, apparatus or equipment affected by the authorised development; and
- (k) such other works as may be necessary or expedient for the purpose of or in connection with the construction or use of the authorised development and which do not give rise to any materially new or materially different environmental effects from those assessed as set out in the environmental statement.

and in connection with such Works Nos. 6 to 7 and to the extent that they do not otherwise form part of any such work, further associated development within the meaning of section 115(2) of the 2008 Act comprising other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised development and which fall within the scope of the work assessed by the environmental statement and the provisions of this licence, including but not limited to –

- (l) temporary cable burial equipment trials;
- (m) cable protection;
- (n) the removal of material from the seabed required for the construction of Work Nos. 6 and 7 and the disposal of up to 1,754,000m³ of inert material of natural origin at the disposal sites with reference WI048 and WI049 within the extent of the Order limits seaward of MHWS produced during the Works;
- (o) the construction of crossing structures over cables that are crossed by the marine HVDC cable; and
- (p) such other works as may be necessary or expedient for the purpose of or in connection with the construction or use of the authorised development and which do not give rise to

any materially new or materially different environmental effects from those assessed as set out in the environmental statement.

3. The grid coordinates for that part of the authorised development which is seaward of MHWS are specified below –

<i>Point ID</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>	<i>Point ID</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>
1	50°47'8.146"N	1°2'20.857"W	135	50°42'0.397"N	0°54'1.872"W
2	50°47'8.216"N	1°2'20.480"W	136	50°41'55.699"N	0°53'35.726"W
3	50°47'8.268"N	1°2'20.179"W	137	50°41'33.679"N	0°52'58.934"W
4	50°47'8.339"N	1°2'19.690"W	138	50°40'20.249"N	0°51'13.974"W
5	50°47'8.386"N	1°2'19.364"W	139	50°39'59.881"N	0°50'52.430"W
6	50°47'8.451"N	1°2'18.889"W	140	50°39'42.599"N	0°50'29.607"W
7	50°47'8.508"N	1°2'18.470"W	141	50°39'36.524"N	0°50'11.733"W
8	50°47'8.553"N	1°2'18.104"W	142	50°39'12.728"N	0°48'58.524"W
9	50°47'8.628"N	1°2'17.588"W	143	50°38'30.615"N	0°46'2.020"W
10	50°47'8.690"N	1°2'17.204"W	144	50°37'46.726"N	0°43'23.708"W
11	50°47'8.771"N	1°2'16.708"W	145	50°37'36.508"N	0°42'41.575"W
12	50°47'8.826"N	1°2'16.349"W	146	50°37'15.582"N	0°41'15.354"W
13	50°47'8.931"N	1°2'15.812"W	147	50°37'15.513"N	0°39'46.232"W
14	50°47'8.992"N	1°2'15.489"W	148	50°36'41.713"N	0°34'22.448"W
15	50°47'9.096"N	1°2'14.962"W	149	50°36'14.831"N	0°32'37.009"W
16	50°47'9.166"N	1°2'14.555"W	150	50°36'7.973"N	0°31'7.231"W
17	50°47'9.231"N	1°2'14.186"W	151	50°36'0.215"N	0°30'36.542"W
18	50°47'9.328"N	1°2'13.628"W	152	50°35'54.791"N	0°30'15.095"W
19	50°47'9.426"N	1°2'13.061"W	153	50°35'23.567"N	0°29'13.075"W
20	50°47'9.490"N	1°2'12.710"W	154	50°34'29.494"N	0°26'42.742"W
21	50°47'9.587"N	1°2'12.132"W	155	50°32'41.551"N	0°23'38.096"W
22	50°47'9.639"N	1°2'11.857"W	156	50°30'3.541"N	0°17'33.192"W
23	50°47'9.789"N	1°2'11.023"W	157	50°28'42.521"N	0°15'42.064"W
24	50°47'9.878"N	1°2'10.527"W	158	50°28'4.707"N	0°14'50.247"W
25	50°47'9.983"N	1°2'9.954"W	159	50°27'43.034"N	0°14'20.562"W
26	50°47'10.053"N	1°2'9.496"W	160	50°26'55.786"N	0°13'15.884"W
27	50°47'10.093"N	1°2'9.212"W	161	50°26'56.222"N	0°13'14.495"W
28	50°47'10.142"N	1°2'8.960"W	162	50°26'57.457"N	0°13'4.676"W
29	50°47'10.205"N	1°2'8.572"W	163	50°26'57.027"N	0°12'54.690"W
30	50°47'10.259"N	1°2'8.304"W	164	50°26'54.961"N	0°12'45.218"W
31	50°47'10.327"N	1°2'7.966"W	165	50°26'51.400"N	0°12'36.908"W
32	50°47'10.374"N	1°2'7.740"W	166	50°26'46.587"N	0°12'30.324"W
33	50°47'10.456"N	1°2'7.347"W	167	50°26'40.850"N	0°12'25.916"W
34	50°47'10.514"N	1°2'7.079"W	168	50°26'34.580"N	0°12'23.983"W
35	50°47'10.587"N	1°2'6.756"W	169	50°26'28.204"N	0°12'24.658"W
36	50°47'10.648"N	1°2'6.496"W	170	50°26'22.156"N	0°12'27.894"W
37	50°47'10.741"N	1°2'6.131"W	171	50°26'21.336"N	0°12'28.756"W
38	50°47'10.822"N	1°2'5.803"W	172	50°26'10.359"N	0°12'13.745"W
39	50°47'10.862"N	1°2'5.617"W	173	50°24'8.032"N	0°9'25.526"W
40	50°47'10.921"N	1°2'5.371"W	174	50°24'2.766"N	0°9'16.501"W
41	50°47'10.939"N	1°2'5.284"W	175	50°23'57.213"N	0°9'5.200"W
42	50°47'10.978"N	1°2'5.099"W	176	50°23'51.251"N	0°8'52.570"W
43	50°47'11.045"N	1°2'4.740"W	177	50°23'46.360"N	0°8'39.092"W
44	50°47'11.107"N	1°2'4.474"W	178	50°21'32.398"N	0°2'15.439"W

45	50°47'11.167"N	1°2'4.178"W	179	50°21'29.076"N	0°2'5.945"W
46	50°47'11.222"N	1°2'3.897"W	180	50°21'28.324"N	0°2'3.795"W
47	50°47'11.281"N	1°2'3.598"W	181	50°21'6.855"N	0°1'12.898"W
48	50°47'11.337"N	1°2'3.294"W	182	50°20'46.163"N	0°0'32.608"W
49	50°47'11.366"N	1°2'3.150"W	183	50°20'34.684"N	0°0'15.657"W
50	50°47'11.403"N	1°2'2.966"W	184	50°20'32.670"N	0°0'12.683"W
51	50°47'11.423"N	1°2'2.845"W	185	50°20'16.756"N	0°0'10.817"E
52	50°47'11.460"N	1°2'2.657"W	186	50°17'36.424"N	0°5'11.894"E
53	50°47'11.492"N	1°2'2.498"W	187	50°16'31.253"N	0°9'3.799"E
54	50°47'11.540"N	1°2'2.249"W	188	50°16'10.086"N	0°11'24.856"E
55	50°47'11.573"N	1°2'2.089"W	189	50°16'7.791"N	0°11'36.422"E
56	50°47'11.617"N	1°2'1.860"W	190	50°16'6.240"N	0°11'43.952"E
57	50°47'11.654"N	1°2'1.683"W	191	50°16'2.500"N	0°12'0.714"E
58	50°47'11.704"N	1°2'1.424"W	192	50°15'56.441"N	0°12'17.698"E
59	50°47'11.767"N	1°2'1.116"W	193	50°15'53.389"N	0°12'23.459"E
60	50°47'11.802"N	1°2'0.862"W	194	50°15'53.179"N	0°12'23.855"E
61	50°47'11.807"N	1°2'0.827"W	195	50°15'53.678"N	0°12'24.498"E
62	50°47'11.827"N	1°2'0.809"W	196	50°15'50.634"N	0°12'30.244"E
63	50°47'11.877"N	1°2'0.444"W	197	50°15'50.355"N	0°12'30.769"E
64	50°47'11.901"N	1°2'0.405"W	198	50°15'44.773"N	0°11'56.429"E
65	50°47'11.904"N	1°2'0.370"W	199	50°15'47.089"N	0°11'49.938"E
66	50°47'11.863"N	1°2'0.317"W	200	50°15'50.773"N	0°11'33.424"E
67	50°47'11.847"N	1°2'0.307"W	201	50°15'53.839"N	0°11'17.971"E
68	50°47'11.847"N	1°2'0.307"W	202	50°16'15.223"N	0°8'55.462"E
69	50°47'11.847"N	1°2'0.307"W	203	50°17'21.968"N	0°4'57.948"E
70	50°47'11.895"N	1°1'59.868"W	204	50°20'4.461"N	0°0'7.202"W
71	50°47'11.912"N	1°1'59.866"W	205	50°20'21.112"N	0°0'31.792"W
72	50°47'11.939"N	1°1'59.841"W	206	50°20'23.127"N	0°0'34.767"W
73	50°47'11.965"N	1°1'59.584"W	207	50°20'33.765"N	0°0'50.477"W
74	50°47'11.966"N	1°1'59.512"W	208	50°20'53.239"N	0°1'28.399"W
75	50°47'11.965"N	1°1'59.496"W	209	50°21'13.893"N	0°2'17.366"W
76	50°47'11.964"N	1°1'59.435"W	210	50°23'31.655"N	0°8'51.889"W
77	50°47'11.965"N	1°1'59.415"W	211	50°23'37.115"N	0°9'6.938"W
78	50°47'11.953"N	1°1'59.406"W	212	50°23'43.773"N	0°9'21.043"W
79	50°47'11.953"N	1°1'59.406"W	213	50°23'49.858"N	0°9'33.428"W
80	50°47'11.953"N	1°1'59.406"W	214	50°23'56.230"N	0°9'44.349"W
81	50°47'11.962"N	1°1'59.198"W	215	50°25'59.269"N	0°12'33.560"W
82	50°47'11.971"N	1°1'59.095"W	216	50°26'10.266"N	0°12'48.600"W
83	50°47'11.985"N	1°1'58.947"W	217	50°26'9.831"N	0°12'49.988"W
84	50°47'11.992"N	1°1'58.887"W	218	50°26'8.596"N	0°12'59.805"W
85	50°47'12.008"N	1°1'58.758"W	219	50°26'9.026"N	0°13'9.789"W
86	50°47'12.020"N	1°1'58.658"W	220	50°26'11.091"N	0°13'19.258"W
87	50°47'12.029"N	1°1'58.582"W	221	50°26'14.651"N	0°13'27.567"W
88	50°47'12.031"N	1°1'58.566"W	222	50°26'19.463"N	0°13'34.151"W
89	50°47'12.040"N	1°1'58.493"W	223	50°26'25.200"N	0°13'38.561"W
90	50°47'12.049"N	1°1'58.409"W	224	50°26'31.470"N	0°13'40.497"W
91	50°47'12.060"N	1°1'58.316"W	225	50°26'37.846"N	0°13'39.825"W
92	50°47'12.079"N	1°1'58.149"W	226	50°26'43.894"N	0°13'36.591"W
93	50°47'12.110"N	1°1'57.942"W	227	50°26'44.714"N	0°13'35.729"W
94	50°47'12.123"N	1°1'57.869"W	228	50°28'31.442"N	0°16'1.912"W
95	50°47'12.141"N	1°1'57.733"W	229	50°29'50.837"N	0°17'50.820"W

96	50°47'12.158"N	1°1'57.645"W	230	50°32'28.318"N	0°23'54.527"W
97	50°47'12.175"N	1°1'57.550"W	231	50°34'15.790"N	0°26'58.375"W
98	50°47'12.189"N	1°1'57.467"W	232	50°35'9.556"N	0°29'27.862"W
99	50°47'12.212"N	1°1'57.339"W	233	50°35'40.062"N	0°30'28.457"W
100	50°47'12.228"N	1°1'57.251"W	234	50°35'44.745"N	0°30'46.976"W
101	50°47'12.250"N	1°1'57.145"W	235	50°35'51.526"N	0°31'13.797"W
102	50°47'12.272"N	1°1'57.028"W	236	50°35'58.386"N	0°32'43.614"W
103	50°47'12.291"N	1°1'56.926"W	237	50°36'25.406"N	0°34'29.597"W
104	50°47'12.310"N	1°1'56.838"W	238	50°36'50.593"N	0°38'30.650"W
105	50°47'12.339"N	1°1'56.698"W	239	50°36'54.547"N	0°39'8.625"W
106	50°47'12.356"N	1°1'56.579"W	240	50°36'58.685"N	0°39'48.398"W
107	50°47'12.319"N	1°1'56.560"W	241	50°36'58.756"N	0°41'20.244"W
108	50°47'12.319"N	1°1'56.560"W	242	50°37'31.141"N	0°43'33.714"W
109	50°47'12.319"N	1°1'56.560"W	243	50°38'15.012"N	0°46'11.964"W
110	50°47'12.377"N	1°1'56.330"W	244	50°38'57.306"N	0°49'9.233"W
111	50°47'12.390"N	1°1'56.270"W	245	50°39'21.609"N	0°50'24.001"W
112	50°47'12.406"N	1°1'56.188"W	246	50°39'29.289"N	0°50'46.600"W
113	50°47'12.425"N	1°1'56.105"W	247	50°39'49.747"N	0°51'13.619"W
114	50°47'12.443"N	1°1'56.031"W	248	50°40'9.842"N	0°51'34.878"W
115	50°47'12.460"N	1°1'55.963"W	249	50°41'21.878"N	0°53'17.854"W
116	50°47'11.065"N	1°1'55.703"W	250	50°41'40.626"N	0°53'49.178"W
117	50°45'45.014"N	1°1'39.017"W	251	50°41'45.252"N	0°54'14.928"W
118	50°45'33.952"N	1°1'29.392"W	252	50°43'22.501"N	0°57'7.513"W
119	50°45'23.239"N	1°1'14.438"W	253	50°43'31.132"N	0°57'27.942"W
120	50°45'13.571"N	1°0'56.514"W	254	50°43'29.651"N	0°57'29.496"W
121	50°45'2.494"N	1°0'25.147"W	255	50°43'40.579"N	0°57'55.368"W
122	50°44'50.712"N	0°59'52.953"W	256	50°43'42.061"N	0°57'53.814"W
123	50°44'39.281"N	0°59'22.406"W	257	50°43'43.756"N	0°57'57.828"W
124	50°44'2.379"N	0°57'54.977"W	258	50°43'44.075"N	0°57'57.664"W
125	50°44'0.123"N	0°57'49.635"W	259	50°43'48.906"N	0°58'9.102"W
126	50°44'0.446"N	0°57'49.479"W	260	50°44'25.563"N	0°59'35.955"W
127	50°43'56.072"N	0°57'39.124"W	261	50°44'36.732"N	1°0'5.805"W
128	50°43'54.590"N	0°57'40.678"W	262	50°44'48.414"N	1°0'37.724"W
129	50°43'43.661"N	0°57'14.804"W	263	50°45'0.207"N	1°1'11.121"W
130	50°43'45.143"N	0°57'13.250"W	264	50°45'11.652"N	1°1'32.340"W
131	50°43'35.866"N	0°56'51.292"W	265	50°45'24.564"N	1°1'50.365"W
132	50°42'27.974"N	0°54'50.779"W	266	50°45'39.934"N	1°2'3.740"W
133	50°42'23.228"N	0°54'42.359"W	267	50°47'8.146"N	1°2'20.857"W
134	50°42'18.988"N	0°54'34.839"W			

SCHEDULE 2

Article 3

Requirements

Interpretation

1.—(1) In addition to article 2 (Interpretation), the terms in this Schedule have the following meaning, unless the context provides otherwise —

“converter station and telecommunications building parameter plans” means the document certified as the converter station and telecommunications building parameter plans by the Secretary of State under article 43 (Certification of plans, etc.) for the purposes of this Order;

“design principles” means the design principles located at section 6 of the DAS;

“flood risk assessment” means the document certified as the flood risk assessment by the Secretary of State under article 43 (Certification of plans, etc.) for the purposes of this Order;

“framework construction traffic management plan” means the document certified as the framework construction traffic management plan by the Secretary of State under article 43 (Certification of plans, etc.) for the purposes of this Order;

“framework construction worker travel plan” means the framework construction worker travel plan which forms part of the framework construction traffic management plan;

“framework waste management plan” means the framework waste management plan appended to the onshore outline construction environmental management plan;

“lead local flood authority” means Hampshire County Council;

“operational broadband and octave band noise criteria document” means the document certified as the operational broadband and octave band noise criteria document by the Secretary of State under article 43 (Certification of plans, etc.) for the purposes of this Order;

“optical regeneration stations parameter plan” means the document certified as the optical regeneration stations parameter plan by the Secretary of State under article 43 (Certification of plans, etc.) for the purposes of this Order;

“onshore outline construction environmental management plan” means the document certified as the onshore outline construction environmental management plan by the Secretary of State under article 43 (Certification of plans, etc.) for the purposes of this Order;

“outline landscape and biodiversity strategy” means the document certified as the outline landscape and biodiversity strategy by the Secretary of State under article 43 (Certification of plans, etc.) for the purposes of this Order;

“outline materials management plan” means the outline materials management plan appended to the onshore outline construction environmental management plan;

“outline soil resources and management plan” means the outline soil resources and management plan appended to the onshore outline construction environmental management plan;

“phase” means any defined section or part of the authorised development, the extent of which is shown in a scheme submitted to the relevant planning authority pursuant to requirement 3 and which may individually or collectively include the onshore site preparation works (phases of the authorised development onshore);

“Portsmouth Water” means Portsmouth Water Limited of PO Box No8, West Street, Havant, Hampshire, PO9 1LG; and

“start-up and shut-down activities” means at the start of the working day the opening up of the site, the arrival of site staff & contractors, changing into appropriate PPE wear, pre-shift briefings, site inductions, tool box talks, and all associated site safety checks and at the end of the working day the cleaning and tidying of work areas, changing out PPE wear, post-shift debrief, the departure of site staff and contractors, and closing and securing the sites only.

“surface water drainage and aquifer contamination mitigation strategy” means the document certified as the aquifer contamination mitigation strategy by the Secretary of State under article 43 (Certification of plans, etc.) for the purposes of this Order,

(2) Where any requirement—

- (a) refers to a scheme, drawing, document or plan, that scheme, document or plan will be taken to be the version certified by the Secretary of State under article 43 (Certification of plans, etc.) of this Order or to any subsequent version of that scheme, drawing, document or plan approved by the discharging authority under a requirement; or
- (b) provides that the authorised development is to be carried out in accordance with details, or a scheme, plan or other document approved by the discharging authority, the approved details, scheme, plan or other document must be taken to include any amendments or revisions subsequently approved by the discharging authority.

(3) Where an approval of details or other document is required under the terms of any requirement or where compliance with a document contains the wording “unless otherwise agreed” by the discharging authority, such approval of details or of any other document (including any subsequent amendments or revisions) or agreement by the discharging authority is not to be given except in relation to minor or immaterial changes or deviations where it has been demonstrated to the satisfaction of the discharging authority that the subject matter of the approval or agreement sought does not give rise to any materially new or materially different environmental effects to those assessed in the Environmental Statement.

(4) Where any requirement identifies a parameter for a building or structure, that parameter identifies the envelope for that building or structure and does not include any external projections including telecommunications infrastructure (including aerials and satellites), access structures and safety measures (including ladders and handrails), mechanical plant, utilities infrastructure, minor architectural features (including gutters and lighting), external surface level areas, and associated compounds and storage areas.

(5) Unless otherwise provided in this Order, where a Requirement relates to a specific Works (or a part thereof) and it specifies “commencement of development”, it refers to the commencement of development in relation to those Works only.

(6) For the purposes of requirement 5, the parameters for the buildings and other structures comprised in Work No. 2 and Works No. 5 are to be measured as follows—

- (a) length is to be measured as the external horizontal dimension from abutment to abutment;
- (b) height is to be measured as the vertical dimension from the finished floor level to the top of the highest part of the structure;
- (c) width is to be measured as the external horizontal width from an abutment to a parallel abutment.

(7) For the purposes of discharging requirements in phases, the undertaker may—

- (a) submit a plan or plans to the discharging authority identifying a part or parts of any of the sites to which each phase or design relates; or
- (b) submit notices to the discharging authority in respect of individual or combined work packages.

Time limits

2.—(1) The authorised development must commence no later than the expiration of five years beginning with the date on which this Order comes into force.

(2) The undertaker will provide to each local planning authority in whose area the authorised development is located landwards of MLWS written notice of commencement not less than 5 working days prior to the proposed date on which the authorised development is commenced.

(3) The undertaker will provide to each local planning authority in whose area the authorised development is located landwards of MLWS written notice of any onshore site preparation works

first being undertaken not less than 5 working days prior to the proposed date on which they are to be first undertaken.

Phases of authorised development onshore

3.—(1) No authorised development landwards of MHWS including the onshore site preparation works may commence until a written scheme setting out all the phases of the authorised development has been submitted to the relevant planning authority detailing the phases of the onshore works within that planning authorities administrative area.

(2) The authorised development landwards of MHWS must be carried out in accordance with the written scheme submitted pursuant to paragraph 1 (as may be updated from time to time).

Converter station option confirmation

4. Prior to the commencement of any works within Work No.2 or the carrying out of any onshore site preparation works in respect of the area where the converter station is to be located the undertaker will confirm to the relevant planning authority which converter station perimeter option shown on the Converter Station Parameter Plan with reference EN020022-2.6-PARA-Sheet1 listed in Schedule 7 to the Order the converter station will be constructed within.

Converter station and optical regeneration station parameters

5.—(1) The buildings and equipment identified in Work No. 2 and listed in table WN2 may only be constructed within the relevant parameter plan zone listed in Table WN2 below and shown on the Converter Station and Telecommunications Building Parameter Plans listed in Schedule 7 to the Order; with reference EN020022-2.6-PARA-Sheet 2 in the event option b(i) is confirmed to be the location for the converter station in accordance with requirement 4; or with reference EN020022-2.6-PARA-Sheet 3 in the event option b(ii) is confirmed to be the location for the converter station in accordance with requirement 4, and in respect of any building in accordance with the maximum dimensions shown in that table for the building –

Table WN2

<i>Component</i>	<i>Parameter Zone</i>	<i>Maximum Parameter (m)</i>		
		<i>Length</i>	<i>Width</i>	<i>Height</i>
Converter Hall	4	90	50	26
Control Building	4	26	50	15
Transformers	3	-	-	-
Spare Transformer	3	-	-	-
HVAC cable termination equipment	3	-	-	-
HVDC cable termination equipment	3	-	-	-
Valve Cooling Systems	4	-	-	-
Spares building	4	27	25	15
Spares building internal perimeter fence	4	-	-	2.4
Standby back-up diesel generator	3	-	-	-
Auxiliary transformer	3	-	-	-
Reactors	3	-	-	-
Filters	3	-	-	-
Lightning masts	3/4	-	-	30
Lighting column	3	-	-	15
Outer security perimeter fence	2	-	-	2.4
Inner electrified fence	2	-	-	3.4
Telecommunications building	5	8	4	3

Telecommunications building compound	5	30	10	-
Telecommunications building security perimeter fence	5	30	10	2.45
Access road	1	1,200	7.3	-
Fire protection deluge system	3	-	-	-

(2) In accordance with the Converter Station and Telecommunications Building Parameter Plans no building within Work No. 2 may be a height which is above +111.100 metres above ordnance datum (excluding the lightning masts which may not be a height which is above +115.100 meters above ordnance datum).

(3) The optical regeneration stations identified in Works No.5 and listed in table WN5 may only be constructed within the relevant parameter plan zone shown on the Optical Regeneration Stations Parameter Plan listed in Schedule 7 to the Order with reference EN020022-2.11-PARA-Sheet 1 and in accordance with the maximum dimensions shown in that table for the buildings and compound –

Table WN5

<i>Component</i>	<i>Maximum Parameter (m)</i>		
	<i>Length</i>	<i>Width</i>	<i>Height</i>
Optical Regeneration Station	11	4	4
Compound	35	18	-
Security Perimeter Fence	35	18	2.45

Detailed design approval

6.—(1) The construction of any phase of Works No. 2 (excluding Works No. 2(a)) or the carrying out of any onshore site preparation works in relation to that phase must not commence until written details of the –

- (a) layout of buildings;
- (b) scale of buildings;
- (c) existing and proposed site levels;
- (d) proposed finished ground floor slab level;
- (e) external appearance and materials of buildings;
- (f) hard surfacing materials;
- (g) location of the attenuation ponds;
- (h) vehicular access, the access road, parking and circulation areas;
- (i) external lighting and lightning protection;
- (j) permanent fencing; and
- (k) proposed services above and below, ground, including drainage, power and communications cables and pipelines, manholes and supports,

relating to that phase of those works and confirming how those details accord with the design principles for the converter station, the onshore outline construction environmental management plan (in so far as relevant to the design of Work No.2) and the surface water drainage and aquifer contamination mitigation strategy (in so far as relevant to the design of Work No.2) have been submitted to and approved in writing by the relevant planning authority (in consultation with the South Downs National Park Authority and, in relation to matters relevant to the surface water drainage and aquifer contamination mitigation strategy only, the Environment Agency and Portsmouth Water).

(2) The construction of any phase of Work No.3 or the carrying out of any onshore site preparation works in respect of the area where the Works No.3 is to be located must not commence until written details of the –

- (a) layout;
- (b) surfacing materials;
- (c) vehicular access, parking and circulation areas; and
- (d) drainage measures,

relating to that phase of those works and confirming how those details accord with the surface water drainage and aquifer contamination mitigation strategy have been submitted to and approved in writing by the relevant planning authority.

(3) The construction of any phase of Works No. 4 must not commence until written details of the –

- (a) proposed layout;
- (b) proposed cable burial depths; and
- (c) indicative location of the joint bays, link boxes and link pillars,

relating to that phase of those works have been submitted to and approved in writing by the relevant planning authority.

(4) The construction of the optical regeneration stations within Works No. 5 must not commence until written details of the –

- (a) layout;
- (b) scale;
- (c) proposed finished floor levels;
- (d) external appearance and materials;
- (e) hard surfacing materials;
- (f) vehicular access, parking and circulation areas;
- (g) permanent fencing; and
- (h) proposed services above and below, ground, including drainage, power and communications cables and pipelines, manholes and supports, security measures and plant,

relating to the optical regeneration stations and confirming how those details accord with the design principles for the optical regeneration stations have been submitted to and approved in writing by the relevant planning authority.

(5) The construction of any phase of Works No.5 (excluding the optical regeneration stations) must not commence until written details of the –

- (a) layout;
- (b) external appearance and materials;
- (c) hard surfacing materials;
- (d) vehicular access, parking and circulation areas;
- (e) proposed services above and below, ground, including drainage, power and communications cables and pipelines, manholes and supports;

relating to that phase of those works have been submitted to and approved in writing by the relevant planning authority.

(6) Works No. 2, 3 and 5 must be carried out in accordance with the approved details.

(7) Works No. 4 must be carried out in accordance with the approved details, save for in relation to such details which are indicative which Work No.4 must be carried out substantially in accordance with.

(8) The external appearance of the buildings within Work No. 2 shall be retained as approved during the operational period unless an amendment or variation is previously agreed in writing by the relevant planning authority save that this shall not prevent the replacement of the approved materials with other materials with the same external appearance.

(9) Any approved permanent fencing in relation to the converter station, the telecommunications buildings and the optical regeneration stations must be completed before the converter station, the telecommunications buildings or the optical regeneration stations (respectively) are brought into use, and maintained for the operation lifetime of the converter station, the telecommunications buildings and the optical regeneration stations (respectively).

(10) HDD must be used for the purpose of passing under–

- (a) Denmead Meadows (in the area identified as a trenchless crossing zone on Sheet 3 of the works plans);
- (b) Langstone Harbour (in the area identified for a trenchless crossing zone on Sheets 7 and 8 of the works plans);
- (c) Sea Defences at Milton Common (in the area identified as a trenchless crossing zone on Sheet 9 of the works plans);
- (d) Eastney and Milton Allotments (in the area identified as a trenchless crossing zone on Sheet 10 of the works plans); and
- (e) Eastney Beach (in the area identified as a trenchless crossing zone on Sheet 10 of the works plans)

(11) Trenchless installation techniques must be used for the purpose of passing under the Brighton to Southampton Railway Line (in the area identified for a trenchless crossing zone on Sheets 7 of the works plans).

Provision of landscaping

7.—(1) No phase of Works No. 2, Works No.4 or the construction of the optical regeneration stations within Works No. 5 may commence and no onshore site preparation works in relation to any such phase may be carried out until a detailed landscaping scheme in relation to that phase (which accords with the outline landscape and biodiversity strategy in so far as relevant to it and the design principles relating to landscaping) has been submitted to and approved by the relevant planning authority (and where related to any phase of Works No. 2 in consultation with the South Downs National Park Authority).

(2) A detailed landscaping scheme for any phase must include details of all proposed hard and soft landscaping works, including (in so far as relevant) -

- (a) surveys, assessments and method statements as guided by BS 5837;
- (b) location, number, species, size, plant protection measures and planting density of any proposed planting;
- (c) cultivation, importing of materials and other operations to ensure plant establishment;
- (d) hard surfacing materials;
- (e) details of existing trees and hedges to be retained, with measures for their protection during the construction period;
- (f) implementation timetables for all landscaping works;
- (g) management, maintenance and monitoring plans and prescriptions; and
- (h) management responsibilities.

Implementation and maintenance of landscaping

8.—(1) All landscaping works must be carried out in accordance with any detailed landscaping scheme approved under requirement 7 applicable to them and to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards.

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

(3) All landscaping provided in connection with Works No.2 and the optical regeneration stations within Works No. 5 must be retained, managed and maintained during the operational period.

Biodiversity management plan

9.—(1) No phase of Works No. 2 or Works No. 5 may commence until a written biodiversity management plan in relation to that phase (which accords with the outline landscape and biodiversity strategy in so far as relevant and the relevant recommendations of appropriate British Standards) has been submitted to and approved by the relevant local planning authority in consultation with the relevant statutory nature conservation bodies and (where works have the potential to have an impact on wetland habitats) the Environment Agency.

(2) No phase of Works No.4 may commence until a written biodiversity management plan in relation to that phase (which accords with the outline landscape and biodiversity strategy in so far as relevant and the relevant recommendations of appropriate British Standards) has been submitted to and approved by the relevant local planning authority in consultation with the relevant statutory nature conservation bodies and (where works have the potential to have an impact on wetland habitats) the Environment Agency.

(3) No part of the onshore site preparation works may commence until a written biodiversity management plan (which accords with the outline landscape and biodiversity strategy in so far as relevant and the relevant recommendations of appropriate British Standards) relating to those works has been submitted to and approved by the relevant local planning authority in consultation with the relevant statutory nature conservation bodies.

(4) Any approved written biodiversity management plan must include:

- (a) measures to protect existing scrub and trees that are to be retained;
- (b) an implementation timetable;
- (c) biodiversity management and maintenance measures; and
- (d) reptile and stag beetle precautionary method statements of works.

(5) Any works for which a written biodiversity management plan has been approved must be carried out in accordance with the written biodiversity management plan approved in relation to them.

Highway accesses

10.—(1) No phase of the authorised development landwards of MHWS may commence until written details of the –

- (a) siting;
- (b) design
- (c) layout
- (d) visibility splays
- (e) access management measures; and
- (f) a maintenance programme,

in respect of any new permanent or temporary means of access to a highway to be used by vehicular traffic, or any alteration or improvement to an existing means of access to a highway used by vehicular traffic, relevant to that phase, has been submitted to and approved by the relevant highway authority (in consultation with the relevant planning authority).

(2) The highway accesses (including visibility splays) where constructed pursuant to this Order must be constructed and maintained in accordance with the approved details.

Construction fencing and other means of enclosure

11.—(1) All construction sites, must remain securely fenced at all times during construction of the authorised development landwards of MHWS.

(2) Any temporary fencing must be removed on completion of the construction of the phase of the authorised development landwards of MHWS it was erected in connection with.

Surface and foul water drainage

12.—(1) No phase of the authorised development landwards of MHWS may commence until for that phase, written details of the surface water drainage system and foul water drainage system (including means of pollution control) have been submitted to and approved by the relevant planning authority in consultation with the lead local flood authority (in relation to surface water drainage) and the sewerage and drainage authority (in relation to foul water drainage).

(2) Any surface or foul water drainage system submitted for approval in relation to a phase of the authorised development must be in accordance with the flood risk assessment and the surface water and aquifer contamination mitigation strategy (in so far as relevant to the phase of the works).

(3) The surface and foul water drainage system for each phase must be constructed and maintained in accordance with the approved details.

(4) If a phase of the authorised development does not include any surface or foul water drainage system the relevant planning authority will be notified.

Contaminated land and groundwater

13.—(1) No phase of the authorised development landwards of MHWS within the area of a relevant planning authority may commence until a written scheme applicable to that phase in accordance with the onshore outline construction environmental management plan and surface water drainage and aquifer contamination mitigation strategy (in so far as relevant), to deal with the contamination of any land, including groundwater, within the Order limits landwards of MHWS which is likely to cause significant harm to persons or pollution of controlled waters or the environment has been submitted to and approved by the relevant planning authority in consultation with the Environment Agency and, to the extent it relates to the intertidal area, the MMO.

(2) The term commence as used in requirement 13(1) includes any onshore site preparation works.

(3) If, during the carrying out of the authorised development contamination of any land, including groundwater, within the Order limits landwards of MLWS which is likely to cause significant harm to persons or pollution of controlled waters or the environment not previously identified is found to be present then the developer will halt the continuation of such part of the authorised development as is to be carried out in the area where the contamination has been identified and submit, and obtain approval from the relevant planning authority in consultation with the Environment Agency and, to the extent it relates to the intertidal area, the MMO for, a written scheme detailing how the contamination will be dealt with.

(4) Any scheme submitted to deal with the contamination of any land, including groundwater, within the Order limits landwards of MHWS which is likely to cause significant harm to persons or pollution of controlled waters or the environment will include an investigation and assessment report, prepared by a specialist consultant approved by the relevant planning authority, to identify the extent of any contamination and the remedial measures to be taken to render the land fit for its intended purpose, together with a management plan which sets out long-term measures with respect to any contaminants remaining on the site.

(5) Remediation must be carried out in accordance with the approved scheme.

(6) Upon completion of the approved scheme, a verification report demonstrating completion of the works set out in the approved scheme and the effectiveness of the remediation will be submitted to and approved, in writing, by the relevant planning authority which must include results of sampling and monitoring carried out to demonstrate that site remediation criteria have been met and a plan for long-term monitoring of pollutant linkages, maintenance and arrangements for contingency action, if appropriate, and for the reporting of this to the relevant planning authority.

(7) Any approved long-term monitoring and maintenance plan will be implemented as approved.

Archaeology

14.—(1) No phase of the authorised development landwards of MHWS may commence until for that phase, a written scheme for the investigation of areas of archaeological interest as identified in the environmental statement has been submitted to and approved by the relevant planning authority.

(2) The term commence as used in requirement 14(1) includes any onshore site preparation works.

(3) The scheme will identify areas where field work and/or a watching brief are required, and the measures to be taken to protect, record or preserve any significant archaeological remains that may be found.

(4) Any archaeological works or watching brief carried out under the scheme must be by a suitably qualified person or body approved by the relevant local planning authority.

(5) Any archaeological works or watching brief must be carried out in accordance with the approved scheme.

Construction environmental management plan

15.—(1) No phase of the authorised development landwards of MHWS may commence and no onshore site preparation works in relation to any such phase may be carried out until a construction environmental management plan relating to that phase has been submitted to and approved by the relevant planning authority.

(2) When approving any construction environmental management plan relating to a phase of Work No.2 and which includes a surface water drainage and aquifer contamination management plan the relevant planning authority must consult with the Environment Agency and Portsmouth Water in relation to that surface water drainage and aquifer contamination management plan prior to any approval of that construction environmental management plan.

(3) Any construction environmental management plan must be in accordance with the outline construction environmental management plan and, so far as relevant to that phase, must –

- (a) contain a record of all sensitive environmental features that have the potential to be affected by construction;
- (b) Contain details of a local community liaison responsibilities;
- (c) Include the following management plans and measures (as relevant to and necessary in connection with the relevant phase of the authorised development) –
 - (i) soil resources management plan (in accordance with the outline soil resources and management plan);
 - (ii) materials management plan (in accordance with the outline materials management plan);
 - (iii) waste management plan (in accordance with the framework waste management plan);
 - (iv) arboriculture method statements;
 - (v) dust management plan;
 - (vi) construction surface water drainage management plan;

- (vii) emergency pollution and spill response plan;
- (viii) earthwork management plan;
- (ix) surface water drainage and aquifer contamination management plan (in accordance with the surface water drainage and aquifer contamination mitigation strategy) which must include:
 - (aa) emergency oil containment and water management plan;
 - (bb) installation, operation and maintenance manual;
 - (cc) sustainable drainage system operation and maintenance strategy;
 - (dd) civil asset management plan;
 - (ee) earthworks method statement and communication plan; and
 - (ff) piling works risk assessment,
- (x) air quality stakeholder communication plan.

(4) The construction of any phase of the authorised development landwards of MHWS must be carried out in accordance with the construction environmental management plan and all supplementary plans approved in relation to it.

External construction lighting

16. No phase of Works No. 2 may commence until written details of external construction lighting to be installed at any of the construction sites within that phase or in relation to that phase in accordance with the onshore outline construction environmental management plan (in so far as relevant) have been submitted to and approved by the relevant local planning authority (in consultation with the South Downs National Park Authority) and any approved means of external construction lighting must be installed only in accordance with the approved details and removed prior to the operational period.

Construction traffic management plan

17.—(1) No phase of the authorised development landwards of MHWS may commence until a construction traffic management plan (in accordance with the framework construction traffic management plan) relating to that phase has been submitted to and approved by the relevant highway authority.

(2) The construction of any phase of the authorised development landwards of MHWS must be carried out in accordance with the construction traffic management plan approved in relation to it.

Construction hours

18.—(1) Subject to requirements 18(3) and 18(4), other than where expressly stated in a construction environmental management plan approved pursuant to requirement 15, construction work will not take place other than:

- (a) in relation to Works No.1, Works No.2 and Works No. 5 between 0800 and 1800 hours on weekdays and 0800 and 1300 hours on Saturdays, excluding public holidays, except in the event of emergency unless otherwise agreed by the relevant local planning authority; and
- (b) in relation to Works No.3 between 0700 and 1800 hours on weekdays and 0800 and 1300 hours on Saturdays, excluding public holidays, except in the event of emergency unless otherwise agreed by the relevant local planning authority;
- (c) in relation to Works No.4 between 0700 and 1700 hours on weekdays and 0800 and 1300 hours on Saturdays, excluding public holidays, except in the event of emergency unless otherwise agreed by the relevant local planning authority;

(2) In the event of an emergency, notification of that emergency must be given to the relevant planning authority as soon as is reasonably practicable.

(3) The operations which it is stated in the onshore outline construction environmental management plan may be carried out outside of the core working hours may be carried out outside of the core working hours in accordance with the working hours stated in the onshore outline construction environmental management plan;

(4) Nothing in this requirement 18 precludes –

- (a) start-up and shut-down activities up to an hour either side of the core working hours; and
- (b) the receipt of oversized deliveries to the site, the arrival and departure of personnel to and from the site, on-site meetings or briefings, and the use of welfare facilities and non-intrusive activities.

(5) In this requirement –

- (a) “core working hours” means the working hours stated in relation to the relevant operations at paragraphs (1)(a), (1)(b) and 1(c);
- (b) “emergency” means a situation where, if the relevant action is not taken, there will be adverse health, safety, security or environmental consequences that in the reasonable opinion of the undertaker would outweigh the adverse effects to the public (whether individuals, classes or generally as the case may be) of taking that action; and
- (c) “non-intrusive activities” means activities which would not create any discernible light, noise or vibration outside the Order limits.

Converter station operational access strategy

19. Prior to the operation of the converter station a strategy for the access and egress of vehicles associated with the operation and maintenance of the converter station shall be submitted to and approved by the relevant highway authority.

Control of noise during the operational period

20.—(1) Prior to the operation of that relevant part of the authorised development landwards of MHWS a noise management plan for:

- (a) Work No.2; and
- (b) the optical regeneration stations;

must be submitted to and approved by the relevant planning authority.

(2) The noise management plans must set out the particulars of –

- (a) the broadband and octave band noise criteria that must be achieved, which unless otherwise agreed will be those set out in the operational broadband and octave band noise criteria document;
- (b) the noise attenuation and mitigations required to achieve the broadband and octave band noise criteria; and
- (c) a noise monitoring scheme for testing the attenuation and mitigation measures provided under subparagraph (b) which must include –
 - (i) the circumstances under which noise will be monitored;
 - (ii) the locations at which noise will be monitored, which unless otherwise agreed will be the locations specified in the operational broadband and octave band noise criteria document;
 - (iii) the method for noise measurement (which must be in accordance with BS 4142:2014+A1:2019, an equivalent successor standard or other agreed noise measurement methodology appropriate to the circumstances); and
 - (iv) a complaints procedure

(3) The noise management plans must be implemented as approved and maintained for the operational period of those parts of the authorised development.

Travel plan

21.—(1) No phase of the authorised development will be commenced until, after consultation with the relevant planning authority and the relevant highway authority, a travel plan for the contractor's workforce in accordance with the framework construction worker travel plan (in so far as relevant), which must include details of the expected means of travel to and from Works No. 2 (including in connection with Works No.4) and Works No.5 and any parking to be provided, has been submitted to and approved by the relevant planning authority(s).

(2) The plan approved under paragraph (1) must be implemented during the construction of the authorised development.

Restoration of land used temporarily for construction

22. The undertaker must confirm to the relevant planning authorities the date of the completion of the construction of the authorised development and any land within the Order limits landwards of MLWS which is used temporarily for construction of the authorised development must be reinstated to its former condition, or such condition as the relevant local planning authority may approve but which may not be to a standard which is higher than its former condition, within not more than twelve months of the date of the completion of the construction of the authorised development.

Control of lighting during the operational period

23. During the operational period there will be no external lighting of Works No.2 during the hours of darkness save for in exceptional circumstances, including in the case of emergency and where urgent maintenance is required.

Decommissioning

24.—(1) In the event that, at some future date, the authorised development landwards of MHWS, or any part of it, is to be decommissioned, a written scheme of decommissioning must be submitted for approval by the relevant planning authority.

(2) Any approved written scheme of decommissioning must be implemented as approved, unless otherwise approved by the relevant planning authority.

Traffic management strategy

25.—(1) No phase of Works No.4 to be undertaken on the highway may commence until a traffic management strategy (substantially in accordance with the framework traffic management strategy) relating to that phase has been submitted to and approved by the relevant highway authority detailing:

- (a) plans detailing the extent of the works;
- (b) the construction methodology in relation to the works including details of the hours of the day within which the works are to be carried out;
- (c) a schedule of timings for the works, including the dates and durations for any closures of any part of the public highway;
- (d) the traffic management strategy to be implemented in relation to those works, including details of any traffic signals and signs and any traffic regulation measures proposed in connection with those works;
- (e) a schedule of condition of any part of the public highway to be affected by the works;
- (f) a specification of the condition of the parts of the public highway where the works are to be undertaken;
- (g) details of any lighting to be used in connection with the works for the duration that the works are being undertaken;

- (h) contact details for the client and contractor carrying out the works;
- (i) details of the advanced publicity to be carried out in connection with those works;
- (j) details of the proposed approach to the reinstatement of the public highway in connection with those works, including (where applicable) details of both temporary and permanent reinstatement;

(2) The construction of any phase of Works No.4 must be carried out in accordance with the traffic management strategy approved in relation to it.

Requirement for written approval

26. Where under any of the above requirements the approval or agreement of the relevant planning authority or another person is required, that approval or agreement must be given in writing.

Amendments to approved details

27.—(1) With respect to any requirement which requires the authorised development to be carried out in accordance with the details approved by the relevant planning authority or the relevant highway authority or any other person, the approved details must be carried out as approved unless an amendment or variation is previously agreed in writing by the relevant planning authority or the relevant highway authority or that person in accordance with subparagraph (2).

(2) Any amendments to or variations from the approved details must be in accordance with the principles and assessments set out in the environmental statement. Such agreement may only be given in relation to changes which are not material where it has been demonstrated to the satisfaction of the relevant planning authority or the relevant highway authority or that person that the subject matter of the agreement sought is not likely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

(3) The approved details must be taken to include any amendments that may subsequently be approved in writing by the relevant planning authority or that other person.

SCHEDULE 3

Article 3

Procedure for approvals, consents and appeals

Applications made under a Requirement

1.—(1) Except where otherwise specified within Schedule 2 (Requirements) of this Order, where an application has been made to a discharging authority for any agreement or approval required by a Requirement included in this Order:

- (a) the undertaker must give the discharging authority sufficient information to identify the requirement(s) to which the application relates;
- (b) the undertaker must provide such particulars, and the request must be accompanied by such plans and drawings, as are reasonably considered necessary to deal with the application; and
- (c) the discharging 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, 40 working days from the day immediately following that on which the application is received by the authority;
- (b) where further information is requested under paragraph 2, 40 working days from the day immediately following that on which 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 discharging authority in writing before the end of the period in sub-paragraph (a) or (b).

Further Information

2.—(1) In relation to any application to which this Schedule applies, the discharging 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 discharging authority considers such further information to be necessary and the requirement does not specify that consultation with a requirement consultee is required, it must, as soon as is reasonably practicable and within 15 working days of receipt of the application, notify the undertaker in writing specifying the further information required.

(3) If the requirement specifies that consultation with a requirement consultee is required, the discharging authority must issue a copy of materials in support of the application to the requirement consultee within 10 working days of receipt of the application, and must notify the undertaker in writing specifying any further information requested by the requirement consultee within 10 working days of receipt of such a request and in any event within 25 working days of receipt of the application.

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

Appeals

3.—(1) The undertaker may appeal to the Secretary of state in the event that –

- (a) The discharging authority refuses an application for any agreement or approval required by a requirement included in this Order;
- (b) The discharging authority does not give notice of its decision to the undertaker within the decision period specified at paragraph 1(2);

- (c) on receipt of a request for further information pursuant to paragraph 2 the undertaker considers that either the whole or part of the specified information requested by the discharging authority is not necessary for consideration of the application; or
 - (d) on receipt of any further information requested, the discharging 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 must be as follows –
- (a) the undertaker must submit to the Secretary of State a copy of the application submitted to the discharging authority and any supporting documentation which the undertaker may wish to provide (“the appeal documentation”);
 - (b) the undertaker must on the same day provide copies of the appeal documentation to the discharging authority and requirement consultee (if applicable);
 - (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 discharging authority and the requirement consultee (if applicable) must submit written representations to the appointed person in respect of the appeal within 10 working days of the date on which the appeal parties are notified of the appointment of a person under sub-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 10 working days of receipt of written representations pursuant to sub-paragraph (d); and
 - (f) the appointed person must make a decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable.
- (3) If the appointed person considers that further information is necessary to enable the appointed person to consider the appeal, he 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.
- (4) Any further information required pursuant to sub-paragraph (3) must 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 working days of that date.
- (5) 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 discharging 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.
- (6) The appointed person may proceed to a decision on an appeal taking into account only such written representations as have been sent within the time limits prescribed, or set by the appointed person, under this paragraph.
- (7) The appointed person may proceed to a decision even though no written representations have been made within those 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.
- (8) The decision of the appointed person on an appeal must be final and binding on the parties, and a court may entertain proceedings for questioning the decision only if the proceedings are brought by a claim for judicial review.
- (9) If an approval is given by the appointed person pursuant to this Schedule, it must be deemed to be an approval for the purpose of Schedule 2 (Requirements) of this Order as if it had been

given by the discharging authority. The discharging 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) must not be taken to affect or invalidate the effect of the appointed person's determination.

(10) Save where a direction is given pursuant to sub-paragraph (11) requiring the costs of the appointed person to be paid by the discharging authority, the reasonable costs of the appointed person must be met by the undertaker.

(11) On application by the discharging 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 must be made, the appointed person must have regard to Communities and Local Government Circular 03/2009 or any circular or guidance which may from time to time replace it.

Interpretation of this Schedule

4. In this Schedule –

“the appeal parties means” the discharging authority, the requirement consultee and the undertaker; and

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

SCHEDULE 4

Article 2

Land plans

<i>Drawing number</i>	<i>Rev</i>	<i>Drawing Title</i>	<i>Scale</i>	<i>Paper size</i>
EN020022-2.2-LP-Sheet0	02	Land Plans - Sheet 0 of 10	1:22,500	A1
EN020022-2.2-LP-Sheet1	02	Land Plans - Sheet 1 of 10	1:2,500	A1
EN020022-2.2-LP-Sheet2	02	Land Plans - Sheet 2 of 10	1:2,500	A1
EN020022-2.2-LP-Sheet3	02	Land Plans - Sheet 3 of 10	1:2,500	A1
EN020022-2.2-LP-Sheet4	02	Land Plans - Sheet 4 of 10	1:2,500	A1
EN020022-2.2-LP-Sheet5	02	Land Plans - Sheet 5 of 10	1:2,500	A1
EN020022-2.2-LP-Sheet6	02	Land Plans - Sheet 6 of 10	1:2,500	A1
EN020022-2.2-LP-Sheet7	02	Land Plans - Sheet 7 of 10	1:2,500	A1
EN020022-2.2-LP-Sheet8	02	Land Plans - Sheet 8 of 10	1:2,500	A1
EN020022-2.2-LP-Sheet9	02	Land Plans - Sheet 9 of 10	1:2,500	A1
EN020022-2.2-LP-Sheet10	02	Land Plans - Sheet 10 of 10	1:2,500	A1

SCHEDULE 5

Article 2

Works plans

<i>Drawing number</i>	<i>Rev</i>	<i>Drawing Title</i>	<i>Scale</i>	<i>Paper size</i>
EN020022-2.4-WP-Sheet0	02	Works Plans - Sheet 0 of 12	1:150,000	A1
EN020022-2.4-WP-Sheet1	02	Works Plans - Sheet 1 of 12	1:2,500	A1
EN020022-2.4-WP-Sheet2	02	Works Plans - Sheet 2 of 12	1:2,500	A1
EN020022-2.4-WP-Sheet3	02	Works Plans - Sheet 3 of 12	1:2,500	A1
EN020022-2.4-WP-Sheet4	02	Works Plans - Sheet 4 of 12	1:2,500	A1
EN020022-2.4-WP-Sheet5	02	Works Plans - Sheet 5 of 12	1:2,500	A1
EN020022-2.4-WP-Sheet6	02	Works Plans - Sheet 6 of 12	1:2,500	A1
EN020022-2.4-WP-Sheet7	02	Works Plans - Sheet 7 of 12	1:2,500	A1
EN020022-2.4-WP-Sheet8	02	Works Plans - Sheet 8 of 12	1:2,500	A1
EN020022-2.4-WP-Sheet9	02	Works Plans - Sheet 9 of 12	1:2,500	A1
EN020022-2.4-WP-Sheet10	02	Works Plans - Sheet 10 of 12	1:2,500	A1
EN020022-2.4-WP-Sheet11	02	Works Plans - Sheet 11 of 12	1:75,000	A1
EN020022-2.4-WP-Sheet12	02	Works Plans - Sheet 12 of 12	1:75,000	A1

SCHEDULE 6

Article 2

Access and rights of way plans

<i>Drawing number</i>	<i>Rev</i>	<i>Drawing Title</i>	<i>Scale</i>	<i>Paper size</i>
EN020022-2.5-AROW-Sheet0	02	Access and Right of Way Plan - Sheet 0 of 10	1:22,500	A1
EN020022-2.5-AROW-Sheet1	02	Access and Right of Way Plan - Sheet 1 of 10	1:2,500	A1
EN020022-2.5-AROW-Sheet2	02	Access and Right of Way Plan - Sheet 2 of 10	1:2,500	A1
EN020022-2.5-AROW-Sheet3	02	Access and Right of Way Plan - Sheet 3 of 10	1:2,500	A1
EN020022-2.5-AROW-Sheet4	02	Access and Right of Way Plan - Sheet 4 of 10	1:2,500	A1
EN020022-2.5-AROW-Sheet5	02	Access and Right of Way Plan - Sheet 5 of 10	1:2,500	A1
EN020022-2.5-AROW-Sheet6	02	Access and Right of Way Plan - Sheet 6 of 10	1:2,500	A1
EN020022-2.5-AROW-Sheet7	02	Access and Right of Way Plan - Sheet 7 of 10	1:2,500	A1
EN020022-2.5-AROW-Sheet8	02	Access and Right of Way Plan - Sheet 8 of 10	1:2,500	A1
EN020022-2.5-AROW-Sheet9	02	Access and Right of Way Plan - Sheet 9 of 10	1:2,500	A1
EN020022-2.5-AROW-Sheet10	02	Access and Right of Way Plan - Sheet 10 of 10	1:2,500	A1

SCHEDULE 7

Article 2

Parameter plans

<i>Drawing number</i>	<i>Rev</i>	<i>Drawing Title</i>	<i>Scale</i>	<i>Paper size</i>
EN020022-2.6- PARA- Sheet1	02	Converter Station and Telecommunications Buildings Parameter Plans Combined Options - Sheet 1 of 3	1:1,250	A1
EN020022-2.6- PARA-Sheet2	02	Converter Station and Telecommunications Buildings Parameter Plans Option B(i) - Sheet 2 of 3	1:1,250	A1
EN020022-2.6- PARA-Sheet3	02	Converter Station and Telecommunications Buildings Parameter Plans Option B(ii) - Sheet 3 of 3	1:1,250	A1
EN020022-2.11- PARA-Sheet1	02	Optical Regeneration Parameter Plan - Sheet 1 of 1	1:500	A1

SCHEDULE 8

Article 13

Streets and public rights of way to be temporarily stopped up

<i>(1) Street or private means of access to be stopped up or suspended</i>	<i>(2) Extent of stopping up or suspension</i>	<i>(3) Access and rights of way plans sheet number</i>
Highways (footway and roadway)		
Broadway Lane and Day Road	Between points TSH/1/a, TSH/1/b and TSH/1/c	Sheet 1
Broadway Lane	Between points TSH/1/d and TSH/1/e	Sheet 1
Anmore Road	Between points TSH/2/a and TSH/2/b	Sheet 2
London Road	TSH/5/a and TSH/5/b	Sheet 5
Farlington Avenue, Havant Road and Eveleigh Road	Between points TSH/6/a, TSH/6/b and TSH/6/c	Sheet 6
Havant Road	Between points TSH/6/d and TSH/6/e	Sheet 6
Eastern Avenue	Between points TSH/9/a and TSH/9/b	Sheet 9
Moorings Way	Between points TSH/9/c and TSH/9/d	Sheets 9 and 10
Bransbury Road and Ironbridge Lane	Between points TSH/10/a and TSH/10/b	Sheet 10
Ironbridge Lane	Between points TSH/10/c and TSH/10/d	Sheet 10
Unnamed road	Between points TSH/10/e and TSH/10/f	Sheet 10
Footpaths		
Footpath 16	Between points TSF/1/a and TSF/1/b	Sheet 1
Footpath 4	Between points TSF/1/b and TSF/1/c	Sheet 1
Footpath 13	Between points TSF/2/a and TSF/2/b	Sheet 2
Footpath 24	Between points TSF/6/a and TSF/6/b	Sheet 6
Footpath 33	Between point TSF/7/a and TSF/7/b	Sheet 7
Permissive paths		
Permissive paths in and around Milton Common	Between points TSPP/9/a, TSPP/9/b and TSPP/9/c	Sheet 9
	Between points TSPP/9/d and TSPP/9/e	Sheet 9
	Between points TSPP/9/f and TSPP/9/g	Sheet 9
	Between points TSPP/9/h and TSPP/9/i	Sheet 9
	Between points TSPP/9/j and TSPP/9/k	Sheet 9

	Between points TSPP/9/l and TSPP/9/m	Sheet 9
	Between points TSPP/9/n and TSPP/9/o	Sheet 9
	Between points TSPP/9/r, TSPP/9/p and TSPP/9/q	Sheet 9

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

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, in the case of a compulsory acquisition under this Order of a right by the creation of a new right or the imposition of a restrictive covenant as they apply in respects compensation on the compulsory purchase of land and interests in land.

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

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

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

3. [In section 58(1) (determination of material detriment where part of house etc. proposed for compulsory acquisition), as it applies to determinations under section 8 (other provisions as to divided land) of the 1965 Act as substituted by paragraph 6—

- (a) for “part” in paragraphs (a) and (b) substitute “a right or restrictive covenant affecting land consisting”; and
- (b) for “severance” substitute “right or restrictive covenant over or affecting the whole of the park or garden”.]

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

(2) For section 5A(5A) of the 1961 Act, after ‘if’ substitute—

- “(a) the acquiring authority enters on land for the purpose of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act;
- (b) the acquiring authority is subsequently required by a determination under paragraph 13 of Schedule 2A to the 1965 Act (as substituted by paragraph 10 of Schedule 9 to the AQUIND Interconnector Order [*]) 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 the 1965 Act

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

(a) 1973 c.26.

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 or is to be enforceable.

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

6. For section 7 of the 1965 Act (measure of compensation) 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.”

7. For section 8 of the 1965 Act (other provisions as to divided land) there is substituted the following section—

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

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

the AQUIND Interconnector Order [*] (“the Order”), in relation to that person, ceases to authorise the purchase of the right and is deemed to authorise the purchase of that person’s interest in the whole of the relevant land including, where the land consists of such a park or garden, the house to which it belongs, and the notice is deemed to have been served in respect of that interest on such date as the tribunal directs.

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

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

8.—(1) 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 (owners under incapacity);
- (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 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.

9. Section 11 of the 1965 Act (powers of entry) is modified to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right or restriction, [as well as notice of entry as required by subsection (1)], 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 (which is deemed for this purpose to have been created on the date of service of the notice); and sections 11A (powers of entry: further notices of entry), 11B (counter-notice requiring possession to be taken on a specified date), 12 (penalty for unauthorised entry) and 13 (entry on warrant in the event of obstruction) of the 1965 Act are modified correspondingly.

10. Section 20 of the 1965 Act (protection for interests 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.

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

12. For Schedule 2A of the 1965 Act substitute—

“SCHEDULE 2A COUNTER-NOTICE REQUIRING PURCHASE OF LAND

Introduction

1. – (1) This Schedule applies where an acquiring authority serve 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 25 (Application of the Compulsory Purchase (Vesting Declarations) Act 1981) of the AQUIND Interconnector Order [*] in respect of the land to which the notice to treat relates.

(2) But see article 27(3) (acquisition of subsoil or airspace only) of the AQUIND Interconnector Order 202[*] which excludes acquisition of subsoil 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 28 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 decides to refer the counter-notice to the Upper Tribunal they must do so within the decision period.

8. If the authority does 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 serves 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 10

Article 30

Land of which temporary possession may be taken

<i>(1) Purpose for which temporary possession may be taken</i>	<i>(2) Plot reference (as shown on land plans)</i>	<i>(3) Land plans sheet number</i>
Activities in connection with the construction of Work No. 2	1-34, 1-45, 1-46, 1-50, 1-54, 1-57, 1-60, 1-65, 1-66, 1-67, 1-68, 1-71, 1-73	Sheet 1
Temporary work area (Work No. 3) in connection with Work No.s 1, 2 and 4	1-39, 1-60	Sheet 1
Activities in connection with Work No. 4	3-11, 7-14, 7-15, 8-03b, 8-03c, 8-03d, 8-09, 10-02, 10-03, 10-08, 10-09	Sheets 3, 7, 8 and 10
For the purpose of and for the duration required to clear any breakout of bentonite drilling lubricant in connection with the undertaking of a HDD beneath the Eastney and Milton Allotments	10-14	Sheet 10

SCHEDULE 11

Article 42

Trees subject to tree preservation orders

<i>Type survey reference</i>	<i>Indicative works to be carried out</i>	<i>TPO reference</i>	<i>TPO name</i>
T2016, T2018	Potential removal	43/1977	No.2, 2A & 4 Down End Road, Farlington, Portsmouth
T925	Potential removal	201/1997	Scoutlands, 261 Havant Road, Farlington, Portsmouth
T59	Potential removal	195/1997	Great Salterns, Mansion, Eastern Road, Copnor, Portsmouth
G593, G602, G739	Potential removal	230/2004	Halliday Crescent, Southsea
T168, T169, T172	Potential removal	1002	150-152, London Road, Waterlooville
G651	Potential removal	1303	Land south of the Vicarage, London Road, Purbrook
W2001	Potential removal	1472	The Vicarage, London Road, Purbrook
T2006	Potential removal	1560	Elettra Avenue, Waterlooville
T154	Potential removal	1619	1 and 2 Silverthorne Way, Waterlooville
G652	Potential removal	1842	Land South of Marrelswood Estate
T160	Potential removal	1899	134 London Road, Waterlooville
G688	Potential removal	1945	138 London Road, Waterlooville
T161	Potential removal	2007	Land to the west of Maurepas Way, Waterlooville
T2016, T2018	Potential removal	43/1977	No.2, 2A & 4 Down End Road, Farlington, Portsmouth
T306, T302	Potential removal	1350G1	Field Known as Denmead Gap Forest Road Denmead Hampshire
T300	Potential removal	1350G6	Field Known as Denmead Gap Forest Road Denmead Hampshire

SCHEDULE 12

Article 41

Removal of important of hedgerows

<i>Area</i>	<i>Hedgerow ID</i>	<i>Sheet Reference</i>	<i>Plan</i>	
			<i>Removal, partial removal or retained</i>	
			<i>Option B(i)</i>	<i>Option B(ii)</i>
Winchester	HR05	EN020022-2.12-HTPO-Sheet1	Partial removal	Retained
Winchester	HR06	EN020022-2.12-HTPO-Sheet1	Partial removal	Retained
Winchester	HR07	EN020022-2.12-HTPO-Sheet1	Partial removal	Partial removal
Winchester	HR08	EN020022-2.12-HTPO-Sheet1	Removal	Retained
Winchester	HR10	EN020022-2.12-HTPO-Sheet1	Partial removal	Retained
Winchester	HR13	EN020022-2.12-HTPO-Sheet1	Partial removal	Partial removal
Winchester	HR15	EN020022-2.12-HTPO-Sheet1	Partial removal	Partial removal
Winchester	HR16	EN020022-2.12-HTPO-Sheet1	Removal	Removal
East Hampshire	HR17	EN020022-2.12-HTPO-Sheet1	Partial removal	Partial removal
Winchester	HR19	EN020022-2.12-HTPO-Sheet1	Partial removal	Partial removal
East Hampshire	HR20	EN020022-2.12-HTPO-Sheet1	Partial removal	Partial removal
East Hampshire	HR23	EN020022-2.12-HTPO-Sheet1	Removal	Removal
Winchester	HR28	EN020022-2.12-HTPO-Sheet1	Partial removal	Partial removal
Winchester	HR31	EN020022-2.12-HTPO-Sheet3	Partial removal	Partial removal
Winchester	HR57	EN020022-2.12-HTPO-Sheet3	Partial removal	Partial removal
Havant	HR66	EN020022-2.12-HTPO-Sheet4	Partial removal	Partial removal

Protective provisions

Part 1

PROTECTION FOR ELECTRICITY, GAS, WATER AND SEWERAGE
UNDERTAKERS**[Application]**

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

Interpretation

2.—(1) In this part —

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

“apparatus” means—

- (a) in the case of a statutory undertaker within paragraph (a) of the definition of that term, electric lines or electrical plant (as defined in the Electricity Act 1989), belonging to or maintained by the statutory 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 a gas transporter for the purposes of gas supply;
- (c) in the case of a statutory undertaker within paragraph (c) of the definition of that term, mains, pipes or other water apparatus belonging to or maintained by the statutory undertaker for the purposes of water supply and any water mains or service pipes (or part of a water main or service pipe) that is the subject of an agreement to adopt made under section 51A (agreements to adopt water main or service pipe at future date) of the Water Industry Act 1991 at the time of the works mentioned in this Part; and
- (d) in the case of a sewerage undertaker—
 - (i) any drain or works vested in the sewerage undertaker under the Water Industry Act 1991; 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 or an agreement to adopt made under section 104 of that Act, 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;

“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;

“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 (gas supply) of the Gas Act 1986(a);
- (c) a water undertaker within the meaning of the Water Industry Act 1991(b);
- (d) a sewerage undertaker within the meaning of part 1 (preliminary) of the Water Industry Act 1991; and

for the area of the authorised development, and in relation to any apparatus, means the statutory undertaker to whom it belongs or by whom it is maintained.

On-street apparatus

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

Apparatus in stopped up streets

4. Regardless of the temporary stopping up or diversion of any highway under the powers conferred by article 13 (temporary stopping up of streets and public rights of way), a statutory undertaker is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

Protective works to buildings

5. The undertaker, in the case of the powers conferred by article 19 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus.

Acquisition of apparatus

6. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

Removal of apparatus

7.—(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 or requires that the statutory undertakers apparatus is relocated or diverted, 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 and to gain access to it will not be extinguished until, if so required by the statutory undertaker, alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the statutory undertaker in question in accordance with paragraphs (2) to (6).

(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 statutory undertaker in question 28 days' written notice of that requirement, together with a plan and section of the work proposed and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order a statutory undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the statutory undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(a) 1986 c. 44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c.45), and was further amended by section 76 of the Utilities Act 2000 (c.27).

(b) 1991 c.56.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in subparagraph (2) in land in which the alternative apparatus or part of such apparatus is to be constructed the statutory undertaker in question must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in other land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the statutory undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 45 (arbitration).

(5) The statutory undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 45 (Arbitration), and after the grant to the statutory undertaker of any such facilities and rights as are referred to in sub-paragraph (2) and (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under this Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the statutory undertaker in question that it desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus, 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.

Facilities and rights for alternative apparatus

8.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a statutory undertaker facilities and rights for the construction and maintenance in land of the undertaker for alternative apparatus in substitution for apparatus to be removed, those facilities and rights will be granted upon such terms and conditions as may be agreed between the undertaker and the statutory undertaker in question or in default of agreement settled by arbitration in accordance with article 45 (Arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the statutory undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator may make such provision for the payment of compensation by the undertaker to that statutory undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection

9.—(1) Not less than 28 days before starting the execution of any works referred to in paragraph 7(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 7(2), the undertaker must submit to the statutory undertaker in question 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 protection of the apparatus, or for securing access to it, 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 21 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, paragraph 1 to 3 and 6 to 8 apply as if the removal of the apparatus had been required by the undertaker under paragraph 7(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 statutory undertaker in question 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 (3) in so far as is reasonably practicable in the circumstances.

Compensation

10.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraphs 5 or 7(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a statutory undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any statutory undertaker, the undertaker must—

- (a) bear and pay on demand the cost reasonably incurred by that statutory undertaker in making good such damage or restoring the supply; and
- (b) make reasonable compensation to that statutory undertaker for any other expenses, loss, demands or proceedings, damages, claims, penalty or costs incurred by the statutory undertaker,

by reason or in consequence of any such damage or interruption.

(2) The fact that any act or thing may have been done by a statutory undertaker on behalf of the undertaker or in accordance with a plan approved by a statutory undertaker or in accordance with any requirement of a statutory undertaker or under its supervision does not, subject to sub-paragraph (3), excuse the undertaker from liability under the provisions of sub-paragraph (1).

(3) Nothing in sub-paragraph (1) must impose any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the neglect or default of a statutory undertaker, its officers, servants, contractors or agents.

(4) A statutory undertaker must give the undertaker reasonable prior written notice of any claim or demand, and no settlement or compromise may be made without the consent of the undertaker who, if it withholds such consent, shall have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand..

Expenses

11.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to the statutory undertaker in question the reasonable expenses incurred by that statutory undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 7(2)..

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

(3) If in accordance with 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 45 (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 statutory undertaker in question 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 statutory undertaker in question 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.

Co-operation

12. Where in consequence of the proposed construction of any of the authorised development, the undertaker or a statutory undertaker requires the removal of apparatus under paragraph 7(2) or a statutory undertaker makes requirements for the protection or alteration of apparatus under paragraph 9, the undertaker must use best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of the statutory undertaker's undertaking and each statutory undertaker must use its best endeavours to co-operate with the undertaker for that purpose.

Disputes

13. Any difference or dispute arising between the undertaker and a statutory undertaker under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and the statutory undertaker in question, be determined by arbitration in accordance with article 45 (arbitration).

Enactments and agreements

14. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and a statutory undertaker in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Part 2

PROTECTION FOR OPERATORS OF ELECTRONIC COMMUNICATIONS NETWORKS

Application

1.—(1) The provisions of this Part have effect for the protection of operators unless otherwise agreed in writing between the undertaker and the operator in question.

(2) This Part does not apply to—

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

Interpretation

2. In this part —

“2003 Act” means the Communications Act 2003;

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

“electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act;

“electronic communications code network” means—

- (a) so much of an electronic communications network or infrastructure 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 (application of the electronic communications code) 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;

“infrastructure system” has the same meaning as in the electronic communications code and references to providing an infrastructure system are to be construed in accordance with paragraph 7(2) of that code; and

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

Electronic communications apparatus installed on, under or over any land

3. The exercise of the powers in article 33 (statutory undertakers) is subject to Part 10 (undertaker’s works affecting electronic communications apparatus) of the electronic communications code.

Compensation

4.—(1) Subject to sub-paragraphs (2) to (3), 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 the property of an operator, the undertaker must—

- (a) bear and pay on demand the cost reasonably incurred by that statutory undertaker in making good such damage or restoring the supply;

- (b) make reasonable compensation to that statutory undertaker for any other expenses, loss, demands or proceedings, damages, claims, penalty or costs incurred by the statutory undertaker,

by reason or in consequence of any such damage or interruption.

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

(3) Any difference arising between the undertaker and the operator under this paragraph must, unless otherwise agreed in writing between the operator and the undertaker, be referred to and settled by arbitration under article 45 (Arbitration).

(4) 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.

Co-operation

5. In respect of any specified work or the acquisition of rights under or over or use of the statutory undertaker's property, the statutory undertaker must co-operate with the undertaker with a view to avoiding undue delay.

Enactments and agreements

6. Nothing in this Part affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Part 3

FOR THE PROTECTION OF SOUTHERN GAS NETWORKS PLC AS GAS UNDERTAKER

[Application

1. For the protection of SGN the following provisions will, unless otherwise agreed in writing between the undertaker and SGN, have effect.

Interpretation

2. In this part —

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

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

“apparatus” means any gas mains, pipes, pressure governors, ventilators, cathodic protections, cables or other apparatus belonging to or maintained by SGN for the purposes of gas distribution together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of SGN 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 works” has the same meaning as is given to the term “authorised development” in article 2 of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

“commence” has the same meaning as in article 2 and commencement shall be construed to have the same meaning save that for the purposes of this Part of the Schedule the terms commence and commencement include all matters comprised in the Onshore Site Preparation Works save for the temporary display of site notices and advertisement;

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

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by SGN (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for SGN’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“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” shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of SGN including retain, lay, construct, inspect, maintain, protect, use, access, enlarge, replace, renew, remove, decommission or render unusable or remove the apparatus;

“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;

“rights” shall include rights and restrictive covenants, and in relation to decommissioned apparatus the surrender of rights, release of liabilities and transfer of decommissioned apparatus;

“SGN” means Southern Gas Networks plc or its successors in title or successor bodies and/or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986.

“specified works” means any of the authorised works or activities undertaken in association with the authorised works which will or may be:

- (a) situated over, or within 15m measured in any direction of any apparatus the removal of which has not been required by the undertaker under sub-paragraph 6(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 sub-paragraph 7(2) or otherwise;

“undertaker” means the undertaker as defined in article 2 of this Order.

On street apparatus

3.—(1) Except for paragraphs 4 (Apparatus of SGN in stopped up streets), 7 (Removal of apparatus) in so far as sub-paragraph 3(2) applies, 8 (Facilities and rights for alternative apparatus) in so far as sub-paragraph 3(2) below applies, 9 (Retained apparatus: protection of SGN) and 10 (Expenses and costs) of this Part of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of SGN, the other provisions of this Part of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and SGN are regulated by the provisions of Part 3 of the 1991 Act.

(2) Paragraph 7 and 8 of this Part of this Schedule shall apply to diversions even where carried out under the 1991 Act, in circumstances where any apparatus is diverted from an alignment within the existing adopted public highway but not wholly replaced within existing adopted public highway.

(3) Notwithstanding articles [11], [12], [30] and [35] or any other powers in the Order generally, s85 of the 1991 Act in relation to cost sharing and the regulations made thereunder shall not apply in relation to any diversion of apparatus of SGN under the 1991 Act.

Apparatus of SGN in stopped up streets

4.—(1) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 13 (temporary stopping up of streets and public rights of way), SGN will be at liberty at all times to take all necessary access across any such stopped up highway and/or to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the temporary stopping up or diversion was in that highway.

Protective works to buildings

5.—(1) The undertaker, in the case of the powers conferred by article 18 (*protective works to buildings*), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of SGN and, if by reason of the exercise of those powers any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) or property of SGN or any interruption in the supply of gas by SGN, as the case may be, is caused, the undertaker must bear and pay on demand the cost reasonably incurred by SGN in making good such damage or restoring the supply; and, subject to sub-paragraph (2), shall:

- (a) pay compensation to SGN for any loss sustained by it by reason or in consequence of any such damage or interruption; and
- (b) indemnify SGN against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by SGN, by reason of any such damage or interruption.

(2) Nothing in this paragraph imposes any liability on the undertaker with respect to any damage or interruption to the extent that such damage or interruption is attributable to the act, neglect or default of SGN or its contractors or workmen.

(3) SGN will give to the undertaker reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made by SGN, save in respect of any payment required under a statutory compensation scheme, without first consulting the undertaker and giving the undertaker an opportunity to make representations as to the claim or demand.

Acquisition of land

6.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not appropriate or acquire any land interest or appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of SGN otherwise than by agreement.

(2) As a condition of agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between SGN and the undertaker) that are subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement and/or other legal or land interest of SGN and/or affects the provisions of any enactment or agreement regulating the relations between SGN and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as SGN reasonably requires enter into such deeds of consent and variations upon such terms and conditions as may be agreed between SGN and the

undertaker acting reasonably and which must be no less favourable on the whole to SGN unless otherwise agreed by SGN.

(3) The undertaker and SGN agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus (including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by SGN and/or other enactments relied upon by SGN as of right or other use in relation to the apparatus, then the provisions in this Schedule shall prevail.

(4) Any agreement or consent granted by SGN under paragraph 9 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph 6(1).

(5) As a condition of an agreement between the parties in sub-paragraph 6(1) that involves de-commissioned apparatus being left in situ in any land of the undertaker, the undertaker must accept a surrender of any existing easement and/or other interest of SGN in such decommissioned apparatus and consequently acquire title to such decommissioned apparatus and release SGN from all liabilities in respect of such de-commissioned apparatus from the date of such surrender.

(6) Where an undertaker acquires land which is subject to any SGN right or interest (including, without limitation, easements and agreements relating to rights or other interests) and the provisions of paragraph 7 do not apply, the undertaker must:

- (a) retain any notice of SGN's easement, right or other interest on the title to the relevant land when registering the undertaker's title to such acquired land; and
- (b) (where no such notice of SGN's easement, right or other interest exists in relation to such acquired land or any such notice is registered only on the Land Charges Register) include (with its application to register title to the undertaker's interest in such acquired land at the Land Registry) a notice of SGN's easement, right or other interest in relation to such acquired land; and
- (c) provide up to date official entry copies to SGN within 20 working days of receipt of such up to date official entry copies.

Removal of apparatus

7.—(1) If, in the exercise of the powers conferred by this Order or under any agreement reached in accordance with paragraph 6 or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus is placed or requires that SGN's apparatus is relocated or diverted, that apparatus must not be decommissioned or removed under this Part of this Schedule and any right of SGN to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, is in operation and the rights and facilities referred to in sub-paragraph (2) have been provided to the reasonable satisfaction of SGN and in accordance with sub-paragraph (2) to (5) inclusive.

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to SGN not less than 28 days' written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order SGN reasonably needs to move or remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to SGN to its satisfaction (taking into account sub-paragraph 8(1) below) the necessary facilities and rights:

- (a) for the construction of alternative apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by SGN in respect of the apparatus);
- (b) subsequently for the maintenance of that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by SGN in respect of the apparatus); and

(c) to allow access to that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by SGN in respect of the apparatus).

(3) If the undertaker is unable to afford the alternative apparatus such necessary facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, SGN must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to assist the undertaker in obtaining the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligations shall not extend to the requirement for SGN to use its compulsory purchase powers to this end unless it (in its absolute discretion) elects to so do.

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

(5) SGN must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the grant to SGN of such facilities and rights as are referred to in sub-paragraph (2) or (3) have been afforded to SGN to its satisfaction, then proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to decommission or remove any apparatus required by the undertaker to be decommissioned or removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

8.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for SGN facilities and rights in land for the access to, construction and maintenance of alternative apparatus in substitution for apparatus to be decommissioned or removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and SGN and must be no less favourable on the whole to SGN than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed unless otherwise agreed by SGN.

(2) If the facilities and rights to be afforded by the undertaker and agreed with SGN under sub-paragraph 8(1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to SGN than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed (in SGN's reasonable opinion) then the terms and conditions to which those facilities and rights are subject in the matter will be referred to arbitration in accordance with paragraph 14 of this Part of this Schedule (arbitration) and the arbitrator shall make such provision for the payment of compensation by the undertaker to SGN as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection of SGN

9.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to SGN a plan and, if reasonably required by SGN, a ground monitoring scheme in respect of those works.

(2) The plan to be submitted to SGN under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc.;
- (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; and
- (f) any intended maintenance regimes.

(3) SGN shall use its reasonable endeavours to provide its approval to or any comments on any plan submitted pursuant to sub-paragraph (2) and detail any reasonable requirements as may be made in accordance with sub-paragraph (6)(a) within not more than 28 days of the date on which a plan under sub-paragraph (1) is submitted to it.

(4) Where SGN provides comments on any plan submitted pursuant to sub-paragraph (1) the undertaker shall provide a response to those comments and where necessary provide any updates to that plan to address the comments made by SGN and SGN shall use reasonable endeavours to confirm whether the plan is approved or whether it has any further comments within 14 days following the date of the response from the undertaker.

(5) Where SGN has provided comments on any plan submitted to sub-paragraph (1) or in response to any response received from the undertaker the undertaker must not commence any works to which sub-paragraphs (1) and (2) apply until SGN has given written approval of the plan so submitted.

(6) Any approval of SGN provided under sub-paragraph (3)—

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

(7) In relation to any work to which sub-paragraphs (1) and/or (2) apply, SGN may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(8) Works to which this paragraph applies must only be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (4), as approved and in accordance with such reasonable conditions given in accordance with sub-paragraph (6)(a) or as amended from time to time by agreement between the undertaker and SGN, and SGN will be entitled to watch and inspect the execution of those works.

(9) Where SGN requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) 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 SGN's reasonable satisfaction prior to the commencement of any authorised works (or any relevant part thereof) for which protective works are required.

(10) Any requirements made by SGN under sub-paragraph (8) must be made within a period of 42 days beginning with the date on which a plan under sub-paragraph (1) is submitted to it

(11) If SGN, 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 3 and 6 to 8 apply as if the removal of the apparatus had been required by the undertaker under sub-paragraph 7(2).

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

(13) The undertaker is not required to comply with sub-paragraphs (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to SGN notice as soon as is reasonably practicable and a plan of those works and must comply with—

- (a) the conditions imposed under sub-paragraph (6)(a) insofar as is reasonably practicable in the circumstances; and
- (b) sub-paragraph (14) at all times.

(14) As soon as reasonably practicable after any ground subsidence event attributable to the authorised works the undertaker shall implement an appropriate ground mitigation scheme save that SGN retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 10.

Expenses and costs

10.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to SGN following receipt of an invoiced demand (including where necessary anticipated disbursements) all charges, costs and expenses reasonably anticipated or incurred by SGN in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or rights or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works as are referred to in this Part of this Schedule including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by SGN in connection with the negotiation or acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs (including professional fees) incurred by SGN as a consequence of SGN;
 - (i) if it elects to do so using its own compulsory purchase powers to acquire any necessary rights under sub-paragraph 7(3); and/or
 - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting SGN;
- (b) in connection with 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;
- (g) any watching brief pursuant to sub-paragraph 9(7).

(2) There shall 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.

(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 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 paragraph 14 of this Part of this Schedule (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 SGN by virtue of sub-paragraph (1) will be reduced by the amount of that excess save where it is not possible or appropriate in the circumstances (including due to statutory or regulatory changes) to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus will 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 will be treated as if it also had been agreed or had been so determined.

Enactments and agreements

11. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between SGN and the undertaker, nothing in this Part of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between the undertaker and SGN 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

12.—(1) Where in consequence of the proposed construction of any of the authorised works, the undertaker or SGN requires the removal of apparatus under sub-paragraph 7(2) or SGN makes requirements for the protection or alteration of apparatus under paragraph 9, the undertaker must use its best endeavours to co-ordinate the execution of the works

- (a) in the interests of safety;
- (b) taking into account the efficient and economic execution of the authorised works; and
- (c) taking into account the need to ensure the safe and efficient operation of SGN's undertaking;

and SGN must co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever SGN's consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

Access

13. If in consequence of the agreement reached in accordance with sub paragraph 6(1) or the powers granted under this Order the access to any apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by SGN in respect of the apparatus) is materially obstructed, the undertaker must provide such alternative rights and means of access to such apparatus as will enable SGN to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

14. Save for differences or disputes arising under sub-paragraphs paragraph 9 any difference or dispute arising between the undertaker and SGN under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and SGN, be determined by arbitration in accordance with article 45 (arbitration).

Notices

15. The plans submitted to SGN by the undertaker pursuant to sub-paragraph 9(1) must be sent to SGN at easements@sgn.co.uk or such other address as SGN may from time to time appoint instead for that purpose and notify to the undertaker.]

Part 4

FOR PROTECTION OF RAILWAY INTERESTS

[Application

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

Interpretation

2. 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 the same is amended from time to time, granted to Network Rail Infrastructure Limited by the Secretary of State in exercise of his powers under section 8 of the Railways Act 1993;

“Network Rail” means Network Rail Infrastructure Limited 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 1159 of the Companies Act 2006^(a)) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

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

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

“railway property” means any railway belonging to Network Rail Infrastructure Limited and—

(a) any station, land, works, apparatus and equipment belonging to Network Rail Infrastructure Limited or connected with any such railway; and

(b) any easement or other property interest held or used by Network Rail Infrastructure Limited for the purposes of such railway or works, apparatus or equipment; and

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

Railway operational procedures

3.—(1) Where under this Schedule 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) 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 their reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised works pursuant to this Order.

Acquisition of land

4.—(1) The undertaker must not exercise the powers conferred by article 20 (Compulsory acquisition of land) article 23 (Compulsory acquisition of rights and the imposition of restrictive covenants), article 26 (Acquisition of subsoil only) and article 29 (Temporary use of land for carrying out authorised development) or the powers conferred by section 11(3) of the 1965 Act in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

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

(3) The undertaker must not exercise the powers conferred by sections 271 or 272 of the 1990 Act, article 33 (Statutory Undertakers), in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

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

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

Approval of plans etc.

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

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated his disapproval of those plans and the grounds of his disapproval the undertaker may serve upon the engineer written notice requiring the engineer to intimate his approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further 28 days the engineer has not intimated his approval or disapproval, he shall be deemed to have approved the plans as submitted.

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

(4) When signifying his approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in his opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using 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 works), and such protective works as may be reasonably necessary for those purposes must be constructed by Network Rail or by the undertaker, if Network Rail so desires, and 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 works until the engineer has notified the undertaker that the protective works have been completed to his reasonable satisfaction.

Carrying out of works

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

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

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

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

Facilities

7.—(1) 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 he may reasonably require with regard to a specified work or the method of constructing it.

8. Network Rail must at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by Network Rail under this Schedule 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.

Network Rail Apparatus

9.—(1) If any permanent or temporary alterations or additions to railway property, are reasonably necessary in consequence of the construction of a specified work, or during a period of 24 months after the completion of that work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the undertaker reasonable notice of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work is to be constructed, Network Rail must assume construction of that part of the specified work and the undertaker must, notwithstanding any such approval of a specified work under paragraph 5(3), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

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

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

Expenses

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

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

Electromagnetic interference

11.—(1) In this paragraph-

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

“Network Rail’s apparatus” means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised works) which are owned or used by

Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signaling or other communications.

(2) This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail’s apparatus carried out after approval of plans under paragraph 5(1) for

the relevant part of the authorised works giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

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

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

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

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

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

(7) In the event of EMI having occurred –

- (a) the undertaker must afford reasonable facilities to Network Rail for access to the undertaker's apparatus in the investigation of such EMI;
- (b) Network Rail must afford reasonable facilities to the undertaker for access to Network Rail's apparatus in the investigation of such EMI; and
- (c) Network Rail must make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail's apparatus or such EMI.

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

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

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

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

(11) In relation to any dispute arising under this paragraph the reference in article 45 (Arbitration) to the Institution of Civil Engineers shall be read as a reference to the Institution of Electrical Engineers.

Maintenance of the authorised development

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

Illuminated signs etc.

13. 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.

Additional expenses

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

indemnity

15.—(1) The undertaker must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Schedule which may be occasioned to or reasonably incurred by Network Rail—

- (a) by reason of the construction or maintenance of a specified work or the failure thereof or
- (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work;

and the undertaker must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission: and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under his supervision shall not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

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

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

(4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network

Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(5) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs shall, in the event of default, be enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-paragraph (4).

(6) In this paragraph—

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

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

Cost estimates

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

17. In the assessment of any sums payable to Network Rail under this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Schedule or increasing the sums so payable.

Agreements relating to the transfer of land etc.

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

(1) any railway property shown on the works and land plans and described in the book of reference;

(2) any lands, works or other property held in connection with any such railway property; and

(3) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

Enactments

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

Notice in relation to transfer

20. The undertaker must give written notice to Network Rail if any application is proposed to be made by the undertaker for the Secretary of State’s consent, under article 7 (Consent to transfer benefit of Order) of this Order and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

(1) the nature of the application to be made;

(2) the extent of the geographical area to which the application relates; and

(3) the name and address of the person acting for the Secretary of State to whom the application is to be made.

Provision of plans

21. The undertaker must no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 43 (Certification of Plans) 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 5

FOR THE PROTECTION OF NATIONAL GRID AS ELECTRICITY UNDERTAKER

[Application

1. For the protection of National Grid as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and National Grid.

(1) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and National Grid, where the benefit of this Order is transferred or granted to another person under article [●] (consent to transfer benefit of Order) –

- (a) any agreement of the type mentioned in subparagraph (1) has effect as if it had been made between national Grid and the transferee or grantee (as the case may be); and
- (b) written notice of the transfer or grant must be given to National Grid on or before the date of that transfer or grant

(2) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to National Grid.

Interpretation

2. In this Part of this Schedule—

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

“acceptable credit provider” means a bank or financial institution with a credit rating that is not lower than: (i) “A-” if the rating is assigned by Standard & Poor’s Ratings Group or Fitch Ratings; and “A3” if the rating is assigned by Moody’s Investors Services Inc.;

“acceptable insurance” means a third party liability insurance effected and maintained by the undertaker with a limit of indemnity of not less than £25,000,000.00 (twenty five million pounds) per occurrence or series of occurrences arising out of one event. Such insurance shall be maintained for the construction period of the authorised works which constitute specified works and arranged with an internationally recognised insurer of repute operating in the London and worldwide insurance market underwriters whose security/credit rating meets the same requirements as an “acceptable credit provider”, such policy shall include (but without limitation):

- (a) National Grid Electricity Transmission Plc as a Co-Insured;
- (b) a cross liabilities clause; and
- (c) contractors’ pollution liability for third party property damage and third party bodily damage arising from a pollution/contamination event with cover of £10,000,000.00 (ten million pounds) per event or £20,000,000.00 (twenty million pounds) in aggregate;

“acceptable security” means either:

- (a) a parent company guarantee from a parent company in favour of National Grid Electricity Transmission Plc to cover the undertaker’s liability to National Grid Electricity Transmission Plc to a total liability cap of £25,000,000.00 (twenty five million pounds) (in a form reasonably satisfactory to National Grid and where required by National Grid,

accompanied with a legal opinion confirming the due capacity and authorisation of the parent company to enter into and be bound by the terms of such guarantee); or

- (b) a bank bond or letter of credit from an acceptable credit provider in favour of National Grid Electricity Transmission Plc to cover the undertaker's liability to National Grid Electricity Transmission Plc for an amount of not less than £10,000,000.00 (ten million pounds) per asset per event up to a total liability cap of £25,000,000.00 (twenty five million pounds) (in a form reasonably satisfactory to the National Grid);

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

“apparatus” means any 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 the 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 works” has the same meaning as is given to the term “authorised development” in article 2(1) of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

“commence” and “commencement” in this Part of this Schedule shall include any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment,

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

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by National Grid (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for National Grid's approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“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” shall include 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 Number 2366977) whose registered office is at 1-3 Strand, London, WC2N 5EH or any successor as a licence holder within the meaning of Part 1 of the Electricity Act 1989;

“parent company” means a parent company of the undertaker acceptable to and which shall have been approved by National Grid acting reasonably

“undertaker” means the undertaker as defined in article 2(1) of this Order;

“specified works” means any of the authorised works or activities undertaken in association with the authorised works 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 7(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 7(2) or otherwise; and/or
- (c) includes any of the activities that are referred to in development near overhead lines EN43-8 and HSE’s guidance note 6 “Avoidance of Danger from Overhead Lines”

On Street Apparatus

3. Except for paragraphs 4 (apparatus in stopped up streets), 9 (*retained apparatus: protection*) 10 (*expenses*) and 11 (*indemnity*) of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of National Grid, the other provisions of this Schedule do 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.

Apparatus of National Grid in stopped up streets

4.—(1) Where any street is stopped up under article [●] [*permanent stopping up*] if National Grid has any apparatus in the street or accessed via that street National Grid has the same rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to National Grid, or procure the granting to National Grid of, legal easements reasonably satisfactory to National Grid in respect of such apparatus and access to it prior to the stopping up of any such street or highway but nothing in this paragraph affects any right of the undertaker or National Grid to require the removal of that apparatus under paragraph 7 or the power of the undertaker, subject to compliance with this sub-paragraph, to carry out works under paragraph 9.

(2) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article [●] (*temporary stopping up of streets*), National Grid is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

Protective works to buildings

5.—(1) The undertaker, in the case of the powers conferred by article [●] [(protective work to buildings)], must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Grid and, if by reason of the exercise of those powers any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) or property of National Grid or any interruption in the supply of electricity by National Grid is caused, the undertaker must bear and pay on demand the cost reasonably incurred by National Grid in making good such damage or restoring the supply; and, subject to sub-paragraph (2), shall—

- (a) pay compensation to National Grid for any loss sustained by it; and
- (b) National Grid the undertaker against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by that undertaker, by reason of any such damage or interruption.

(2) Nothing in this paragraph imposes any liability on the undertaker with respect to any damage or interruption to the extent that such damage or interruption is attributable to the act, neglect or default of National Grid or its contractors or workmen; and National Grid will give to the undertaker reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made by National Grid, save in respect of any payment required under a statutory compensation scheme, without first consulting the undertaker and giving the undertaker an opportunity to make representations as to the claim or demand.

Acquisition of land

6.—(1) *Regardless* of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not (a) appropriate or acquire or take temporary possession of any land or apparatus or ((b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of National Grid otherwise than by agreement (such agreement not to be unreasonably withheld).

(2) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between National Grid and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of National Grid or affect the provisions of any enactment or agreement regulating the relations between National Grid and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as National Grid reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Grid and the undertaker acting reasonably and which must be no less favourable on the whole to National Grid unless otherwise agreed by National Grid, and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) The undertaker and National Grid agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus/including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Grid and/or other enactments relied upon by National Grid as of right or other use in relation to the apparatus, then the provisions in this Schedule shall prevail.

(4) Any agreement or consent granted by National Grid under paragraph 9 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).

Removal of apparatus

7.—(1) — If, in the exercise of the powers conferred by this Order , the undertaker acquires any interest in or possesses temporarily 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 in accordance with sub-paragraph (2) to (5).

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), secure any necessary consents for the alternative apparatus and afford to National Grid to its reasonable satisfaction (taking into account paragraph 8(1) below) the necessary facilities and rights

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

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Grid must, on receipt of a written notice to

that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for National Grid to use its compulsory purchase powers to this end unless it elects to so do.

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

(5) National Grid must, after the alternative apparatus to be provided or constructed has been agreed, and subject to a written diversion agreement having been entered into between the parties and the grant to National Grid of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

8.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for National Grid facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and National Grid and must be no less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by National Grid.

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject the matter may be referred to arbitration in accordance with paragraph 15 (*Arbitration*) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection of electricity undertaker

9.—(1) Not less than 56 days before the commencement of any specified works 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) In relation to works which will or may be situated on, over, under or within (i) 15 metres measured in any direction of any apparatus, or (ii) involve embankment works within 15 metres of any apparatus, the plan to be submitted to National Grid under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these 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, in addition to the matters set out in sub-paragraph (2), include a method statement describing; -

- (a) details of any cable trench design including route, dimensions, clearance to pylon foundations;
- (b) demonstration that pylon foundations will not be affected prior to, during and post construction;
- (c) details of load bearing capacities of trenches;
- (d) details of any cable installation methodology including access arrangements, jointing bays and backfill methodology;
- (e) a written management plan for high voltage hazard during construction and ongoing maintenance of any cable route;
- (f) written details of the operations and maintenance regime for any cable, including frequency and method of access;
- (g) 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 support overhead line construction traffic of at least 26 tonnes in weight.

(4) The undertaker must not commence any works to which sub-paragraphs (2) or (3) apply until National Grid has given written approval of the plan so submitted.

(5) Any approval of National Grid required under sub-paragraphs (4) —

- (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.

(6) In relation to any work to which sub-paragraphs (2) or (3) apply, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage, for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(7) Works executed under sub-paragraphs (2) or (3) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (6), 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 under sub-paragraph (6) National Grid requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) 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 Grids' satisfaction prior to the commencement of any authorised development (or any relevant part thereof) for which protective works are required and National Grid shall give notice its requirement for such works within 42 days of 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, paragraphs 1 to 3 and 6 to 8 apply as if the removal of the apparatus had been required by the undertaker under paragraph 7(2).

(10) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the authorised development, 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 comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances and 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 HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".

Expenses

10.—(1) Save where otherwise agreed in writing between National Grid and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to National Grid within 30 days of receipt of an itemised invoice or claim from National Grid all charges, costs and expenses reasonably anticipated within the following three months or reasonably and properly incurred by National Grid in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works including without limitation—

- (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 such apparatus including without limitation all costs incurred by National Grid as a consequence of National Grid;
 - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 7(3); or
 - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Grid;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;
- (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) 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.

(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 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 paragraph 15 (*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) will be reduced by the amount of that excess save to the extent that it is not possible in the

circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus will 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 will be treated as if it also had been agreed or had been so determined.

(5) Any amount which apart from this sub-paragraph would be payable to National Grid in respect of works by virtue of sub-paragraph (1) will, 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

11.—(1)— Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, use maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default 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 or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of National Grid, or there is any interruption in any service provided, or in the supply of any goods, by National Grid, or National Grid becomes liable to pay any amount to any third party, the undertaker will—

- (a) bear and pay on demand the cost reasonably and properly incurred by National Grid in making good such damage or restoring the supply; and
- (b) indemnify National Grid for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Grid, by reason or in consequence of any such damage or interruption or National Grid becoming liable to any third party as aforesaid and including Network Code Claims other than arising from any default of National Grid.

(2) The fact that any act or thing may have been done by National Grid on behalf of the undertaker or in accordance with a plan approved by National Grid or in accordance with any requirement of National Grid or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless National Grid fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of—

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of National Grid, its officers, servants, contractors or agents;
- (b) any authorised works and/or any other works authorised by this Part of this Schedule carried out by National Grid as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article [●] (*consent to transfer benefit of order*] subject to the proviso that once such works become apparatus (“new apparatus”), any authorised works yet to be executed and not falling within this sub-section 3(b) will be subject to the full terms of this Part of this Schedule including this paragraph 11.

(4) National Grid must give the undertaker reasonable notice of any such third party claim or demand and no settlement, or compromise must, unless payment is required in connection with a

statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

(5) National Grid must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(6) Not to commence construction (and not to permit the commencement of such construction) of the authorised works on any land owned by National Grid or in respect of which National Grid has an easement or wayleave for its apparatus or any other interest or to carry out any works within 15 metres of National Grid's apparatus until the following conditions are satisfied:

- (a) unless and until National Grid is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has first provided the acceptable security (and provided evidence that it shall maintain such acceptable security for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and National Grid has confirmed the same to the undertaker in writing; and
- (b) unless and until National Grid is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to National Grid that it shall maintain such acceptable insurance for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and National Grid has confirmed the same in writing to the undertaker.

(7) In the event that the undertaker fails to comply with 11(6) of this Part of this Schedule, nothing in this Part of this Schedule shall prevent National Grid from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

Enactments and agreements

12. 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

13.—(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or National Grid requires the removal of apparatus under paragraph 7(2) or National Grid makes requirements for the protection or alteration of apparatus under paragraph 9 the undertaker shall use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of National Grid's undertaking and National Grid shall use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever National Grid's consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

Access

14. If in consequence of the agreement reached in accordance with paragraph 6(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

15. Save for differences or disputes arising under paragraph 7(2), 7(4) 8(1), and 9 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 [●] (*arbitration*).

Notices

16. Notwithstanding article [●] (service of notices), any plans submitted to National Grid by the undertaker pursuant to this Part 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

1. The provisions of this Part of this Schedule apply for the protection of Highways England and have effect unless otherwise agreed in writing between the undertaker and Highways England.

Interpretation

2.—(1) Where the terms defined in article 2 (interpretation) of this Order are inconsistent with sub-paragraph 2 the latter shall prevail.

(2) In this part of this Schedule—

“as built information” means one digital copy of the following information—

- (a) as constructed drawings in both PDF and Auto CAD DWG formats for anything designed by the undertaker; in compliance with Interim Advice Note 184 or any successor document;
- (b) list of suppliers and materials used and test results; and
- (c) method statements for the works carried out.

“condition survey” means a survey of the condition of Highways England structures, assets within the Order limits that in the reasonable opinion of Highways England may be affected by a specified work;

“contractor” means any contractor or sub-contractor appointed by the undertaker to carry out a specified work;

“detailed design information” means drawings specifications and calculations as appropriate for the following—

- (a) earthworks including supporting geotechnical assessments required by CD622 (Managing geotechnical risk) of the DMRB or any successor document and any required strengthened earthworks appraisal form certification in so far as is relevant to trenchless construction;
- (b) topographical survey;
- (c) health and safety information including any asbestos survey required by GD05/16 (asbestos management in trunk road assets) or any successor document; and
- (d) other such information that may be reasonably required by Highways England to inform the detailed design of a specified work.

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

“highways structure” means structures or installations within the scope of the DMRB and that are situated under, over or adjacent to a motorway or other trunk road;

“nominated persons” means the undertaker’s representatives or the contractor’s representatives on site during the carrying out of a specified work as notified to Highways England from time to time;

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

“specific work” means so much of any work authorised by this Order, including any maintenance of that work, as is in or under the trunk road network for which Highways England is the highway authority; and

“trunk road network” for these protective provisions means the crossing under the A27 in the location shown on the Works Plans Sheet No.7.

General

3. The undertaker acknowledges that parts of the works authorised by this Order affect or may affect parts of the trunk road network.

Prior approvals

4.—(1) No specified works may commence until—

- (a) The programme of works has been approved by Highways England, such approval not to be unreasonably withheld or delayed;
- (b) The following details relating to the specific work have been submitted to and approved by Highways England, such approval not to be unreasonably withheld or delayed—
 - (i) the detailed design information;
 - (ii) the identity of the contractor and nominated persons.
- (c) any further information that Highways England may reasonably request within 14 days of the submission of the detailed design of a specified work has been supplied to Highways England; and
- (d) a condition survey and a reasonable regime of monitoring the structures and assets that were surveyed under the condition survey has been submitted to and approved, acting reasonably, by Highways England.

(2) Highways England must provide the undertaker with a list, which is to be agreed between the parties acting reasonably, of all the structures and assets to be subject to both a condition survey and reasonable regime of monitoring pursuant to sub-paragraph (1)(d) and paragraph 7(1) of this Part of this Schedule before the first condition survey is conducted and the reasonable regime of monitoring is implemented.

(3) Highways England must prior to the commencement of a specified work inform the undertaker of the identity of the person who will act as a point of contact on behalf of Highways England to consider the information required under sub-paragraph (1) and of the identity of the person or persons who are authorised to give consent or approval on behalf of Highways England for any matter requiring approval or consent in these provisions.

(4) Any approval of Highway England required by this paragraph—

- (a) must not be unreasonably withheld or delayed;
- (b) in the case of a refusal must be accompanied by a statement of grounds of refusal;
- (c) is deemed to have been refused if it is neither given or refused within 56 days of the submission of the relevant information (if further information is requested by Highways England any such request must be submitted to the undertaker within 14 days of submission of the relevant information under this and the provision of such further

information by the undertaker will not be deemed to constitute a new application for approval pursuant to this paragraph); and

- (d) may be given subject to any reasonable conditions as Highways England considers necessary.

(5) If the undertaker requires entry onto land which forms part of the trunk road network to exercise the powers over that land set out in article 19 (authority to survey and investigate the land) of this Order, the undertaker must supply details of any proposed road space bookings (in accordance with Highways England's Asset Management Operational Requirements (AMOR) including Network Occupancy Management System (NOMS) used to manage road space bookings and network occupancy) and submit to Highways England and obtain the approval of Highways England of a scheme of traffic management prior to the exercise of the power.

Construction of specified work

5.—(1) The undertaker must, prior to commencement of a specified work, give to Highways England 28 days' notice in writing of the date on which the specified work will start unless otherwise agreed by Highways England.

(2) If the carrying out of any part of the authorised development requires the booking of road space with Highways England, the undertaker must comply with Highways England's usual road space booking procedures prior to and during the carrying out of the specified work and no specified work for which a road space booking with Highways England is required must commence without a road space booking having first been secured from Highways England.

(3) Any specified work must be carried out to the reasonable satisfaction of Highways England (acting reasonably) in accordance with—

- (a) the relevant detailed design information and programme of works approved pursuant to paragraph 4(1)(a) and 4(1)(b)(i) or as subsequently varied by agreement between the undertaker and Highways England;
- (b) any conditions of Highways England notified by Highways England to the undertaker pursuant to paragraph 4(4)(d) of this Part of this Schedule.

(4) The undertaker must ensure that (where possible) without entering the highway the specified work is carried out without disturbance to the highway and so that the highway remains open for traffic at all times unless otherwise agreed with Highways England.

(5) 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 by Highways England) to gain access to a specified work for the purposes of inspection and supervision of a specified work or method of construction of such work.

(6) If any specified work is constructed—

- (a) other than in accordance with the requirements of this Part of this Schedule; or
- (b) in a way that causes damage to the highway, any highway structure or asset or any other land of Highways England,

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 or put right any damage notified to the undertaker under this Part of this Schedule.

(7) If within 56 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, such sum to be payable within 30 days of demand. Where the steps required to be taken pursuant to any notice require the submission of any information for the prior approval of Highways England, the submission of that information will evidence that the undertaker has taken steps to comply with a notice served by Highways England under sub-paragraph (6).

(8) Highways England may, at its discretion, in its notice in writing to the undertaker given pursuant to sub-paragraph (6) state that Highways England intend to put right the damage notified

to the undertaker, and if it intends to do so it must give the undertaker not less than 28 days' notice of its intention to do so and Highways England may recover from the undertaker any reasonable expenditure incurred by Highways England in so doing.

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

Payments

6.—(1) The undertaker must pay to Highways England a sum equal to the whole of any costs and expenses which Highways England incurs (including costs and expenses for using internal or external staff) in relation to any specified work including—

- (a) the checking and approval of the information required under paragraph 4(1) of this Part of this Schedule;
- (b) the supervision of a specified work;
- (c) reasonable legal and administrative costs, reasonably and properly incurred, in relation to sub-paragraphs (a) and (b); and
- (d) any value added tax which is payable by Highways England only in respect of such costs and expenses arising under this paragraph 6(1) and for which it cannot obtain reinstatement from HM Revenue and Customs,

together comprising “the HE costs”.

(2) The undertaker must pay to Highways England upon demand and prior to such costs being incurred the total costs that Highways England believe will be properly and necessarily incurred by Highways England in undertaking any statutory procedure or preparing and bringing into force any traffic regulation order or orders necessary to carry out or for effectively implementing any specified work or that are incurred in connection with a specified work.

(3) Highways England must provide the undertaker with a fully itemised invoice showing its estimate of the HE costs prior to the commencement of a specified work and the undertaker must pay to Highways England the estimate of the HE costs prior to commencing a specified work and in any event prior to Highways England incurring any cost.

(4) If at any time after the payment referred to in sub-paragraph (3) has become payable, Highways England reasonably believes that the HE costs will exceed the estimated HE costs in respect of a specified work it may give notice to the undertaker of the amount that it believes the HE costs will exceed the estimate of the HE costs (excess) and the undertaker must pay to Highways England within 28 days of the date of the notice a sum equal to the excess.

(5) Highways England must give the undertaker a final account of the costs, as a fully itemised invoice, referred to in sub-paragraph (1) within 30 days of the undertaker notifying to Highways England that a specified work has been completed.

(6) Within 30 days of the issue of the final account—

- (a) if the final account shows a further sum as due to Highways England the undertaker must pay to Highways England the sum shown due to it; or
- (b) if the account shows that the payment or payments previously made by the undertaker have exceeded the costs incurred by Highways England, Highways England must refund the difference to the undertaker.

Completion of a specified work

7.—(1) Within 56 days of the completion of a specified work, the undertaker must arrange for the highway structures and assets that were the subject of the condition survey carried out in

respect of the specified work to be re-surveyed and must submit the re-survey to Highways England for its approval.

(2) If the re-survey carried out pursuant to sub-paragraph (1) indicates that any damage has been caused to any highways structure, the undertaker must submit a scheme for remedial works in writing to Highways England for its approval in writing, which must not be unreasonably withheld or delayed, and must carry out the remedial works at its own cost and in accordance with the approved scheme.

(3) If the undertaker fails to carry out the remedial work in accordance with the approved scheme, 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, such sum to be payable within 30 days of demand.

(4) Highways England may, at its discretion, at the same time as giving its approval to the condition survey, give notice in writing to the undertaker stating that Highways England will remedy the damage identified by the condition survey and Highways England may recover from the undertaker any reasonable expenditure incurred by Highways England in so doing.

(5) Within 10 weeks of the completion of a specified work, the undertaker must submit to Highways England the as built information.

(6) The undertaker must make available to Highways England upon reasonable request copies of any survey or inspection reports produced pursuant to any inspection or survey of any specified work following its completion that the undertaker may from time to time carry out.

Indemnification

8.—(1) The undertaker must indemnify Highways England from and against all costs, expenses, damages, losses and liabilities suffered by Highways England arising from or in connection with any claim, demand, action or proceedings resulting from the construction or maintenance of a specified work.

(2) Within 30 days of the receipt of the notification referred to in sub-paragraph (1) the undertaker must pay to Highways England the amount specified as the quantum of such claim.

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

Expert determination

9.—(1) Article 45 (arbitration) of this Order does not apply to this Part of this Schedule;

(2) Any difference under this Part of this Schedule may be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) All parties involved in settling any difference must use best endeavours to do so within 21 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the expert must be appointed within 21 days of the notification of the dispute.

(4) The expert must—

- (a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 21 days of the expert's appointment;
- (b) permit a party to comment on the submissions made by the other party within 21 days of receipt of the submission;
- (c) issue a decision within 42 days of receipt of the submissions under sub-paragraph (b); and
- (d) give reasons for the decision.

(5) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 45 (arbitration).

(6) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.]

SCHEDULE 14

Article 43

Certified documents

<i>Document title</i>	<i>Document reference</i>	<i>Revision</i>
Book of reference – regulation 5(2)(d)	Application Document 4.3	002
Environmental statement – Regulation 5(2)(a)	Application Document 6.1 – 6.4	001
Onshore outline construction environmental management plan – Regulation 5(2)(o)	Application Document 6.9	002
Habitats regulations assessment – Regulation 5(2)(g)	Application Document 6.8	002
Land plans – Regulation 5(2)(i)	Application Document 2.2	002
Works plans – Regulation 5(2)(j)	Application Document 2.4	002
Access and rights of way plans – Regulation 5(2)(k)	Application Document 2.5	002
Converter station and telecommunications building parameter plan – Regulation 5(2)(o)	Application Document 2.6	002
Optical regeneration stations parameter plans – Regulation 5(2)(o)	Application Document 2.11	002
Outline marine construction environmental management plan – Regulation 5(2)(o)	Application Document 6.5	001
Hedgerow and Tree Preservation Order Plans	Application Document 2.12	002
Outline landscape and biodiversity strategy – regulation 5(2)(o)	Application Document 6.10	002
Design and access statement – Regulation 5(2)(q)	Application Document 5.5	002
Surface water drainage and aquifer contamination mitigation strategy – Regulation 5(2)(o)	Application Document 6.3.3.6	002
Marine archaeology outline written scheme of investigation	Application Document 6.3.14.3	001
Framework traffic management strategy -	Application Document 6.3.22.1A	002

Regulation 5(2)(o)		
Framework construction traffic management plan – Regulation 5(2)(o)	Application Document 6.3.22.2	002
Flood risk assessment – Regulation 5(2)(o)	Application Document 6.3.20.4	001
Operational broadband and octave band noise criteria document – Regulation 5(2)(o)	Application Document 7.7.11	001

Deemed marine licence under the 2009 Act

PART 1

Licensed marine activities

1.—(1) In this licence —

“the 2008 Act” means the Planning Act 2008;

“the 2009 Act” means the Marine and Coastal Access Act 2009;

“the 2011 Regulations” means the Marine Licensing (Licence Application Appeals) Regulations 2011;

“authorised deposits” means the substances and particles specified in paragraph 5 of Part 1 of this licence;

“authorised development” means Works No. 6 and 7 described in paragraph 3 of Part 1 of this licence or any part of that work and further associated development within the meaning of section 115(2) of the 2008 Act comprising other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised development and which fall within the scope of the work assessed by the environmental statement;

“cable circuit” means a number of electrical conductors necessary to transmit electricity between two points within the authorised development; this comprises in the case of a HVDC cable, two conductors;

“cable protection” means physical measures for the protection of cables including grout bags, concrete or frond mattresses, and/or rock placement and any other physical measures for the protection of cables which are unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement;

“Cefas” means the Centre for Environment, Fisheries and Aquaculture Science or any successor body to its function;

“commence” means the first carrying out of any licensed marine activities authorised by this marine licence, save for pre-construction surveys approved under this licence and “commenced” and “commencement” is to be construed accordingly;

“condition” means a condition under Part 2 of this licence;

“disposal” means the deposit of dredged material at the disposal sites with reference WI048 and WI049 within the extent of the Order limits seaward of MHWS and “dispose” and cognate expression is to be construed accordingly;

“enforcement officer” means a person authorised to carry out enforcement duties under Chapter 3 of the 2009 Act;

“environmental statement” means the document certified as the environmental statement by the Secretary of State for the purposes of this Order in accordance with article 43 (Certification of plans, etc.);

“Health and Safety Executive” means the independent national regulator that aims to prevent work-related death, injury and ill-health and “HSE” is to be construed accordingly;

“horizontal directional drilling work area” means the area within which the temporary horizontal directional drilling entry/exit pits are to be located as identified within the outline marine construction environmental management plan;

“licensed activities” means the activities specified in Part 1 of this licence;

“maintain” includes inspect, upkeep, repair, adjust, alter, improve, preserve and further includes remove, reconstruct and replace any part of 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 “maintenance” must be construed accordingly;

“Marine Management Organisation” means the body created under the 2009 Act which is responsible for the monitoring and enforcement of this licence or any successor of that function and “MMO” is to be construed accordingly;

“MCA” means the Maritime and Coastguard Agency;

“MCA safety guidance” means those aspects of MGN543 “Offshore Renewable Energy Installations (OREIs) – Guidance on UK Navigational Practice, Safety and Emergency Response Issues” and its annexes that are relevant to the authorised development;

“marine emergency action card” means the MCA bespoke emergency action card template that will be completed to inform emergency response actions during the construction of the authorised development;

“mean high water springs” or “MHWS” means the average throughout the year of two successive high waters during a 24-hour period in each month when the range of the tide is at its greatest;

“marine HVDC cables” means two 320 kilovolt HVDC cable circuits for the transmission of electricity which may be bundled as two pairs of cables or take the form of single cables together with a fibre optic data transmission cables for the purpose of control, monitoring, protection and commercial telecommunications uses with each cable circuit, including one or more cable crossing;

“Order” means the AQUIND Interconnector Order 202[];

“Order limits” means the limits shown on the works plans within which the authorised development may be carried out, whose grid co-ordinates seaward of MHWS are set out in paragraph 6 of Part 1 of this licence;

“outline marine construction environmental management plan” means the document certified by the Secretary of State under article 43 (Certification of plans, etc.) of this Order as the outline marine construction environmental management plan;

“marine archaeology outline written scheme of investigation” means the document certified by the Secretary of State under article 43 (Certification of plans, etc.) of this Order as the marine archaeology outline written scheme of investigation;

“screened out” means to pass through grid screens no larger than 30cm;

“standard marking schedule” means UK Standard Marking Schedule for Offshore Installation (DECC 04/11);

“statutory historic body” means the Historic Buildings and Monuments Commission, otherwise known as Historic England or any successor of that function;

“statutory nature conservation body” means an organisation charged by the government with advising on nature conservation matters;

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

“UK Hydrographic Office” means the UK Hydrographic Office of Admiralty Way, Taunton, Somerset TA1 2DN;

“undertaker” means AQUIND Limited (company number 06681477) or the person who has the benefit of this Order in accordance with article 6 (Benefit of Order) and 7 (Consent to transfer benefit of Order);

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

“work plans” means the plans certified by the Secretary of State as Works Plans under article 43 (Certification of plans, etc.) for the purposes of the Order and identified in Part 2 of Schedule 5 of the Order (Works Plans); and

“working day” means Monday to Friday excluding bank holidays and other public holidays;

(2) A reference to any statute, order, regulation or similar instrument is to be construed as reference to a statute, order, regulation or similar instrument as amended by any subsequent statute, order, regulation or instrument or as contained in any subsequent re-enactment.

(3) Unless otherwise indicated –

- (a) all time are taken to be Greenwich Mean Time (GMT);
- (b) all co-ordinates are taken to be latitude and longitude degrees minutes and seconds to three decimal places.

(4) Except where otherwise notified in writing by the relevant organisation, the primary point of contact with the organisations listed below and address for returns of correspondence are –

(a) Marine Management Organisation (head office)

Offshore Marine Licensing
Lancaster House, Hampshire Court
Newcastle Business Park
Newcastle Upon Tyne
NE4 7YH
Tel: 0300 123 1032;

(b) Marine Management Organisation (local office)

Offshore Marine Licensing
Lynx House
1 Northern Road
Portsmouth
PO6 3XB
Tel: 02392 373435

(c) Trinity House

Tower Hill
London
EC3N 4DH
Tel: 020 7481 6900;

(d) The United Kingdom Hydrographic Office

Admiralty Way
Somerset
TA1 2DN
Tel: 01823 337 900;

(e) Maritime and Coastguard Agency

Technical Services Navigation
Bay 2/20, Spring Place
105 Commercial Road
Southampton
SO15 1EG
Tel: 020 3817 2000;

(f) Natural England

4th floor, Eastleigh House
Upper Market Street
Eastleigh
Hampshire
SO50 9YN
Tel: 0300 060 39000

(g) Historic England

Cannon Bridge House
25 Dowgate Hill
London
EC4R 2YA
Tel: 020 7973 370

(h) Centre for Environment, Fisheries and Aquaculture Science

Parkfield Road
Suffolk
NR33 0HT
Tel: 01502 562 244;

Details of Licensed Marine Activities

2. Subject to the licence conditions, this licence authorises the undertaker (and any agent or contractor acting on their behalf) to carry out the following licensable marine activities under section 66(1) of the 2009 Act –

(1) the deposit at sea of the authorised deposits from any vessel, any container floating in the sea or any structure on land constructed or adapted wholly or mainly for the purpose of depositing substances and articles in the sea;

(2) the construction of works in or over the sea and/or on the seabed;

(3) dredging including (but not limited to) mass flow excavation for the purposes of seabed preparation for the works;

(4) the removal of out of service cables, seabed debris and static fishing equipment;

(5) boulder clearance works either by displacement ploughing or subsea grab technique or another equivalent method;

(6) the removal of sediment samples for the purposes of informing environmental monitoring under this licence during pre-construction, construction and operation;

(7) the disposal of up to 1,754,000m³ of inert material of natural origin produced during the Works comprised within Works Nos 6 and 7; and

(8) any other works comprised in the preparation of the seabed for the Works.

3. Such activities are authorised in relation to the construction, maintenance and operation of –

Work No. 6 – marine HVDC cable circuits and ducts within the Order limits seaward of MHWS and landward of MLWS between Work No. 5 and Work No. 7 including where required works to facilitate HDD.

Work No. 7 – marine HVDC cable works consisting of –

(a) marine HVDC cable circuits between the UK exclusive economic zone with France and Works No. 6;

(b) up to 4 temporary HDD entry/exit pits; and

(c) a temporary work area for vessels to carry out intrusive activities.

4. In connection with Works Nos. 6 and 7 and to the extent that they do not otherwise form part of any such work, further associated development within the meaning of section 115(2) of the 2008 Act comprising other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised development and which fall within the scope of the work assessed by the environmental statement and the provisions of this licence, including but not limited to –

- (1) cable protection;
- (2) temporary cable burial equipment trials;
- (3) the removal of material from the seabed required for the construction of Work Nos. 6 and 7 and the disposal of up to 1,754,000m³ of inert material of natural origin produced during the Works;
- (4) the construction of crossing structures over in-service cables that are crossed by the marine HVDC cable; and
- (5) such other works as may be necessary or expedient for the purpose of or in connection with the construction or use of the authorised development and which do not give rise to any materially new or materially different environmental effects from those assessed as set out in the environmental statement.

5. The substances or articles authorised for deposit includes –

- (1) Iron, steel, copper and aluminium;
- (2) Stone, rock, and concrete;
- (3) sand and gravel;
- (4) plastic and synthetics;
- (5) drilling liquids;
- (6) material extracted from within the Order limits seawards of MHWS during construction, drilling and seabed preparation for the Works; and
- (7) marine coatings and other chemicals;
- (8) any other material of substance to the extent its effects have been considered within the environmental statement.

6. The grid coordinates for that part of the authorised development comprising Works Nos.6 and 7 are specified below and more particularly on the works plans –

<i>Point ID</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>	<i>Point ID</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>
1	50°47'8.146"N	1°2'20.857"W	135	50°42'0.397"N	0°54'1.872"W
2	50°47'8.216"N	1°2'20.480"W	136	50°41'55.699"N	0°53'35.726"W
3	50°47'8.268"N	1°2'20.179"W	137	50°41'33.679"N	0°52'58.934"W
4	50°47'8.339"N	1°2'19.690"W	138	50°40'20.249"N	0°51'13.974"W
5	50°47'8.386"N	1°2'19.364"W	139	50°39'59.881"N	0°50'52.430"W
6	50°47'8.451"N	1°2'18.889"W	140	50°39'42.599"N	0°50'29.607"W
7	50°47'8.508"N	1°2'18.470"W	141	50°39'36.524"N	0°50'11.733"W
8	50°47'8.553"N	1°2'18.104"W	142	50°39'12.728"N	0°48'58.524"W
9	50°47'8.628"N	1°2'17.588"W	143	50°38'30.615"N	0°46'2.020"W
10	50°47'8.690"N	1°2'17.204"W	144	50°37'46.726"N	0°43'23.708"W
11	50°47'8.771"N	1°2'16.708"W	145	50°37'36.508"N	0°42'41.575"W
12	50°47'8.826"N	1°2'16.349"W	146	50°37'15.582"N	0°41'15.354"W
13	50°47'8.931"N	1°2'15.812"W	147	50°37'15.513"N	0°39'46.232"W
14	50°47'8.992"N	1°2'15.489"W	148	50°36'41.713"N	0°34'22.448"W
15	50°47'9.096"N	1°2'14.962"W	149	50°36'14.831"N	0°32'37.009"W
16	50°47'9.166"N	1°2'14.555"W	150	50°36'7.973"N	0°31'7.231"W

17	50°47'9.231"N	1°2'14.186"W	151	50°36'0.215"N	0°30'36.542"W
18	50°47'9.328"N	1°2'13.628"W	152	50°35'54.791"N	0°30'15.095"W
19	50°47'9.426"N	1°2'13.061"W	153	50°35'23.567"N	0°29'13.075"W
20	50°47'9.490"N	1°2'12.710"W	154	50°34'29.494"N	0°26'42.742"W
21	50°47'9.587"N	1°2'12.132"W	155	50°32'41.551"N	0°23'38.096"W
22	50°47'9.639"N	1°2'11.857"W	156	50°30'3.541"N	0°17'33.192"W
23	50°47'9.789"N	1°2'11.023"W	157	50°28'42.521"N	0°15'42.064"W
24	50°47'9.878"N	1°2'10.527"W	158	50°28'4.707"N	0°14'50.247"W
25	50°47'9.983"N	1°2'9.954"W	159	50°27'43.034"N	0°14'20.562"W
26	50°47'10.053"N	1°2'9.496"W	160	50°26'55.786"N	0°13'15.884"W
27	50°47'10.093"N	1°2'9.212"W	161	50°26'56.222"N	0°13'14.495"W
28	50°47'10.142"N	1°2'8.960"W	162	50°26'57.457"N	0°13'4.676"W
29	50°47'10.205"N	1°2'8.572"W	163	50°26'57.027"N	0°12'54.690"W
30	50°47'10.259"N	1°2'8.304"W	164	50°26'54.961"N	0°12'45.218"W
31	50°47'10.327"N	1°2'7.966"W	165	50°26'51.400"N	0°12'36.908"W
32	50°47'10.374"N	1°2'7.740"W	166	50°26'46.587"N	0°12'30.324"W
33	50°47'10.456"N	1°2'7.347"W	167	50°26'40.850"N	0°12'25.916"W
34	50°47'10.514"N	1°2'7.079"W	168	50°26'34.580"N	0°12'23.983"W
35	50°47'10.587"N	1°2'6.756"W	169	50°26'28.204"N	0°12'24.658"W
36	50°47'10.648"N	1°2'6.496"W	170	50°26'22.156"N	0°12'27.894"W
37	50°47'10.741"N	1°2'6.131"W	171	50°26'21.336"N	0°12'28.756"W
38	50°47'10.822"N	1°2'5.803"W	172	50°26'10.359"N	0°12'13.745"W
39	50°47'10.862"N	1°2'5.617"W	173	50°24'8.032"N	0°9'25.526"W
40	50°47'10.921"N	1°2'5.371"W	174	50°24'2.766"N	0°9'16.501"W
41	50°47'10.939"N	1°2'5.284"W	175	50°23'57.213"N	0°9'5.200"W
42	50°47'10.978"N	1°2'5.099"W	176	50°23'51.251"N	0°8'52.570"W
43	50°47'11.045"N	1°2'4.740"W	177	50°23'46.360"N	0°8'39.092"W
44	50°47'11.107"N	1°2'4.474"W	178	50°21'32.398"N	0°2'15.439"W
45	50°47'11.167"N	1°2'4.178"W	179	50°21'29.076"N	0°2'5.945"W
46	50°47'11.222"N	1°2'3.897"W	180	50°21'28.324"N	0°2'3.795"W
47	50°47'11.281"N	1°2'3.598"W	181	50°21'6.855"N	0°1'12.898"W
48	50°47'11.337"N	1°2'3.294"W	182	50°20'46.163"N	0°0'32.608"W
49	50°47'11.366"N	1°2'3.150"W	183	50°20'34.684"N	0°0'15.657"W
50	50°47'11.403"N	1°2'2.966"W	184	50°20'32.670"N	0°0'12.683"W
51	50°47'11.423"N	1°2'2.845"W	185	50°20'16.756"N	0°0'10.817"E
52	50°47'11.460"N	1°2'2.657"W	186	50°17'36.424"N	0°5'11.894"E
53	50°47'11.492"N	1°2'2.498"W	187	50°16'31.253"N	0°9'3.799"E
54	50°47'11.540"N	1°2'2.249"W	188	50°16'10.086"N	0°11'24.856"E
55	50°47'11.573"N	1°2'2.089"W	189	50°16'7.791"N	0°11'36.422"E
56	50°47'11.617"N	1°2'1.860"W	190	50°16'6.240"N	0°11'43.952"E
57	50°47'11.654"N	1°2'1.683"W	191	50°16'2.500"N	0°12'0.714"E
58	50°47'11.704"N	1°2'1.424"W	192	50°15'56.441"N	0°12'17.698"E
59	50°47'11.767"N	1°2'1.116"W	193	50°15'53.389"N	0°12'23.459"E
60	50°47'11.802"N	1°2'0.862"W	194	50°15'53.179"N	0°12'23.855"E
61	50°47'11.807"N	1°2'0.827"W	195	50°15'53.678"N	0°12'24.498"E
62	50°47'11.827"N	1°2'0.809"W	196	50°15'50.634"N	0°12'30.244"E
63	50°47'11.877"N	1°2'0.444"W	197	50°15'50.355"N	0°12'30.769"E
64	50°47'11.901"N	1°2'0.405"W	198	50°15'44.773"N	0°11'56.429"E
65	50°47'11.904"N	1°2'0.370"W	199	50°15'47.089"N	0°11'49.938"E
66	50°47'11.863"N	1°2'0.317"W	200	50°15'50.773"N	0°11'33.424"E
67	50°47'11.847"N	1°2'0.307"W	201	50°15'53.839"N	0°11'17.971"E

68	50°47'11.847"N	1°2'0.307"W	202	50°16'15.223"N	0°8'55.462"E
69	50°47'11.847"N	1°2'0.307"W	203	50°17'21.968"N	0°4'57.948"E
70	50°47'11.895"N	1°1'59.868"W	204	50°20'4.461"N	0°0'7.202"W
71	50°47'11.912"N	1°1'59.866"W	205	50°20'21.112"N	0°0'31.792"W
72	50°47'11.939"N	1°1'59.841"W	206	50°20'23.127"N	0°0'34.767"W
73	50°47'11.965"N	1°1'59.584"W	207	50°20'33.765"N	0°0'50.477"W
74	50°47'11.966"N	1°1'59.512"W	208	50°20'53.239"N	0°1'28.399"W
75	50°47'11.965"N	1°1'59.496"W	209	50°21'13.893"N	0°2'17.366"W
76	50°47'11.964"N	1°1'59.435"W	210	50°23'31.655"N	0°8'51.889"W
77	50°47'11.965"N	1°1'59.415"W	211	50°23'37.115"N	0°9'6.938"W
78	50°47'11.953"N	1°1'59.406"W	212	50°23'43.773"N	0°9'21.043"W
79	50°47'11.953"N	1°1'59.406"W	213	50°23'49.858"N	0°9'33.428"W
80	50°47'11.953"N	1°1'59.406"W	214	50°23'56.230"N	0°9'44.349"W
81	50°47'11.962"N	1°1'59.198"W	215	50°25'59.269"N	0°12'33.560"W
82	50°47'11.971"N	1°1'59.095"W	216	50°26'10.266"N	0°12'48.600"W
83	50°47'11.985"N	1°1'58.947"W	217	50°26'9.831"N	0°12'49.988"W
84	50°47'11.992"N	1°1'58.887"W	218	50°26'8.596"N	0°12'59.805"W
85	50°47'12.008"N	1°1'58.758"W	219	50°26'9.026"N	0°13'9.789"W
86	50°47'12.020"N	1°1'58.658"W	220	50°26'11.091"N	0°13'19.258"W
87	50°47'12.029"N	1°1'58.582"W	221	50°26'14.651"N	0°13'27.567"W
88	50°47'12.031"N	1°1'58.566"W	222	50°26'19.463"N	0°13'34.151"W
89	50°47'12.040"N	1°1'58.493"W	223	50°26'25.200"N	0°13'38.561"W
90	50°47'12.049"N	1°1'58.409"W	224	50°26'31.470"N	0°13'40.497"W
91	50°47'12.060"N	1°1'58.316"W	225	50°26'37.846"N	0°13'39.825"W
92	50°47'12.079"N	1°1'58.149"W	226	50°26'43.894"N	0°13'36.591"W
93	50°47'12.110"N	1°1'57.942"W	227	50°26'44.714"N	0°13'35.729"W
94	50°47'12.123"N	1°1'57.869"W	228	50°28'31.442"N	0°16'1.912"W
95	50°47'12.141"N	1°1'57.733"W	229	50°29'50.837"N	0°17'50.820"W
96	50°47'12.158"N	1°1'57.645"W	230	50°32'28.318"N	0°23'54.527"W
97	50°47'12.175"N	1°1'57.550"W	231	50°34'15.790"N	0°26'58.375"W
98	50°47'12.189"N	1°1'57.467"W	232	50°35'9.556"N	0°29'27.862"W
99	50°47'12.212"N	1°1'57.339"W	233	50°35'40.062"N	0°30'28.457"W
100	50°47'12.228"N	1°1'57.251"W	234	50°35'44.745"N	0°30'46.976"W
101	50°47'12.250"N	1°1'57.145"W	235	50°35'51.526"N	0°31'13.797"W
102	50°47'12.272"N	1°1'57.028"W	236	50°35'58.386"N	0°32'43.614"W
103	50°47'12.291"N	1°1'56.926"W	237	50°36'25.406"N	0°34'29.597"W
104	50°47'12.310"N	1°1'56.838"W	238	50°36'50.593"N	0°38'30.650"W
105	50°47'12.339"N	1°1'56.698"W	239	50°36'54.547"N	0°39'8.625"W
106	50°47'12.356"N	1°1'56.579"W	240	50°36'58.685"N	0°39'48.398"W
107	50°47'12.319"N	1°1'56.560"W	241	50°36'58.756"N	0°41'20.244"W
108	50°47'12.319"N	1°1'56.560"W	242	50°37'31.141"N	0°43'33.714"W
109	50°47'12.319"N	1°1'56.560"W	243	50°38'15.012"N	0°46'11.964"W
110	50°47'12.377"N	1°1'56.330"W	244	50°38'57.306"N	0°49'9.233"W
111	50°47'12.390"N	1°1'56.270"W	245	50°39'21.609"N	0°50'24.001"W
112	50°47'12.406"N	1°1'56.188"W	246	50°39'29.289"N	0°50'46.600"W
113	50°47'12.425"N	1°1'56.105"W	247	50°39'49.747"N	0°51'13.619"W
114	50°47'12.443"N	1°1'56.031"W	248	50°40'9.842"N	0°51'34.878"W
115	50°47'12.460"N	1°1'55.963"W	249	50°41'21.878"N	0°53'17.854"W
116	50°47'11.065"N	1°1'55.703"W	250	50°41'40.626"N	0°53'49.178"W
117	50°45'45.014"N	1°1'39.017"W	251	50°41'45.252"N	0°54'14.928"W
118	50°45'33.952"N	1°1'29.392"W	252	50°43'22.501"N	0°57'7.513"W

119	50°45'23.239"N	1°1'14.438"W	253	50°43'31.132"N	0°57'27.942"W
120	50°45'13.571"N	1°0'56.514"W	254	50°43'29.651"N	0°57'29.496"W
121	50°45'2.494"N	1°0'25.147"W	255	50°43'40.579"N	0°57'55.368"W
122	50°44'50.712"N	0°59'52.953"W	256	50°43'42.061"N	0°57'53.814"W
123	50°44'39.281"N	0°59'22.406"W	257	50°43'43.756"N	0°57'57.828"W
124	50°44'2.379"N	0°57'54.977"W	258	50°43'44.075"N	0°57'57.664"W
125	50°44'0.123"N	0°57'49.635"W	259	50°43'48.906"N	0°58'9.102"W
126	50°44'0.446"N	0°57'49.479"W	260	50°44'25.563"N	0°59'35.955"W
127	50°43'56.072"N	0°57'39.124"W	261	50°44'36.732"N	1°0'5.805"W
128	50°43'54.590"N	0°57'40.678"W	262	50°44'48.414"N	1°0'37.724"W
129	50°43'43.661"N	0°57'14.804"W	263	50°45'0.207"N	1°1'11.121"W
130	50°43'45.143"N	0°57'13.250"W	264	50°45'11.652"N	1°1'32.340"W
131	50°43'35.866"N	0°56'51.292"W	265	50°45'24.564"N	1°1'50.365"W
132	50°42'27.974"N	0°54'50.779"W	266	50°45'39.934"N	1°2'3.740"W
133	50°42'23.228"N	0°54'42.359"W	267	50°47'8.146"N	1°2'20.857"W
134	50°42'18.988"N	0°54'34.839"W			

7. This licence remains in force until the authorised development has been decommissioned in accordance with a programme to be approved by the MMO and the completion of such programme has been confirmed by the MMO in writing.

8. The provisions of section 72 of the 2009 Act apply to this licence except that the provisions of section 72(7) relating to the transfer of the licence only apply to a transfer not falling within article 6 (Benefit of the Order).

9. With respect to any condition which requires the licensed activities to be carried out in accordance with the plans, protocols or statements approved under this Schedule, the plans, protocols or statements so approved are taken to include amendments that may be approved in writing by the MMO subsequent to the first approval of those plans, protocols or statements.

10. Any amendments to or variations from the approved details must demonstrate that the subject matter of the approval sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

PART 2

Conditions

Design Parameters

1. The total length of the marine HVDC cables from MHWS to the EEZ and cable protection and the cable protection area must not exceed the following –

<i>Work</i>	<i>Cable length</i>	<i>Cable protection length</i>	<i>Cable protection area</i>
Works No. 6 and 7	109km	23km	0.7km ²

Notifications and Inspections

2.—(1) The undertaker must ensure that –

- (a) a copy of this licence (issued as part of the grant of the Order) and any subsequent amendments or revisions to it is provided to –
 - (i) all agents and contractors notified to the MMO in accordance with condition 4(c)(vi); and

- (ii) the masters and transport managers responsible for the vessels notified to the MMO in accordance with condition 4(c)(vi).
 - (b) within 20 working days of receipt of a copy of this licence those persons referred to in paragraph (a) above must provide a completed confirmation form to the MMO confirming receipt of this licence.
- (2) Only those persons and vessels notified to the MMO pursuant to condition 4(1)(c)(vi) are permitted to carry out the licensed activities.
- (3) Copies of this licence must also be available for inspection at the following locations –
- (a) the undertakers registered address;
 - (b) any site office located at or adjacent to the construction site and used by the undertaker or its agents and contractors responsible for the loading, transportation or disposal of the authorised deposits; and
 - (c) on board each vessel or at the office of any transport manager with responsibility for vessels from which authorised deposits or removals are to be made.
- (4) The documents referred to in sub-paragraphs (1)(a) must be available for inspection by an authorised enforcement officer at the locations set out in sub-paragraph (3)(b) above.
- (5) The undertaker must provide access, and if necessary appropriate transportation, to the marine construction site or any other associated works or vessels to facilitate any inspection that the MMO considers necessary to inspect the works during the construction and operation of the authorised development.
- (6) The undertaker must inform the MMO Local Office in writing at least five working days prior to the commencement of the licensed activities or any part of them.
- (7) The undertaker must inform the Kingfisher Information Service of Seafish by e-mail to kingfisher@seafish.co.uk of details regarding the vessel routes, timings and locations relating to the construction of the authorised development or relevant part –
- (a) at least ten working days prior to the commencement of marine activities for inclusion in the Kingfisher Fortnightly Bulletin and marine hazard awareness data; and
 - (b) as soon as reasonably practicable and not later than 24 hours on completion of construction of all licensed marine activities’
- and confirmation of notification in accordance with this paragraph (7) must be provided MMO within 5 working days.
- (8) A local notice to mariners must be issued at least ten working days prior to the commencement of the licensed activities or any part of them advising of the start date of Works No. 6 and Works No. 7 and the expected vessel routes from the construction ports to the relevant location. Copies of all notices must be provided to the MMO, the MCA and the UK Hydrographic Office within 5 working days.
- (9) The local notices to mariners must be updated and reissued at weekly intervals during construction activities and at least five working days before any planned operations and maintenance works and supplemented with VHF radio broadcasts agreed with the MCA in accordance with the construction programme approved under condition 7(1)(b). Copies of all notices must be provided to the MMO and the UK Hydrographic Office within 5 working days.
- (10) The undertaker must notify the UK Hydrographic Office both of the commencement (within ten working days), progress and completion of construction (within ten working days) of the licensed activities in order that all necessary amendments to the nautical charts are made and the undertaker must send a copy of such notifications to the MMO within five working days.
- (11) The undertaker must notify HM Coastguard at least ten working days prior to commencement of the licence activities or any part of them advising of the start date of Works No. 6 and Works No. 7 by e-mail to the relevant zone contacts (zone15@hmcg.gov.uk or zone16@hmcg.gov.uk) and a copy of that notice must be provided to the MMO within five working days.

(12) The undertaker must notify the Environment Agency at least ten working days prior to the commencement of Works No. 6 and the temporary HDD entry/exit pits forming part of Work No.7.

(13) In case of damage to, or destruction or decay of, the authorised development or any part thereof the undertaker must as soon as possible and no later than 24 hours following the undertaker becoming aware of any such damage, destruction or decay, notify the MMO, the MCA, Trinity House, the Kingfisher Information Service of Seafish and the UK Hydrographic Office.

(14) In case of exposure of the marine HVDC cables on or above the seabed, the undertaker must within three working days following identification of any exposure of the marine HVDC cables, issue a local notice to mariners and by informing Kingfisher Information Service of Seafish of the location and extent of the exposure. Copies of all notices must be provided to the MMO, the MCA, Trinity House and the UK Hydrographic Office within five working days.

Pre-construction surveys

3.—(1) Surveys in relation to the pre-construction phase of the authorised development will include –

- (a) a swath-bathymetry survey within the Order limits seaward of MHWS to:
 - (i) inform future navigation risk assessments as part of the cable specification and installation plan; and
 - (ii) determine the location, extent and composition of any biogenic and geogenic reef habitat within the Order limits seaward of MHWS identified in the environmental statement.

(2) The pre-construction surveys must not be carried out until details of the proposed pre-construction surveys, including methodologies and timings, and a proposed form and content for a pre-construction baseline report have been submitted to and approved by the MMO in consultation with the relevant statutory bodies.

(3) The MMO must determine an application for approval made under sub-paragraph (2) within a period of 8 weeks commencing on the date the application is received by the MMO, unless otherwise agreed in writing with the undertaker.

(4) Where the MMO is minded to refuse an application for consent made under sub-paragraph (2) and notifies the undertaker accordingly, or fails to determine the application for approval under this article within the period prescribed in sub-paragraph (2), the undertaker may appeal to the Secretary of State in accordance with the procedure in Part 3 of this licence.

(5) The undertaker must carry out the pre-construction surveys agreed under sub-paragraph (2) or approved following an appeal under sub-paragraph (4) and as may be updated from time to time and provide the baseline report to the MMO in the agreed format in accordance with the agreed timetable, unless otherwise agreed with the MMO in consultation with the relevant statutory nature conservation bodies.

Pre-construction plans and documentation

4.—(1) The licensed activities or any part of those activities must not commence until the following (as relevant to that part) have been submitted to and approved in writing by the MMO –

- (a) A design plan at a scale of 1:25,000 and 1:50,000, including detailed representation of the most suitably scaled admiralty chart, to be agreed in writing with the MMO which shows –
 - (i) the length and arrangement of all cables comprised in Works No. 6 and 7;
 - (ii) the indicative location of the temporary horizontal directional drilling entry/exit pits within the horizontal direction drilling work area;
 - (iii) indicative location of cable crossings; and

to ensure compliance with the description of Works No. 6 and 7 and compliance with condition 1 above.

- (b) a construction programme to include details of –
 - (i) the proposed construction start date; and
 - (ii) the proposed timings for mobilisation of plant, delivery of materials and installation works; and
 - (iii) an indicative construction programme for the carrying out of the works comprised in Works No. 6 and 7;
 which may be amended from time to time subject to the approval in writing of the MMO.
- (c) a cable burial and installation plan in accordance with the construction methods assessed in the environmental statement and including details of –
 - (i) marine HVDC cable installation methodology, including the methods for disposal;
 - (ii) technical specification of marine HVDC cables below MHWS and cable burial depths in accordance with industry good practice;
 - (iii) a detailed cable laying plan for the Order limits seaward of MHWS, incorporating a burial assessment which includes the identification of any part of the marine HVDC cables that exceeds 5% of navigable depth referenced to chart datum and, in the event of the identification of any area of cable protection that exceeds 5% of navigable depth, details of any steps (to be determined following consultation with Trinity House and the MCA) to be taken to ensure existing and future safe navigation is not compromised or such similar assessment to ascertain suitable burial depths and cable laying techniques, including cable protection,
 - (iv) proposals for monitoring the marine HVDC cables including cable protection during the operation of the authorised development which includes a risk based approach to the management of unburied or shallow buried cables;
 - (v) advisory safe passing distances for vessels around construction sites;
 - (vi) the name and function of any agent or contractor appointed to engage in the licensed activities vessels and vessel transit corridors and a completed Hydrographic Note H102 listing the vessels to be used in relation to the licensed activities;
 - (vii) codes of conduct for vessel operators;
 - (viii) details of any required micro-siting in relation to biogenic and geogenic reef habitat or archaeological construction exclusion zones within the Order limits seaward of MHWS; and
 - (ix) associated ancillary works.
- (d) an environmental management plan (in accordance with the outline marine construction environmental management plan) covering the period of construction to include details of –
 - (i) a marine pollution contingency plan to address the risks, methods and procedures to deal with any spills and collision incidents of the authorised development in relation to all activities to be carried out;
 - (ii) a biosecurity plan detailing how risk of the introduction and spread of invasive non-native species will be minimised;
 - (iii) waste management and disposal arrangements;
 - (iv) the appointment and responsibilities of a fisheries liaison officer; and
 - (v) a fisheries liaison and coexistence plan to ensure relevant fishing fleets are notified of commencement of the licensed activities and to address the interaction of the licensed activities with fishing activities.

(2) The licensed activities or any part of the activities must not commence unless a written scheme of archaeological investigation has been submitted to and approved by the MMO, in accordance with the marine archaeology outline written scheme of investigation, and in accordance with industry good practice and in consultation with the statutory historic body to include –

- (a) details of responsibilities of the undertaker, archaeological consultant and contractor;
- (b) archaeological analysis of survey data, and timetable for reporting, which is to be submitted to the MMO;
- (c) delivery of any mitigation including the use of archaeological construction exclusion zones in agreement with the MMO;
- (d) a requirement for the undertaker to ensure that a copy of any agreed archaeological report is deposited with the National Record of the Historic Environment, by submitting a Historic England OASIS ('Online AccesS to the Index of archaeological InvestigationS') form with a digital copy of the relevant report within six months of completion of construction of the authorised development, and to notify the MMO that the OASIS form has been submitted to the National Record of the Historic Environment within two weeks of submission; and
- (e) a reporting and recording protocol, including reporting of any wreck or wreck material during construction, operation and decommissioning of the authorised development.

(3) No part of the licensed activities may commence until a statement confirming how the undertaker has taken into account the MCA safety guidance in so far as is applicable to that part of the licensed activities has been submitted to and approved by the MMO, in consultation with the MCA.

5.—(1) Each programme, statement, plan, protocol or scheme required to be approved under condition 4 must be submitted for approval at least four months prior to the intended commencement of the licensed activities, except where otherwise stated or unless otherwise agreed in writing by the MMO.

(2) Save in respect of any plan which secures mitigation to avoid adversely affecting the integrity of a European Site, where the MMO fails to determine that application for approval under condition 4 within the period referred to in sub-paragraph (1), the programme, statement, plan, protocol or scheme is deemed to be approved by the MMO.

(3) The MMO must determine an application for approval made under condition 4 within a period of four months commencing on the date the application is received by the MMO, unless otherwise agreed in writing with the undertaker.

(4) Where the MMO is minded to refuse an application for approval made under condition 4 and notifies the undertaker accordingly, or the MMO fails to determine the application for consent under this article within the period prescribed in sub-paragraph (2), the undertaker may appeal to the Secretary of State in accordance with the procedure in Part 3 of this licence.

(5) The licensed activities must be carried out in accordance with the approved plans, protocols, statements, schemes and details approved under condition 4 or approved following an appeal under sub-paragraph (4) and as may be updated from time to time, unless otherwise agreed in writing by the MMO.

(6) Prior to the commencement of Work No. 6 and the temporary HDD entry/exit pits forming part of Work No. 7, the undertaker must provide the Environment Agency with a copy of any construction programme approved by the MMO pursuant to condition 4(1)(b) and any method statement relating to sediment mobilising activities relevant to the temporary HDD entry/exit pits forming part of Work No.7.

Reporting of engaged agents, contractors and vessels

6. Any change to the details supplied pursuant to condition 4(1)(c)(vi) must be notified to the MMO in writing prior to the agent, contractor, or vessel engaging in the licensed activities.

Aids to Navigation

7.—(1) Any vessels utilised during the licensed activities, when jacked up, must exhibit signals in accordance with the standard marking schedule;

(2) The undertaker must during the whole period from the commencement of the licensed activities to completion of decommissioning of the authorised development exhibit such lights, marks, sounds, signals and other aids to navigation, and take such other steps for the prevention of danger to navigation as Trinity House may from time to time direct;

(3) The undertaker must during the period from the start of construction of the authorised development to completion of decommissioning of the authorised development keep Trinity House and the MMO informed of progress of the authorised development including the following

- (a) notice of commencement of construction of the authorised development within 24 hours of commencement having occurred;
- (b) notice within 24 hours of any aids to navigation being established or relocated by the undertaker; and
- (c) notice within 5 working days of completion of construction of the authorised development.

(4) In the event the provisions of condition 2(13) are invoked, the undertaker must lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as directed by Trinity House.

Chemicals, drilling and debris

8.—(1) The Undertaker must ensure that any coatings/treatments are suitable for use in the marine environment and are used in accordance with guidelines approved by the Health and Safety Executive and guidance for pollution prevention issued by the government.

(2) The storage, handling, transport and use of fuels, lubricants, chemicals and other substances must be undertaken so as to prevent releases into the marine environment, including bunding of 110% of the total volume of all reservoirs and containers.

(3) The undertaker must ensure that only inert material of natural origin produced during dredging in connection with the carrying out of the Works is disposed of at the disposal sites with reference WI048 and WI049 within the extent of the Order limits seaward of MHWS and all other materials must be screened out before the disposal of inert material and disposed of to land.

(4) The undertaker must inform the MMO of the location of and quantities of material disposed of each month under the Order, by submission of a disposal return by 14 February each year for the months August to January inclusive, and by 15 August for the months February to July inclusive.

(5) The undertaker must ensure any rock material used in the construction of the authorised development is from a recognised source, free from contaminants and containing minimal fines.

(6) In the event that any rock material is misplaced or lost below MHWS, the undertaker must report the loss to the District Marine Office within 48 hours and if the MMO reasonably considers such material to constitute a navigation or environmental hazard (dependent on the size and nature of the material) the undertaker must endeavour to locate the material and recover it.

(7) The undertaker must ensure that any oil, fuel or chemical spill within the marine environment is reported to the MMO, Marine Pollution Response Team in accordance with the marine pollution contingency plan agreed under condition 4(1)(d)(i);

(8) All dropped objects must be reported to the MMO using the Dropped Object Procedure Form as soon as reasonably practicable and in any event within 24 hours of the undertaker becoming aware of an incident. On receipt of the Dropped Object Procedure Form, the MMO may require relevant surveys to be carried out by the undertaker (such as side scan sonar) if reasonable to do so and the MMO may require obstructions to be removed from the seabed at the undertakers expense if reasonable to do so.

Force majeure

9.—(1) If, due to stress of weather or any other cause the master of a vessel determines that it is necessary to deposit the authorised deposits outside of the Order limits seaward of MHWS or to dispose of dredged material within the Order limits seaward of MHWS but outside of the disposal sites with reference WI048 and WI049 because the safety of human life and/or the vessel is threatened, within 48 hours full details of the circumstances of the disposal must be notified to the MMO.

(2) The unauthorised deposits must be removed at the expense of the undertaker unless written approval is obtained from the MMO.

Post-construction surveys

10.—(1) Within 6 months of the completion of the construction of the authorised development the undertaker is to submit to the MMO for approval a swath-bathymetry survey within the Order limits seaward of MHWS in order to:

- (a) inform of any dropped objects or residual navigational risk; and
- (b) to determine any change in the location, extent and composition of any biogenic or geogenic reef feature identified in the pre-construction survey in the parts of the Order limits seaward of MHWS in which construction works were carried out.

(2) Where requested by the MMO following the completion of construction of the authorised development the undertaker will produce an electromagnetic deviation survey to confirm that there must be no more than a 3 degree electromagnetic variation for 95% of the marine HVDC cables and no more than a 5 degree electromagnetic variation for the remaining 5% of the marine HVDC cables in water depths of 5m and deeper as a result of the operation of the authorised development.

(3) Within 3 months of completion of construction of the authorised development the undertaker must submit International Hydrographic Office (IHO Order 1A) approved Multi Beam Echo Sounder survey data and report to the MMO, the MCA, Trinity House and UK Hydrographic Office, meeting MGN 543 hydrographic survey guidelines and confirming the final clearance depths over the marine HVDC cables and the associated cable protection. If the MMO, the MCA, Trinity House or the UKHO identify any area as a possible danger to navigation to exhibit such lights, marks, sounds, signals and other aids to navigation as are reasonably required by the MMO, the MCA, Trinity House and/or UK Hydrographic Office unless otherwise agreed.

Cable burial management plan

11.—(1) Following the completion of construction of the authorised development the undertaker will submit a cable burial management plan including results of the post installation surveys to the MMO for its approval (in consultation with the statutory nature conservation body) which is to include:

- (a) as built plans showing location of the marine HVDC cables and cable protection;
- (b) details of the proposed frequency and extent of future cable burial surveys;
- (c) details and justification for the installation of any additional cable protection; and
- (d) proposals for maintaining marine cables including cable protection during the operational lifetime of the authorised development which includes a risk based approach to the management of unburied or shallow buried cables;

and which may be amended from time to time subject to the approval in writing of the MMO.

(2) The cable burial management plan approved by the MMO as may be updated from time to time must be implemented during the operational lifetime of the project and reviewed as specified within the plan, following cable burial surveys, installation of cable protection, or periodically as required.

Post-construction approvals

12.—(1) The MMO must determine any application for approval made under condition 10 or 11 within a period of four months commencing on the date the application is received by the MMO, unless otherwise agreed in writing with the undertaker.

(2) Where the MMO is minded to refuse an application for approval made under condition 10 and 11 and notifies the undertaker accordingly, or the MMO fails to determine the application for consent under this article within the period prescribed in sub-paragraph (1), the undertaker may appeal to the Secretary of State in accordance with the procedure in Part 3 of this licence.

Maintenance of the authorised development

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

(2) No works of maintenance whose likely effect is not assessed in the environmental statement or which are likely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement may be carried out, unless otherwise approved by the MMO.

(3) Works of maintenance include but are not limited to –

- (a) cable repairs, including but not limited to the removal of defective cable and sediment to undertake those repairs, and addition of sections of cable to replace defective cable and the removal and replacement of cable protection;
- (b) remedial cable burial

(4) Where the MMO's approval is required under paragraph (2), such approval may be given only where it has been demonstrated to the satisfaction of the MMO that the approval sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

(5) The laying of new cable protection following the completion of construction must not extend for longer than 15 years from the date of the issue of the notification of the completion of the completion of construction to be issued pursuant to condition 2(10) unless otherwise agreed with the MMO.

(6) The undertaker must inform the MMO Local Office in writing at least 5 working days prior to the commencement of the laying of any new cable protection following the completion of construction.

(7) The undertaker must issue a notice to mariners at least 5 working days prior to the laying of any new cable protection following the completion of construction and that notice must be forwarded to the MMO within 5 working days of issue.

(8) The undertaker must issue a notice to the UK Hydrographic Office at least 5 working days prior to the laying of any new cable protection following the completion of construction to permit the promulgation of maritime safety information and updating of nautical charts and publications

(9) The undertaker must notify the MMO Local Office of the completion of the laying of any new cable protection following the completion of construction no later than 10 working days after the completion of the laying of the new cable protection.

(10) Within 4 weeks of the completion of laying of any new cable protection following the completion of construction, unless otherwise agreed with the MMO, the undertaker must submit International Hydrographic Office (IHO Order 1A) approved Multi Beam Echo Sounder survey data and report to the MMO, the MCA and UKHO, meeting MGN 543 hydrographic survey guidelines and confirming the final clearance depths over the protected cables where the new cable protection has been laid. Once this data has been assessed, if any area is identified as a possible danger to navigation it may require marking with aids to navigation at the undertakers expense.

(11) The MMO must determine any application for approval made under this condition 13 within a period of 8 weeks commencing on the date the application is received by the MMO, unless otherwise agreed in writing with the undertaker.

PART 3

Procedure for appeals

1. Where the MMO refuses an application for approval under conditions 3, 4, 10, 11 and 13 and notifies the undertaker accordingly, or fails to determine the application for approval in accordance with any of those conditions the undertaker may by notice appeal against such a refusal or non-determination and the 2011 Regulations apply subject to the modifications set out in paragraph 2 below.

2. The 2011 Regulations are modified so as to read for the purposes of this Order only as follows –

(1) For regulation 4(1) (Appeal against marine licensing decisions) substitute –

“A person who has applied for approval under condition [x] of Part 2 of Schedule 20 to the AQUIND Interconnector Order 202[x] may by notice appeal against a decision to refuse such an application or a failure to determine such an application.”

(2) For regulation 6(1) (Time limit for the notice of appeal) substitute –

“Notice of an appeal must be received by the Secretary of State within the period of four months beginning with the date of the decision to which the application relates or, in the case of non-determination, the date by which the application should have been determined.”

(3) For regulation 7(2)(a) (Contents of the notice of appeal) substitute –

“a copy of the decision to which the appeal relates or, in the case of non-determination, the date by which the application should have been determined; and”

(4) In regulation 8(1) (Decision as to appeal procedure and start date) the words “as soon as practicable after” are substituted with the words “within the period of 2 weeks beginning on the date of”.

(5) In regulation 10(3) (Representations and further comments) the word “At” is substituted with the words “By no later than”.

(6) In regulation 10(5) (Representations and further comments) the words “as soon as is reasonably practicable after” are substituted with the words “by no later than the end of”.

(7) In regulation 12(1) (Establishing the hearing or inquiry) after the words “(“the relevant date”)” the words “which must be within 14 weeks of the start date” are inserted.

(8) In regulation 13(2) (Pre-inquiry meeting) the words “4 weeks” are substituted with the words “2 weeks”.

(9) In regulation 22(1) (Determining the appeal – general) after the words “against a decision” the words “or a non-determination” are inserted and for regulation 22(1)(b) and (c) substitute –

“(a) allow the appeal, and where the appeal is against a decision, quash the decision in whole or in part;

(b) where the appointed person allows the appeal, and in the case of an appeal against a decision quashes that decision in whole or in part, direct the Authority to approve the application for approval to which the appeal relates”

(10) In regulation 22(2) (Determining the appeal – general) after the words “in writing of the determination” insert the words “within the period of 12 weeks beginning with the start date where the appeal is to be determined by written representations or within the period of 12 weeks beginning on the day of the close of the hearing or inquiry where the appeal is to be determined by way of a hearing or inquiry.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises AQUIND Interconnector Limited (referred to in this Order as the undertaker) to construct, operate and maintain an electricity interconnector near Lovedean, Hampshire out to the EEZ boundary between UK and France waters, to be known as AQUIND Interconnector, as well associated development. The Order imposes requirements in connection with the electricity interconnector and the associated development, together the authorised development.

The Order permits the undertaker to acquire, compulsorily or by agreement, lands and rights in land and to use land for the purposes of the authorised development.

A copy of the plans and book of reference referred to in this Order and certified in accordance with article 43 (Certification of plans, etc.) of this Order may be inspected free of charge at [xx].

