

Application by AQUIND Limited for an Order granting Development Consent for the AQUIND Interconnector Project

The Examining Authority's schedule of changes to the draft Development Consent Order [REP7-013]

Reference: EN020022

Issue date: 3 February 2021

Ref	ExA's suggested changes	ExA's comments
Preamble		
Page 4, prior to Part 1	The Panel, having considered the application together with the documents that accompanied it and the representations made, in accordance with section 83 74 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.	Incorrect section reference to PA2008.
Articles		
7	(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.	The Secretary of State has not found the inclusion of a time limit for determination to be appropriate in recently made Orders. Subsequent sub-paragraphs will require renumbering.
10(2)	(2) The undertaker must restore to the reasonable satisfaction of the street authority restore any street that has been temporarily altered pursuant to this article in accordance with Section 70 of the New Roads and Street Works Act 1991.	To follow the approach as specified in the Applicant's response to Local Impact Reports, within which the ' <i>Specification for the Reinstatement of Openings in Highways</i> ' is applicable.
19(5)	(5) The undertaker must make good any damage done to the land when exercising any power 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.	To clarify the extent of compensation provided by the article.

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24(2)	(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 commencement of any activity authorised by this Order which interferes with or breaches such rights.	The amendment seeks to maintain a necessity for extinguishment and reflects recent Orders made by the Secretary of State.
26(3)	(b) for “the three-year period mentioned in section 4” substitute substitute “the 7 five-year period mentioned in article 22 (Time limit for exercise of authority to acquire land compulsorily) of the AQUIND Interconnector Order 202[]”.	For consistency throughout the Order.
30(7)	(7) Any dispute as to the person’s entitlement to compensation under paragraph (5)-(6) , or as to the amount of compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.	To correct a referencing error.
30(8)	(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 construction of the authorised development, other than loss or damage for which compensation is payable under paragraph (5)-(6) .	To correct a referencing error.
43	Certification of plans and documents , etc	To avoid doubt about the inclusion of all relevant plans and documents. Contents list and cross-references (e.g. requirements) need to be changed to match.
43(3)	(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; and (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.	To correct a drafting error.

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45	<p>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.</p> <p>(2) Should the Secretary of State fail to make an appointment under paragraph (1) within 14 days’ of a referral, the referring party may refer to the Centre for Effective Dispute Resolution for appointment of an arbitrator. shall be referred to and settled in arbitration in accordance with the rules at Schedule 17 (arbitration rules) of this Order, by a single arbitrator to be agreed upon by the parties, within 14 days of receipt of the notice of arbitration, or if the parties fail to agree within the time period stipulated, to be appointed on application of either party (after giving written notice to the other) by the Secretary of State.</p> <p>(2) For the avoidance of doubt, any matter for which the consent or approval of the Secretary of State or the Marine Management Organisation is required under any provision of this Order shall not be subject to arbitration.</p>	<p>The Applicant’s approach varies from the equivalent provisions in recently made Orders. The Secretary of State has made amendments to return similar suggested variations back to the standard provision during the decision period.</p>
46	<p>Procedure in relation to requirements, appeals certain approvals, etc.</p> <p>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.</p> <p>(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.</p> <p>Subject to paragraph (2), Schedule 3 (procedure in relation to certain approvals etc.) is to have effect in relation to all consents, agreements or approvals contemplated by any provisions of this Order.</p> <p>(2) Schedule 3 does not apply in respect of any consents, agreements or approvals contemplated by the provisions of Schedule 13 (protective</p>	<p>To address concerns over an inadequate allowance of time by the local planning authorities, and to bring this into line with the corresponding arrangements set out in recently made Orders and agreed by the Secretary of State.</p>

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	<p>provisions) or any dispute under article 18(6) (protective work to buildings) to which the following paragraph applies.</p> <p>(3) Subject to any other provision in this Order, any difference or dispute arising under any provision of Schedule 13 or article 18(6) must, unless otherwise agreed in writing between the undertaker and the party in question, be referred to and settled in arbitration, by a single arbitrator to be agreed upon by the parties within 14 days of receipt of the notice of arbitration, or if the parties fail to agree within the time period stipulated, to be appointed on application of either party (after giving written notice to the other) by the Secretary of State.</p>	
47(2)	<p>(2) Paragraph (1) does not apply to the exercise of any right under this Order for the compulsorily compulsory acquisition of an interest in any Crown land (as defined in section 227 of 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). A consent under paragraph (1) may be given unconditionally or subject to terms and conditions and is deemed to have been given in writing where it is sent electronically.</p>	Correction of typographic error.
SCHEDULES		
Schedule 2, Requirements		
R26	<p>26.—(1) The authorised development landwards of MHWS must not be commenced for the purposes of section 155(1) of the Planning Act 2008 and the undertaker must not exercise the powers in articles 20 to 36 until:</p> <p>(a) subject to paragraph (3), security of £4.97 million has been provided in respect of the liabilities of the undertaker to pay compensation to landowners in connection with the acquisition of their land or of rights over their land or the temporary use of their land by the undertaker exercising its powers under Part 5 of this Order; and</p> <p>(b) the Secretary of State has approved the security in writing.</p> <p>(2) The security referred to in paragraph (1) may include, without limitation, any one or more of the following:</p> <p>(a) the deposit of a cash sum;</p> <p>(b) a payment into court;</p>	<p>The additions seek to provide an appropriate mechanism by which the relevant tests in respect of the availability of funding for Compulsory Acquisition could be satisfied. The additions reflect suggestions made by Mr Geoffrey Carpenter and Mr Peter Carpenter at Deadline 6 and recent Orders made by the Secretary of State.</p>

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	<p>(c) an escrow account;</p> <p>(d) a bond provided by a financial institution;</p> <p>(e) an insurance policy;</p> <p>(f) a guarantee by a parent company or companies of the undertaker;</p> <p>(g) a guarantee by a person of sufficient financial standing (other than the undertaker).</p> <p>(3) A guarantee given in respect of any liability of the undertaker to pay compensation under this Order is to be treated as enforceable against the guarantor by any person to whom such compensation is payable.</p> <p>(3)(4) The Secretary of State is to have no liability to pay compensation in respect of the compulsory acquisition of land or otherwise under this Order.</p> <p>(5) Article 46 (Procedure in relation to requirements, appeals, etc.) does not apply in relation to approvals sought under this requirement.</p>	
Schedule 3, procedure for approvals, consent and appeals		
3	<p style="text-align: right;">Article 3 46</p> <p style="text-align: center;">SCHEDULE 3</p> <p style="text-align: center;">Procedure for approvals, consents and appeals</p> <p>Applications made under a Requirement</p> <p>1.—(1) Where an application has been made to a discharging authority for any consent, agreement or approval under a requirement included in this Order:</p> <p>(a) the undertaker must give the discharging authority sufficient information to identify the requirement(s) to which the application relates;</p> <p>(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</p> <p>(c) the discharging authority must give notice to the undertaker of its decision on the application before the end of the decision period.</p>	<p>To address concerns over an inadequate allowance of time by the discharging authorities, and to bring this into line with the corresponding arrangements set out in recently made Orders and agreed by the Secretary of State.</p> <p>To correct cross-referencing.</p>

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	<p>(2) For the purposes of sub-paragraph (1) and (3), the decision period is—</p> <p>(a) where no further information is requested under paragraph 2, 42 days from the day immediately following that on which the application is received by the authority;</p> <p>(b) where further information is requested under paragraph 2, 42 days from the day immediately following that on which further information has been supplied by the undertaker under paragraph 2; or</p> <p>(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).</p> <p>(3) In the event the discharging authority does not determine an application within the decision period the discharging authority is taken to have granted all parts of the application (without any condition or qualification) at the end of that period unless otherwise agreed in writing.</p> <p>Further Information</p> <p>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.</p> <p>(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 5 working days of receipt of the application, notify the undertaker in writing specifying the further information required.</p> <p>(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 5 working days of receipt of the application, and must notify the undertaker in writing specifying any further information requested by the requirement consultee within 5</p>	

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	<p>working days of receipt of such a request and in any event within 21 days of receipt of the application.</p> <p>(4) If the discharging authority does not give such notification as specified in sub-paragraph (2) or (3) or otherwise fails to request any further information within the timescales provided for in this paragraph, 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.</p> <p>Appeals</p> <p>3.—(1) The undertaker may appeal to the Secretary of state in the event that—</p> <ul style="list-style-type: none"> (a) the discharging authority refuses an application for any agreement or approval required by a requirement included in this Order; (b) 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 (c) 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. <p>(2) The procedure for appeals is as follows—</p> <ul style="list-style-type: none"> (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); 	

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	<p>(e) as soon as is practicable after receiving the appeal documentation and within not more than 28 days, 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;</p> <p>(d) the discharging authority and the requirement consultee (if applicable) must submit any written representations in respect of the appeal 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 (e) 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;</p> <p>(e) the appeal parties may make any counter submissions to the appointed person within 10 working days beginning with the first day immediately following the date of receipt of written representations pursuant to sub paragraph (d); and</p> <p>(f) the appointed person must make a decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable.</p> <p>(3) If the appointed person considers that further information is necessary to enable the appointed person to consider the appeal, the appointed person must as soon as practicable notify the appeal parties in writing specifying the further information required, the appeal party from whom the information is sought, and the date by which the information is to be submitted.</p> <p>(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.</p> <p>(5) Any written representations concerning matters contained in the further information must be submitted to the appointed person, and made available to</p>	

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	<p>all appeal parties within 10 working days of the date mentioned in sub-paragraph (3).</p> <p>Outcome of appeals</p> <p>4.—(1) On an appeal under paragraph 3 of this Schedule, the appointed person may—</p> <p style="padding-left: 40px;">(a) allow or dismiss the appeal; or</p> <p style="padding-left: 40px;">(b) reverse or vary any part of the decision of the discharging authority (whether the appeal relates to that part of it or not);</p> <p>and may deal with the application as if it had been made to the appointed person in the first instance.</p> <p>(2) 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 paragraph 3 of this Schedule.</p> <p>(3) 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.</p> <p>(4) The decision of the appointed person on an appeal is final and binding on the parties, and a court may entertain proceedings for questioning the decision only if the proceedings are brought by a claim for judicial review within 6 weeks of the date of the appointed person’s decision beginning with the date of that decision.</p> <p>(5) If an approval is given by the appointed person pursuant to this Schedule, it is 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.</p> <p>(6) The discharging authority may confirm any determination given by the appointed person in identical form in writing but a failure to give such</p>	

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	<p>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.</p> <p>(7) Save where a direction is given pursuant to sub-paragraph (8) 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.</p> <p>(8) 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 the Planning Practice Guidance: Appeals (March 2014) or any circular or guidance which may from time to time replace it.</p> <p>Interpretation of this Schedule</p> <p>5. In this Schedule—</p> <p>“the appeal parties means” the discharging authority, the requirement consultee and the undertaker; and</p> <p>“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.</p> <p>Interpretation</p> <p>1. In this Schedule—</p> <p>“the appeal parties” means the discharging authority, the undertaker and any requirement consultees;</p> <p>“business day” means a day other than a Saturday or Sunday which is not Christmas Day, Good Friday or a bank holiday under section 1 of the Banking and Financial Dealings Act 1971;</p>	

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	<p>“discharging authority” means the body responsible for giving a consent, agreement or approval under this schedule; and</p> <p>“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.</p> <p>Applications made under requirements</p> <p>2.—(1) Where an application has been made to the discharging authority for any consent, agreement or approval required or contemplated by any provisions of this Order (including consent, agreement or approval in respect of part of a requirement) the discharging authority must give notice to the undertaker of its decision on the application within a period of nine weeks beginning with—</p> <p>(a) where no further information is requested under paragraph 3, the day immediately following that on which the application is received by the discharging authority;</p> <p>(b) where further information is requested under paragraph 3, the day immediately following that on which further information has been supplied by the undertaker; or</p> <p>(c) such longer period as may be agreed in writing by the undertaker and the discharging authority.</p> <p>(2) Subject to sub-paragraph (4), in the event that the discharging authority does not determine an application within the period set out in sub-paragraph (1), the discharging authority is to be taken to have granted all parts of the application (without any condition or qualification) at the end of that period.</p> <p>(3) Where an application is made to the discharging authority for any consent, agreement or approval required by a requirement included in this Order, it must be accompanied by a report which states whether the subject matter of the application will give rise to any materially new or materially different environmental effects compared to those in the environmental statement.</p>	

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	<p>(4) Where an application has been made to the discharging authority for any consent, agreement or approval required by a requirement included in this Order, and—</p> <p>(a) the discharging authority does not determine the application within the period set out in sub-paragraph (1) and such application is accompanied by a report which states that the subject matter of such application is likely to give rise to any materially new or materially different environmental effects compared to those in the environmental statement; or</p> <p>(b) the discharging authority determines during the period set out in sub-paragraph (1) that it considers that the subject matter of such application will give rise to any materially new or materially different environmental effects compared to those in the environmental statement, the application is to be taken to have been refused by the discharging authority at the end of that period.</p> <p>Further information and consultation</p> <p>3.—(1) In relation to any application to which this Schedule applies, the discharging authority has the right to request such reasonable further information from the undertaker as is necessary to enable it to consider the application.</p> <p>(2) In the event that the discharging authority considers such further information to be necessary and the provision of the Order governing or requiring the application does not specify that consultation with a requirement consultee is required, the discharging authority must, within ten business days of receipt of the application, notify the undertaker in writing specifying the further information required.</p> <p>(3) If the provision of the Order governing or requiring the application specifies that consultation with a requirement consultee is required, the discharging authority must issue the consultation to the requirement consultee within five business days of receipt of the application, and must notify the undertaker in writing specifying any further information requested by the</p>	

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	<p>requirement consultee within five business days of receipt of such a request and in any event within ten business days of receipt of the application.</p> <p>(4) In the event that the discharging authority does not give notification as specified in sub-paragraph (2) or (3) it is to be deemed to have sufficient information to consider the application and is not subsequently entitled to request further information without the prior agreement of the undertaker.</p> <p>Appeals</p> <p>4.—(1) The undertaker may appeal in the event that—</p> <p>(a) the discharging authority refuses (including a deemed refusal pursuant to paragraph 2(4)) an application for any consent, agreement or approval required or contemplated by any of the provisions of this Order or grants it subject to conditions;</p> <p>(b) on receipt of a request for further information pursuant to paragraph 3 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</p> <p>(c) 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.</p> <p>(2) The appeal process is to be as follows—</p> <p>(a) any appeal by the undertaker must be made within 42 days of the date of the notice of the decision or determination, or (where paragraph 2(3) applies) expiry of the decision period as determined under paragraph 2(1);</p> <p>(b) the undertaker must submit the appeal documentation to the Secretary of State and must on the same day provide copies of the appeal documentation to the appeal parties;</p>	

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	<p>(c) as soon as is practicable following receipt of the appeal documentation, the Secretary of State is to 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 must be sent, the date of such notification being the “start date” for the purposes of this sub-paragraph (2);</p> <p>(d) the discharging authority and any requirement consultee must submit written representations to the appointed person in respect of the appeal within ten business days of the start date 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;</p> <p>(e) the appeal parties must make any counter-submissions to the appointed person within ten business days of receipt of written representations pursuant to sub-paragraph (d); and</p> <p>(f) the appointed person must decide the appeal and notify the appeal parties of the decision, with reasons, as soon as reasonably practicable and in any event within 30 business days of the deadline for the receipt of counter-submissions pursuant to sub-paragraph (e).</p> <p>(3) The appointment of the person pursuant to sub-paragraph (2)(c) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.</p> <p>(4) If the appointed person considers that further information is necessary to enable consideration of the appeal the appointed person must, within five business days of his appointment, notify the appeal parties in writing specifying the further information required, the appeal part from whom the information is sought, and the date by which the information is to be submitted.</p> <p>(5) Any further information required pursuant to sub-paragraph (4) is to be provided by the party from whom the information is sought to the appointed person and to the other appeal parties by the date specified by the appointed person (the “specified date”), and the appointed person must notify the appeal</p>	

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	<p>parties of the revised timetable for the appeal on or before that day. The revised timetable for the appeal must require submission of written representations to the appointed person within ten business days of the specified date but otherwise is to be in accordance with the process and time limits set out in sub-paragraphs (2)(d) to (2)(f).</p> <p>(6) On an appeal under this paragraph, the appointed person may—</p> <ul style="list-style-type: none"> (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), <p>and may deal with the application as if it had been made to the appointed person in the first instance.</p> <p>(7) The appointed person may proceed to a decision on an appeal taking into account only such written representations as have been sent within the prescribed time limits, or set by the appointed person, under this paragraph.</p> <p>(8) The appointed person may proceed to a decision even though no written representations have been made within the prescribed time limits, if it appears to him that there is sufficient material to enable a decision to be made on the merits of the case.</p> <p>(9) The decision of the appointed person on an appeal is to be final and binding on the appeal parties, and a court may entertain proceedings for questioning the decision only if the proceedings are brought by a claim for judicial review.</p> <p>(10) If an approval is given by the appointed person pursuant to this Schedule, it is deemed to be an approval for the purpose of any consent, agreement or approval required under the Order or for the purpose of Schedule 2 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</p>	

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	<p>identical form) is not to be taken to affect or invalidate the effect of the appointed person’s determination.</p> <p>(11) The appointed person may or may not be a member of the Planning Inspectorate but must be a qualified town planner of at least ten years’ experience.</p> <p>(12) Save where a direction is given pursuant to sub-paragraph (13) 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.</p> <p>(13) 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 is to be made, the appointed person must have regard to Planning Practice Guidance: Appeals (March 2014), published by the Ministry of Housing, Communities & Local Government, or any circular or guidance which may from time to time replace it.</p> <p>Application to protective provisions</p> <p>5. Nothing in this Schedule applies to any consent, agreement or approval required or contemplated by Schedule 13 (protective provisions) or article 18(6) (protective work to buildings).</p>	
<p>Schedule 9, Modification of compensation and compulsory purchase enactments for the creation of new rights and restrictive covenants</p>		
2(1)	<p>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 paragraph (3).</p>	For consistency and accuracy.
<p>Schedule 17, Arbitration Rules</p>		
Insert Schedule 17	<p style="text-align: right;">Article 45</p> <p style="text-align: center;">SCHEDULE 17 ARBITRATION RULES</p>	The Applicant’s approach to arbitration (Article 45) varies from the equivalent provisions in recently made Orders. The Secretary of State has made amendments to return

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	<p>Primary objective</p> <p>1.—(1) The primary objective of these Arbitration Rules is to achieve a fair, impartial, final and binding award on the substantive difference between the parties (save as to costs) within 4 months from the date the Arbitrator is appointed pursuant to article 37 (arbitration) of the Order.</p> <p>(2) The Parties will first use their reasonable endeavours to settle a dispute amicably through negotiations undertaken in good faith by the senior management of the Parties. Any dispute which is not resolved amicably by the senior management of the Parties within twenty business days of the dispute arising, or such longer period as agreed in writing by the Parties, shall be subject to arbitration in accordance with the terms of this Schedule.</p> <p>(3) The Arbitration shall be deemed to have commenced when a party (“the Claimant”) serves a written notice of arbitration on the other party (“the Respondent”).</p> <p>Time periods</p> <p>2.—(1) All time periods in these Arbitration Rules will be measured in business days and this will exclude weekends, bank and public holidays.</p> <p>(2) Time periods will be calculated from the day after the Arbitrator is appointed which shall be either—</p> <ul style="list-style-type: none"> (a) the date the Arbitrator notifies the parties in writing of his/her acceptance of an appointment by agreement of the parties; or (b) the date the Arbitrator is appointed by the Secretary of State. <p>Timetable</p> <p>3.—(1) The timetable for the arbitration will be that set out in sub-paragraphs (2) to (4) below unless amended in accordance with paragraph 5(3).</p> <p>(2) Within 15 days of the Arbitrator being appointed, the Claimant shall provide both the Respondent and the Arbitrator with—</p> <ul style="list-style-type: none"> (a) a written Statement of Claim which describes the nature of the difference between the parties, the legal and factual issues, the Claimant’s contentions as to those issues, and the remedy it is seeking; and 	<p>similar suggested variations back to the standard provision during the decision period.</p>

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	<p>(b) all statements of evidence and copies of all documents on which it relies, including contractual documentation, correspondence (including electronic documents), legal precedents and expert witness reports.</p> <p>(3) Within 15 days of receipt of the Claimant’s statements under sub-paragraph (2) by the Arbitrator and Respondent, the Respondent shall provide the Claimant and the Arbitrator with—</p> <p>(a) a written Statement of Defence responding to the Claimant’s Statement of Claim, its statement in respect of the nature of the difference, the legal and factual issues in the Claimant’s claim, its acceptance of any element(s) of the Claimant’s claim, its contentions as to those elements of the Claimant’s claim it does not accept;</p> <p>(b) all statements of evidence and copies of all documents on which it relies, including contractual documentation, correspondence (including electronic documents), legal precedents and expert witness reports; and</p> <p>(c) any objections it wishes to make to the Claimant’s statements, comments on the Claimant’s expert report(s) (if submitted by the Claimant) and explanations for the objections.</p> <p>(4) Within 5 days of the Respondent serving its statements sub-paragraph (3), the Claimant may make a Statement of Reply by providing both the Respondent and the Arbitrator with—</p> <p>(a) a written statement responding to the Respondent’s submissions, including its reply in respect of the nature of the difference, the issues (both factual and legal) and its contentions in relation to the issues;</p> <p>(b) all statements of evidence and copies of documents in response to the Respondent’s submissions;</p> <p>(c) any expert report in response to the Respondent’s submissions;</p> <p>(d) any objections to the statements of evidence, expert reports or other documents submitted by the Respondent; and</p> <p>(e) its written submissions in response to the legal and factual issues involved.</p>	

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	<p>Procedure</p> <p>4.—(1) The Arbitrator shall make an award on the substantive difference based solely on the written material submitted by the parties unless the Arbitrator decides that a hearing is necessary to explain or resolve any matters.</p> <p>(2) Either party may, within 2 days of delivery of the last submission, request a hearing giving specific reasons why it considers a hearing is required.</p> <p>(3) Within 5 days of receiving the last submission, the Arbitrator will notify the parties whether a hearing is to be held and the length of that hearing.</p> <p>(4) Within 10 days of the Arbitrator advising the parties that he will hold a hearing, the date and venue for the hearing will be fixed by agreement with the parties, save that if there is no agreement the Arbitrator shall direct a date and venue which he considers is fair and reasonable in all the circumstances. The date for the hearing shall not be less than 35 days from the date of the Arbitrator’s direction confirming the date and venue of the hearing.</p> <p>(5) A decision will be made by the Arbitrator on whether there is any need for expert evidence to be submitted orally at the hearing. If oral expert evidence is required by the Arbitrator, then any expert(s) attending the hearing may be asked questions by the Arbitrator.</p> <p>(6) There will be no process of examination and cross-examination of experts, but the Arbitrator shall invite the parties to ask questions of the experts by way of clarification of any answers given by the expert(s) in response to the Arbitrator’s questions. Prior to the hearing the procedure for the expert(s) will be that—</p> <ul style="list-style-type: none"> (a) at least 20 days before a hearing, the Arbitrator will provide a list of issues to be addressed by the expert(s); (b) if more than one expert is called, they will jointly confer and produce a joint report or reports within 10 days of the issues being provided; and (c) the form and content of a joint report shall be as directed by the Arbitrator and must be provided at least 5 days before the hearing. <p>(7) Within 10 days of a Hearing or a decision by the Arbitrator that no hearing is to be held the Parties may by way of exchange provide the Arbitrator with a</p>	

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	<p>final submission in connection with the matters in dispute and any submissions on costs. The Arbitrator shall take these submissions into account in the Award.</p> <p>(8) The Arbitrator may make other directions or rulings as considered appropriate in order to ensure that the parties comply with the timetable and procedures to achieve an award on the substantive difference within 4 months of the date on which they are appointed, unless both parties otherwise agree to an extension to the date for the award.</p> <p>(9) If a party fails to comply with the timetable, procedure or any other direction then the Arbitrator may continue in the absence of a party or submission or document, and may make a decision on the information before them attaching the appropriate weight to any evidence submitted beyond any timetable or in breach of any procedure and/or direction.</p> <p>(10) The Arbitrator’s award shall include reasons. The parties shall accept that the extent to which reasons are given shall be proportionate to the issues in dispute and the time available to the Arbitrator to deliver the award.</p> <p>Arbitrator’s powers</p> <p>5.—(1) The Arbitrator has all the powers of the Arbitration Act 1996(a), including the non-mandatory sections, save where modified by these Rules.</p> <p>(2) There shall be no discovery or disclosure, except that the Arbitrator shall have the power to order the parties to produce such documents as are reasonably requested by another party no later than the Statement of Reply, or by the Arbitrator, where the documents are manifestly relevant, specifically identified and the burden of production is not excessive. Any application and orders should be made by way of a Redfern Schedule without any hearing.</p> <p>(3) Any time limits fixed in accordance with this procedure or by the Arbitrator may be varied by agreement between the parties, subject to any such variation being acceptable to and approved by the Arbitrator. In the absence of agreement, the Arbitrator may vary the timescales and/or procedure—</p> <p>(a) if the Arbitrator is satisfied that a variation of any fixed time limit is reasonably necessary to avoid a breach of the rules of natural justice and then;</p>	

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	<p>(b) only for such a period that is necessary to achieve fairness between the parties.</p> <p>(4) On the date the award is made, the Arbitrator will notify the parties that the award is completed, signed and dated, and that it will be issued to the parties on receipt of cleared funds for the Arbitrator’s fees and expenses.</p> <p>Costs</p> <p>6.—(1) The costs of the Arbitration shall include the fees and expenses of the Arbitrator, the reasonable fees and expenses of any experts and the reasonable legal and other costs incurred by the parties for the Arbitration.</p> <p>(2) Subject to sub-paragraph (3), the Arbitrator will award recoverable costs on the general principle that each party should bear its own costs.</p> <p>(3) The Arbitrator may depart from the general principle in sub-paragraph (2) and make such other costs award as it considers reasonable where a party has behaved unreasonably as defined within the National Planning Practice Guidance or such other guidance as may replace it.</p> <p>Confidentiality</p> <p>7.—(1) Subject to sub-paragraphs (2) and (3), any arbitration hearing and documentation shall be open to and accessible by the public.</p> <p>(2) The Arbitrator may direct that the whole or part of a hearing is to be private or any documentation to be confidential where it is necessary in order to protect commercially sensitive information.</p> <p>(3) Nothing in this paragraph shall prevent any disclosure of a document by a party pursuant to an order of a court in England and Wales or where disclosure is required under any enactment.</p>	