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**nationalgrid**

**THE PLANNING ACT 2008**  
**THE INFRASTRUCTURE PLANNING (APPLICATIONS: PRESCRIBED FORMS AND  
PROCEDURE) REGULATIONS 2009 REGULATION 5(2)(c)**  
**THE PROPOSED NATIONAL GRID (YORKSHIRE GREEN ENERGY ENABLEMENT PROJECT)  
DEVELOPMENT CONSENT ORDER 202\***  
**EXPLANATORY MEMORANDUM**

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# Contents

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<b>1.</b>	<b>Introduction</b>	<b>1</b>
1.1.	Summary	1
1.2.	Approach regarding the Model Provisions	2
<b>2.</b>	<b>Purpose of the draft DCO</b>	<b>3</b>
<b>3.</b>	<b>Construction and operation of the Proposed Development</b>	<b>5</b>
3.1.	Nationally Significant Infrastructure Project	5
3.2.	Associated development	6
<b>4.</b>	<b>Preliminary Provisions</b>	<b>9</b>
4.4.	Article 1 (Citation and commencement)	9
4.5.	Article 2 (Interpretation)	9
4.6.	Operative Provisions	11
<b>Part 2</b>	<b>Principal Powers</b>	<b>12</b>
4.7.	Article 3 (Development consent etc. granted by the Order)	12
4.8.	Article 4 (Maintenance of authorised development)	12
4.9.	Article 5 (Limits of deviation)	12
4.10.	Article 6 (Benefit of the Order)	13
4.11.	Article 7 (Consent to transfer benefit of the Order)	14
4.12.	Article 8 (Planning permission)	14
4.13.	Article 9 (Application of the 1990 Act)	15
4.14.	Article 10 (Application of the Community Infrastructure Levy Regulations 2010)	16
<b>Part 3</b>	<b>Streets</b>	<b>16</b>
4.15.	Article 11 (Street works)	16
4.16.	Article 12 (Application of the 1991 Act)	17
4.17.	Article 13 (Power to alter layout etc. of streets)	17
4.18.	Article 14 (Temporary stopping up of streets, cycle tracks, and public rights of way)	18
4.19.	Article 15 (use of private roads for construction)	18
4.20.	Article 16 (Access to works)	19
4.21.	Article 17 (Construction, alteration and maintenance of streets)	19
4.22.	Article 18 (Agreements with street authorities)	20

## **Part 4 Supplemental Powers 20**

- 4.23. Article 19 (Discharge of water) 20
- 4.24. Article 20 (Protective work to buildings) 20
- 4.25. Article 21 (Authority to survey and investigate the land) 21

## **Part 5 Compulsory Acquisition Powers 22**

- 4.26. Article 22 (Compulsory acquisition of land) 22
- 4.27. Article 23 (Compulsory acquisition of land – incorporation of the mineral code) 23
- 4.28. Article 24 (Time limit for exercise of authority to acquire land and rights compulsorily) 23
- 4.29. Article 25 (Compulsory acquisition of rights) 23
- 4.30. Article 26 (Extinguishment and suspension of private rights) 24
- 4.31. Article 27 (Extinguishment of private rights and restrictive covenants relating to apparatus removed from land subject to temporary possession) 25
- 4.32. Article 28 (Power to override easements and other rights) 26
- 4.33. Article 29 (Disregard of certain interests and improvements) 26
- 4.34. Article 30 (Set-off for enhancement in value of retained land) 27
- 4.35. Article 31 (No double recovery) 27
- 4.36. Article 32 (Modification of Part 1 of the 1965 Act) 28
- 4.37. Article 33 (Application of the 1981 Act) 28
- 4.38. Article 34 (Acquisition of subsoil or airspace only) 29
- 4.39. Article 35 (Use of subsoil under or airspace over streets) 29
- 4.40. Article 36 (Temporary use of land by National Grid) 29
- 4.41. Article 37 (Temporary use of land by NPG) 31
- 4.42. Article 38 (Temporary use of land by NGN) 31
- 4.43. Article 39 (Temporary use of land for maintaining the authorised development) 31
- 4.44. Article 40 (Statutory undertakers) 32
- 4.45. Article 41 (Recovery of costs of new connections) 32

## **Part 6 Miscellaneous and General 32**

- 4.46. Article 42 (Application of landlord and tenant law) 32
- 4.47. Article 43 (Defence to proceedings in respect of statutory nuisance) 33
- 4.48. Article 44 (Maintenance of drainage works) 33
- 4.49. Article 45 (Traffic Regulation) 33
- 4.50. Article 46 (Felling or lopping of trees and removal of hedgerows) 34
- 4.51. Article 47 (Protection of interests) 34
- 4.52. Article 48 (Certification of plans, etc.) 34
- 4.53. Article 49 (Service of notices) 35
- 4.54. Article 50 (Procedure regarding certain approvals, etc.) 35
- 4.55. Article 51 (Removal of human remains) 36
- 4.56. Article 52 (Amendment of local legislation) 36
- 4.57. Article 53 (Arbitration) 37
- 4.58. Article 54 (Temporary closure of, and works in, the river Ouse) 37
- 4.59. Article 55 (Trees subject to tree preservation orders) 37

<b>5.</b>	<b>Schedules</b>	<b>38</b>
5.1.	Schedule 1 (Authorised development)	38
5.2.	Schedule 2 (Plans and drawings)	38
5.3.	Schedule 3 (Requirements)	38
5.4.	Schedule 4 (Discharge of Requirements)	41
5.5.	Schedule 5 (Benefit of the Order Rules)	41
5.6.	Schedule 6 (Streets subject to street works)	41
5.7.	Schedule 7 (Streets subject to alteration of layout)	41
5.8.	Schedule 8 (Streets, cycle tracks or public rights of way to be temporarily stopped up)	42
5.9.	Schedule 9 (Access to works)	42
5.10.	Schedule 10 (Modification of compensation and compulsory purchase enactments for creation of new rights)	42
5.11.	Schedule 11 (Extinguishment of private rights and restrictive covenants relating to apparatus removed from land subject to temporary possession)	42
5.12.	Schedule 12 (Land of which temporary possession may be taken)	42
5.13.	Schedule 13 (Land in which only new rights and restrictive covenants etc. may be acquired)	43
5.14.	Schedule 14 (Traffic regulation)	43
5.15.	Schedule 15 (Protective Provisions)	43
5.16.	Schedule 16 (Amendment of local legislation)	45

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# 1. Introduction

## 1.1. Summary

- 1.1.1. This memorandum accompanies an application for development consent (the **Application**) by National Grid Electricity Transmission plc (**National Grid**) for works to construct, operate and maintain the Yorkshire Green Energy Enablement (GREEN) Project (referred to as the **Project** or **Yorkshire GREEN**) in Yorkshire, with the most northerly components approximately 1.5km north-east of the village of Shipton and approximately 10km north-west of York city centre, and the most southerly components at Monk Fryston Substation, located to the east of the A1 and immediately south of the A63. National Grid, together with Northern Power Grid (Northeast) PLC (**NPG**) and Northern Gas Networks Limited (**NGN**), makes up the 'undertaker' as so defined within the DCO (**undertaker**).
- 1.1.2. The authorised development is required to provide sufficient transmission capacity to enable the connection of new electricity generation and interconnection projects in the region, and to carry out all associated works.
- 1.1.3. This memorandum explains the purpose and effect of each Article of, and Schedule to, the draft National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 202\* (the **DCO**), as required by regulation 5(2)(c) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009<sup>1</sup> (**APFP Regulations**).
- 1.1.4. In compliance with The Planning Inspectorate's Advice Note 15: Drafting Development Consent Orders<sup>2</sup>, this memorandum should assist the Examining Authority, Secretary of State and any third parties in understanding the powers and accompanying restrictions sought within the DCO in respect of the authorised development.
- 1.1.5. The Project currently falls within six local authority boundaries:
  - Hambleton District Council;
  - City of York Council;
  - Harrogate Borough Council;
  - Selby District Council;
  - Leeds City Council; and
  - North Yorkshire County Council.

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

<sup>2</sup> [Advice Note Fifteen: Drafting Development Consent Orders | National Infrastructure Planning \(planninginspectorate.gov.uk\)](https://www.planninginspectorate.gov.uk/advice-note-15-drafting-development-consent-orders/) (accessed 18 October 2022).

- 1.1.6. North Yorkshire County Council, Hambleton District Council, Selby District Council, Ryedale District Council, Scarborough Borough Council, Harrogate Borough Council, Craven District Council and Richmondshire District Council are expected to form a new single council (North Yorkshire Council) on 1 April 2023 as a result of Local Government Reorganisation.

## 1.2. Approach regarding the Model Provisions

- 1.2.1. The Localism Act 2011<sup>3</sup> (the **Localism Act**) removed the requirement for the decision maker to have regard to the prescribed Model Provisions as per The Infrastructure Planning (Model Provisions) (England and Wales) Order 2009<sup>4</sup> (the **Model Provisions**). The Localism Act also removed the requirement on an applicant to explain in the explanatory memorandum divergences from the Model Provisions. However, the Model Provisions have been used as a base for a number of other DCOs and their adoption is seen as established practice by promoters.
- 1.2.2. Where there is a significant departure from the general Model Provisions, or an Article is based on other precedent orders, an explanation of the new provision is provided. In general, the precedents followed for the DCO are other development consent orders for electric lines (the National Grid (Hinkley Point C Connection Project) Order 2016<sup>5</sup> (**Hinkley Connection Order**) and the National Grid (Richborough Connection Project) Order 2017<sup>6</sup> (**Richborough Order**) as well as development consent orders and Transport and Works Act Orders (**TWAO**) for other linear schemes, such as pipeline and highway schemes.
- 1.2.3. The DCO does not include Model Provisions which are not relevant or applicable to the Project and this memorandum does not seek to explain further their omission.

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<sup>3</sup> 2011 c.20.

<sup>4</sup> S.I. 2009/2265.

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

<sup>6</sup> S.I. 2017/817.

## 2. Purpose of the draft DCO

- 2.1. The purpose of the DCO is to grant the undertaker development consent for a Nationally Significant Infrastructure Project (**NSIP**).
- 2.2. The Project will comprise both new infrastructure and works to existing transmission infrastructure and facilities. The Project is divided into six sections for ease of reference as described below.
  - 2.2.1. Section A (Osballdwick Substation): Minor works at the existing Osballdwick Substation comprising the installation of a new circuit breaker and isolator along with associated cabling, removal and replacement of one gantry and works to one existing pylon. All substation works would be within existing operational land.
  - 2.2.2. Section B (North west of York Area): Works would comprise:
    - reconductoring of 2.4km of the 400kV Norton to Osballdwick (2TW/YR) overhead line and replacement of one pylon on this overhead line; the new 400kV YN overhead line (2.8km), north of the proposed Overton Substation;
    - the new Shipton North and South 400kV cable sealing end compounds (CSECs) and 230m of cabling to facilitate the connection of the new YN 400kV overhead line with the existing Norton to Osballdwick YR overhead line;
    - a new substation (Overton 400kV/275kV Substation approximately 1km south of Shipton by Beningbrough;
    - two new sections of 275kV overhead line which would connect into Overton Substation from the south (the 2.1km XC overhead line to the south-west and the 1.5km SP overhead line to the south-east);
    - works to 5km of the existing XCP Poppleton to Monk Fryston overhead line between Moor Monkton in the west and Skelton in the east comprising a mixture of decommissioning, replacement and realignment. To the south and south-east of Moor Monkton the existing overhead line would be realigned up to 230m south from the current overhead line and the closest pylon to Moor Monkton (340m south-east) would be permanently removed. A 2.35km section of this existing overhead line would be permanently removed between the East Coast Mainline (ECML) Railway and Woodhouse Farm to the north of Overton.
  - 2.2.3. Section C (Moor Monkton – Tadcaster - existing 275kV Poppleton to Monk Fryston (XC) overhead line north of Tadcaster (Section D)): Works proposed to this existing 275kV overhead line include replacing existing overhead line conductors, replacement of pylon fittings, strengthening of steelwork and works to pylon foundations.



- 2.2.4. Section D (Tadcaster Area): Two new CSECs (Tadcaster East and West 275kV CSECs) would be installed approximately 3km south-west of Tadcaster and northeast of the A64/A659 junction where two existing overhead lines meet. One pylon on the existing 275kV Tadcaster Tee to Knaresborough (XD/PHG) overhead line would be replaced.
- 2.2.5. Section E (Tadcaster – Monk Fryston - existing 275kV Poppleton to Monk Fryston (XC) overhead line south of Tadcaster (Section D)): Works proposed to the existing 275kV overhead line include replacing existing overhead line conductors, replacement of pylon fittings, strengthening of steelwork and works to pylon foundations.
- 2.2.6. Section F (Monk Fryston Area): A new substation would be constructed to the east of the existing Monk Fryston Substation which is located approximately 2km south-west of the village of Monk Fryston and located off Rawfield Lane, south of the A63. A 1.45km section of the 275kV Poppleton to Monk Fryston (XC/XCP) overhead line to the west of the existing Monk Fryston substation and south of Pollums House Farm would be realigned to connect to the proposed Monk Fryston Substation. East of the existing Monk Fryston Substation the existing 4YS 400kV Monk Fryston to Eggborough overhead line, which currently connects to the existing substation, would be connected to the proposed Monk Fryston Substation.
- 2.3. A more detailed explanation of the Project is set out in **Environmental Statement Chapter 3: Description of the Project (Volume 5, Document 5.2.3)** which accompanies the Application.
- 2.4. The Project also requires the compulsory acquisition of land and rights over land as well as temporary possession. A justification for the use of compulsory acquisition powers is set out in the **Statement of Reasons (Volume 4, Document 4.1)** which accompanies the Application.

# 3. Construction and operation of the Proposed Development

## 3.1. Nationally Significant Infrastructure Project

- 3.1.1. The DCO will provide consent for upgrading and reinforcing the high-voltage power network above 132kV, so that more clean energy reaches homes and businesses in Yorkshire and further afield. It comprises new electricity infrastructure, such as new overhead lines, substations, cables and equipment to connect overhead lines to buried cables, known as CSECs, as well as works to existing overhead lines and substations. Schedule 1 to the DCO contains a list of numbered works comprising the NSIP and, as explained further below, the associated development.
- 3.1.2. In order to future proof the Project, rating values (**kV**) for the overhead lines and substations have not been specified within Schedule 1 of the DCO. In addition, 'operational use' has been defined within the DCO as "when that part first transmits electricity at 275kV or above".
- 3.1.3. This approach to drafting has been taken because positive future developments, which allow an increase in output from renewable energy sources, may necessitate higher transmission values to ensure that reaching carbon reduction targets are not inhibited by the transmission network. Future developments in overhead line technology may allow for this increase without any material changes to infrastructure, or therefore consequent material changes to likely significant effects. The environmental impact assessment has been conducted on the basis of the intended transmission value of 400kV or 275kV for overhead lines and 400kV/275kV for substations. However, it is not considered necessary to specify the transmission value in the DCO as a parameter in order to control environmental effects, as these are properly controlled by all other parameters of the DCO. For these reasons, the description of development at Schedule 1 of the DCO has been drafted so as not to specify a transmission value or, therefore, inhibit the operation of a different transmission value than currently envisaged in the future.
- 3.1.4. The authorised development falls within the definition of an NSIP for the purposes of sections 14 and 16 of the Planning Act 2008<sup>7</sup> (the **Act**) because it forms the installation of an electric line above ground which will be wholly within England, of a nominal voltage greater than 132 kilovolts and longer than two kilometres.
- 3.1.5. As the Project itself is an NSIP, development consent must be obtained from the Secretary of State to authorise it, and an application for a development

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<sup>7</sup> 2008 c.29.

consent order must be made to the Secretary of State, care of the Planning Inspectorate, under section 37 of the Act.

## 3.2. **Associated development**

3.2.1. Pursuant to section 115 of the Act, development consent can be granted for both the NSIP and associated development.

3.2.2. The Secretary of State for Levelling Up, Housing and Communities (as was named Secretary of State for Communities and Local Government at time of publication) issued guidance entitled "Guidance on associated development applications for major infrastructure projects" (April 2013)<sup>8</sup>, which sets out the defining characteristics of, and illustrates the types of development that may qualify as associated development. In summary, associated development must not be an aim in itself; it must be subordinate to and necessary for the effective operation of the NSIP, and may include measures that support construction or operation of the NSIP, or measures that are necessary to mitigate the effects of the primary development. Associated development should generally be proportionate to the nature and scale of the NSIP. The guidance clarified that it is for an applicant to decide whether to include something that could be considered as associated development in an application for development consent or whether to apply for consent for it by other means.

3.2.3. Associated development forming part of the Project may include:

- ramps, means of access, footpaths, cycleways, bridleways and trackways;
- embankments, bridges, aprons, abutments, foundations, retaining walls, drainage, wing walls, headwalls, culverts and fencing including stock-proof fencing;
- works to alter the position of apparatus, including mains, sewers, drains, conductors and cables;
- works to alter the course of, or otherwise interfere with a watercourse, drainage works, attenuation ponds, and culverts;
- landscaping and other works to mitigate any adverse effects of construction, maintenance, operation or use, together with means of access;
- tree, hedgerow and vegetation planting and maintenance works;
- works for the benefit or protection of the environment;
- works for the benefit or protection of land, structures, apparatus or equipment affected by the authorised development (including earthing and works for monitoring);

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<sup>8</sup> Department for Communities and Local Government, "Guidance on associated development applications for major infrastructure projects" April 2014, available [here](#) (accessed 18 October 2022).

- works required for the strengthening, improvement, maintenance, or reconstruction of any streets;
- works to streets and any alteration, removal or installation of street furniture, traffic signage and signals, and road lining, including where required to facilitate the construction of temporary accesses;
- site preparation works, site clearance (including scaffolding, fencing, vegetation removal, demolition of existing buildings or structures and the creation of alternative footpaths, cycleways, bridleways and trackways);
- earthworks (including soil stripping and storage, site levelling, ground improvement, berms and bunding);
- works within temporary construction compounds, comprising temporary laydown, assembly and storage areas, temporary offices, security cabins, temporary vehicle parking, construction fencing, gates and hoarding, perimeter enclosure, security fencing, construction related buildings, welfare facilities, construction and security lighting and haulage roads, provision of services, generators, lighting, waste management facilities, drainage works, attenuation ponds, access roads, wheel cleaning facilities, biosecurity measures, fencing and hoarding;
- works within cable sealing end compounds and substations, comprising the installation of switchgear, above and below ground services, troughs and cables, perimeter fencing, gates and hoarding, drainage systems, attenuation ponds, pollution control, generators, earthing and protection control systems, supervisory control and data acquisition communications, lighting, waste management facilities, drainage works, attenuation ponds, access roads, wheel cleaning facilities, biosecurity measures, parking areas;
- works to allow for the provision of services, including power supplies, electric vehicle charging points and communication equipment;
- installation of wires, cables, ducts, pipes and conductors including establishment of winching points;
- the changing of name plates;
- such other works, including scaffolding and crossing protection, working areas, and works of demolition (which includes but is not limited to demolition of residential properties), as may be necessary or expedient for the purposes of or in connection with the construction of the authorised development and which do not give rise to any materially different environmental effects from those assessed in the environmental statement;
- the construction and installation of permanent vehicle access roads, gates and fencing, hardstanding, and drainage;
- works to place, alter, divert, relocate, protect, remove or maintain the position of apparatus (including statutory undertakers' apparatus), services, plant and other equipment in, under or above a street, or in

other land, including mains, sewers, drains, pipes, lights, cables, fencing and other boundary treatments; and

- such other works as may be necessary or expedient for the purposes of or in connection with the construction, installation, operation or maintenance of the authorised development and which do not give rise to any materially different environmental effects from those assessed in the environmental statement.

- 3.2.4. In some cases there may be some overlap between associated development and works which form part of the NSIP. Given this potential for overlap between the two categories, there is a danger that separating this out in the DCO could potentially lead to an error, incorrectly defining it one way or another.
- 3.2.5. Noting that there is no requirement for a DCO to distinguish between these two categories, National Grid has therefore chosen not to differentiate the NSIP and associated development works in Schedule 1 to the DCO. All elements of the authorised development either constitute part of the NSIP or are associated development within the meaning of section 115(2) of the Act, and so can properly be authorised by the DCO.
- 3.2.6. In order to ensure that the authorised development is constructed efficiently and without impediment, the DCO contains the powers to carry out the other associated works listed in paragraphs (a) – (u) of Schedule 1. The use of such measures is precededented in previous National Grid Orders, such as the Richborough Order<sup>9</sup>.

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<sup>9</sup> S.I. 2017/817.

## The Draft DCO

# 4. Preliminary Provisions

- 4.1. The preamble to the DCO sets out some key legislative provisions and, if made, will explain that an application under section 37 of the Act has been made to the Secretary of State for an order granting development consent and that the application has been examined by a single appointed person or panel appointed by the Secretary of State pursuant to Chapter 3 of Part 6 of the Act and the Infrastructure Planning (Examination Procedure) Rules 2010<sup>10</sup>.
- 4.2. If made, the DCO will go on to explain that the Secretary of State has considered the Examining Authority's report and recommendation, has taken into account the environmental information submitted with the Application in accordance with regulation 3 of The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (the **EIA Regulations**)<sup>11</sup>, and has had regard to the documents and matters referred to in section 104(2) of the Act (which include the National Policy Statements and Local Impact Reports that will be prepared by the relevant planning authorities) in deciding to make the DCO.
- 4.3. Articles 1 and 2 of the DCO contain preliminary provisions.
- 4.4. **Article 1 (Citation and commencement)**
  - 4.4.1. This Article provides for the commencement and citation of the DCO. It includes the date on which the DCO will come into force.
- 4.5. **Article 2 (Interpretation)**
  - 4.5.1. This Article provides for the interpretation of the DCO and sets out specific definitions relating to the Project. The "authorised development" is defined as the development and the associated development, the components of which are listed in Schedule 1 (authorised development) of the DCO.
  - 4.5.2. It should be noted that Schedule 3 (requirements) also contains some further definitions of certain terms that relate specifically to the requirements, and Schedule 4 contains further definitions of certain terms that relate specifically to the procedure for discharge of requirements.
  - 4.5.3. Definitions to note include:
    - "Commence" is defined in Schedule 3 (requirements) and makes clear that a number of works that would constitute a 'material operation' under

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<sup>10</sup> S.I. 2010/103.

<sup>11</sup> S.I. 2017/572.

the Act do not mean that the authorised development has been 'commenced' for the purposes of triggering some of the requirements. This enables the undertaker to undertake certain preparatory works prior to the submission of relevant details for approval under certain requirements, such as requirement 6 (outline construction management plans). The works that are excluded from the definition of 'commence' are either de minimis or have minimal potential for adverse impacts. They may, in some cases, need to be carried out in order to comply with pre-commencement requirements (for example, to inform assessments and proposals required to be submitted for approval). The undertaker should be permitted to carry out low impact preparatory works following the grant of the DCO whilst it is working to discharge the pre-commencement requirements, thereby helping to minimise the construction timetable. In any event, the pre-commencement works must be carried out in accordance with the construction management plans and the outline soil management plan which are listed in requirement 5 (construction management plans). This is considered to be a proportionate approach which allows some flexibility for pre-commencement works to be undertaken prior to approval of all construction plans and which is within the scope of the environmental impact assessment.

- "building" is defined differently to section 235 of the Act. Whereas section 235 of the Act cross refers to section 336(1) of the 1990 Act describing a building as "includes any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building", the definition in the DCO "includes any structure or erection or any part of a building, structure or erection". This definition is necessary to give full effect to Article 20 (protective work to buildings).
- "linear works" and "non-linear works" are defined for the purposes of Article 5 (limits of deviation) of the DCO. The linear works are defined as the works shown on the works plan as having a centre line. This includes, for example, the overhead line (temporary and permanent) and supporting structures, and underground cables and utilities. Non-linear works are defined as the works identified on the works plan as non-linear works, comprising substations and cable sealing end compounds.
- "maintain" includes inspect, repair, adjust, alter, dismantle, remove, clear, refurbish, re-tension, paint, surface treat, decommission, improve, reconstruct or replace any or all of the authorised development including through the use of robots, drones, gadgets or similar devices either remote controlled or autonomous, provided such works do not give rise to any materially new or materially different environmental effects to those identified in the environmental statement. This is broadly reflective of the precedented position for previously made orders, such as the Richborough Order, but with the advancement of technology, also facilitates robots, drones, gadgets and similar devices to accommodate National Grid's current working practices.
- "undertaker" is expressed to include National Grid in relation to the authorised development in its entirety, and NPG and NGN have been named as undertakers in relation to certain specified works. The

authorised development includes diversion of NPG's and NGN's apparatus (undergrounding of overhead distribution lines and diversion of a gas pipeline respectively) and as, in practice, it is likely that NPG and NGN will undertake those diversion works, they have specifically been named as an 'undertaker' for the purposes of undertaking and operating their relevant works. The NPG works and the NGN works are also defined in the DCO. It should be noted that the NPG and NGN works are associated development, and do not amount to an NSIP in their own right.

- 4.5.4. Article 2(2) clarifies that any rights over land that are granted by the DCO 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.
- 4.5.5. Article 2(3) provides that all distances, directions and lengths referred to in the DCO are approximate, which allows for some flexibility in the event that it transpires there will be marginal differences in any of the dimensions and ensures they are permitted under the terms of the DCO.
- 4.5.6. Article 2(4) clarifies that all areas described in square metres in the book of reference are approximate.
- 4.5.7. Article 2(5) clarifies that any reference to a work number in the DCO is to be construed by reference to that work number as set out in Schedule 1.
- 4.5.8. Article 2(6) explains that unless otherwise stated, letters referenced in the DCO are references on the relevant plans.
- 4.5.9. Article 2(7) provides that the term "includes" is non-limiting.
- 4.5.10. Article 2(8) provides that references to "document" followed by numbers are documents in support of the Application.
- 4.5.11. Article 2(9) confirms that "operational use" of any part of the authorised development occurs when that part first transmits electricity at 275kV or above.
- 4.5.12. Article 2(10) confirms that references to primary or secondary legislation are construed as a reference to the primary or secondary legislation as amended.

## 4.6. **Operative Provisions**

- 4.6.1. Articles 3 to 55 of the DCO contain provisions for and relating to the Project, and miscellaneous and general provisions.



## Part 2 Principal Powers

### 4.7. **Article 3 (Development consent etc. granted by the Order)**

4.7.1. This Article would grant development consent for the authorised development within the Order limits, thereby authorising the construction of the development. The authorised development means the development described in Schedule 1 (authorised development). This includes further 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. Article 3 is based on the Model Provisions as well as the Richborough Order<sup>12</sup>. As explained under Article 2 (interpretation) above, specific reference is made to granting development consent to NPG for the NPG Works and to NGN for the NGN works.

### 4.8. **Article 4 (Maintenance of authorised development)**

4.8.1. This Article sets out the scope within which the undertaker may maintain the authorised development. It is based on the general Model Provisions Article 3. “Maintain” is defined in Article 2 (interpretation). Article 4 follows the approach taken for the Richborough Order<sup>13</sup> as amended to reflect that the undertaker also includes NPG and NGN.

### 4.9. **Article 5 (Limits of deviation)**

4.9.1. This Article would allow for the lateral deviation of works within the lines and situations shown on the works plan and the design drawings. A centre line is included on the works plan, and the linear works (as defined in the DCO and explained in Article 2 (interpretation) above) may deviate laterally from the centre line within the limits of deviation shown on the works plan. The non-linear works (also defined in the DCO and explained in Article 2 (interpretation) above) are also shown on the works plan, as well as the design drawings, but the lateral limits of deviation for the non-linear works are shown only on the design drawings.

4.9.2. Vertical limits of deviation (upwards) are included for the overhead lines and their supporting structures, which can deviate to any extent not exceeding 6 metres upwards. To prevent this provision for vertical deviation applying to underground apparatus, ‘overhead lines and their supporting structures’, are specified as opposed to ‘linear works’ as so defined.

4.9.3. Any works can also deviate vertically to any extent downwards and construction activities may be carried out anywhere within the Order limits.

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<sup>12</sup> S.I. 2017/817.

<sup>13</sup> Ibid.

- 4.9.4. The limits of deviation laterally for both linear and non-linear works as well as vertically upwards for overhead lines and supporting structures will not apply if the Secretary of State is satisfied, and certifies, that deviation in excess of this would not give rise to any materially new or materially different environmental effects to those assessed in the environmental statement.
- 4.9.5. An explanation as to how limits of deviation have been assessed, including the downwards vertical deviation is explained at Chapter 3 of the environmental statement. The purpose of including limits of deviation is to provide the necessary flexibility when constructing the authorised development, reducing the risk that the Project as approved cannot later be implemented for unforeseen reasons, such as engineering, environmental or geological reasons. A similar approach has been adopted on the Hinkley Connection Order<sup>14</sup> and the Richborough Order<sup>15</sup>.
- 4.9.6. Both the works plan and design drawings (showing the limits of deviation) are certified under Article 48 (certification of plans, etc.) of the DCO.

#### 4.10. **Article 6 (Benefit of the Order)**

- 4.10.1. This Article overrides section 156(1) of the Act (as permitted by section 156(2)) to give the benefit of the DCO to National Grid, NPG (in respect of the NPG Works) and NGN (in respect of the NGN Works) rather than anyone with an interest in the land. It would be impracticable for a variety of landowners to implement parts of the authorised development in an uncoordinated manner, which might be the case if section 156(1) were to remain.
- 4.10.2. The purpose of paragraph (2) is to clarify the exceptions where the provisions of the DCO will self-evidently benefit others. Without this provision, only the undertaker could benefit from these works. This is required, for example, in respect of alterations to apparatus and equipment of statutory undertakers which are not specified as a separate Work No. but are included as part of the authorised development.
- 4.10.3. Article 6 is based on the approach taken for the Southampton to London Pipeline Development Consent Order<sup>16</sup> 2020 (Southampton to London Pipeline Order)(Article 7) and the Richborough Order<sup>17</sup> (Article 6).
- 4.10.4. Given the inclusion of NPG and NGN in Article 6, it is tied to Schedule 5 (benefit of the Order rules). Schedule 5 governs the relationship between National Grid, NPG and NGN in constructing the authorised development. For example, National Grid's consent is required (and may be subject to reasonable conditions) before NPG and NGN can carry out their respective works. In addition, a process is included in the event that NPG or NGN fail to carry out their works (either at all or in accordance with National Grid's conditions) which would allow National Grid to undertake the works and

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<sup>14</sup> S.I. 2016/49.

<sup>15</sup> S.I. 2017/817.

<sup>16</sup> S.I. 2020/1099.

<sup>17</sup> S.I. 2017/817.

mean that NPG and NGN cease to be undertakers for the purposes of the DCO. The rules have been included in a separate schedule to simplify the drafting of the Article.

#### 4.11. **Article 7 (Consent to transfer benefit of the Order)**

- 4.11.1. This Article provides for the transfer of the whole or part of the benefit of the DCO with the consent of the Secretary of State, subject to certain exceptions. Article 7 is based on the approach taken for the Southampton to London Pipeline Order<sup>18</sup> (Article 8) and also broadly mirrors that of the Richborough Order<sup>19</sup> (Article 7).
- 4.11.2. Specific statutory undertakers have been listed under paragraph 7, who are permitted to be transferred the benefit of the DCO without prior consent of the Secretary of State. Each of the bodies listed under this sub-paragraph is a statutory undertaker and licence holder with associated duties to install or maintain a safe supply in relation to their relevant licence and apparatus/equipment. Accordingly, each of the bodies has been judged as fit and proper to undertake the corresponding works identified and would normally undertake their own diversions and installations in the course of their usual operations. In addition, and by virtue of their relevant statutory rights, each body listed is also an ‘undertaker’ entitled to carry out installation, inspection or ongoing maintenance of their relevant apparatus/equipment within a ‘street’ for the purposes of section 48(5) of the New Roads and Street Works Act 1991<sup>20</sup>. As a statutory undertaker, each of the bodies is also authorised to make a compulsory purchase order for the purposes of its undertaking.
- 4.11.3. Notwithstanding the inclusion of powers for the listed statutory undertakers to carry out works to their apparatus under the transferred benefit of the DCO, it is still possible that they could carry out these related works under their own statutory powers outside of the DCO. These related works to statutory undertaker apparatus have been included within the DCO to ensure there is no inhibition to the implementation of the Project. However, this does not mean that all works would necessarily be required to be carried out under the powers of the DCO.

#### 4.12. **Article 8 (Planning permission)**

- 4.12.1. Article 8(1) permits certain development authorised by a planning permission granted under the Town and Country Planning Act 1990<sup>21</sup> (**1990 Act**) that is within the Order limits to be carried out pursuant to the terms of the planning permission without breaching the Order. This provision is not a model provision, but ensures that the undertaker does not breach section 161 of the Act in carrying out certain development pursuant to a grant of planning

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<sup>18</sup> Ibid.

<sup>19</sup> S.I. 2017/817.

<sup>20</sup> 1991 c.22.

<sup>21</sup> 1990 c.8.

permission. This Article is not preceded in other overhead line orders but is based on Article 11 of the M42 Junction 6 Order<sup>22</sup>.

#### 4.13. **Article 9 (Application of the 1990 Act)**

- 4.13.1. This Article applies to specified works which, though temporary in nature, would be in place for a considerable period of time (e.g. temporary construction compounds). The Article applies section 57(2) of the 1990 Act to those works to clarify that planning permission is not required for the resumption, at the end of that period, of the purpose for which that land was normally used before the development consent was granted. Temporary construction works are defined in Article 2 (interpretation) as the temporary construction compounds described in Schedule 1 (authorised development). This Article was contained within the Richborough Order<sup>23</sup> (Article 8).
- 4.13.2. Paragraph (2) follows Article 36 of the general Model Provisions and provides that for the purposes of section 264(3)(a) of the 1990 Act, the development consent granted by the DCO shall be treated as specific planning permission. This means that the land subject to the authorised Project will be operational land of the undertaker as a statutory undertaker and, therefore, is land on which the undertaker is permitted to carry out its undertaking. Statutory undertakers can make an application for planning permission on their operational land under section 266 of the 1990 Act which may be dealt with by the Secretary of State and the appropriate Minister. In addition, in respect of operational land certain permitted development rights may apply. This is appropriate and proportionate for inclusion in the draft DCO as it will mean that, once constructed and into their operational phase, the works are treated as part of the wider network of which they will be part, on an equivalent legal basis. This provision is also included at Article 37 of the Hinkley Connection Order<sup>24</sup> and Article 36 of the Richborough Order<sup>25</sup>.
- 4.13.3. Additional provision has also been made at paragraph (3) to provide for planning permission in relation to powers to carry out certain street works (pursuant to Article 11(2)). This is because such matters may be outside of the Order limits, and hence the Article provides that such works are not deemed to constitute development. Article 8(2) and (3) mirror the provisions of Article 51 of The Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014<sup>26</sup>, and Article 8(2) is also included at Article 37 of the Hinkley Connection Order<sup>27</sup>.
- 4.13.4. Article 9(4) provides for an extension for the implementation of the DCO in the event that a decision by the Secretary of State to grant development consent is subject to a challenge. This wording parallels sections 91(3A) and

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<sup>22</sup> S.I. 2020/528.

<sup>23</sup> S.I. 2017/817.

<sup>24</sup> S.I. 2016/49.

<sup>25</sup> S.I. 2017/817.

<sup>26</sup> S.I. 2014/2384.

<sup>27</sup> S.I. 2016/49.

(3B) of the 1990 Act<sup>28</sup> and section 5B of the Vesting Declarations Act<sup>29</sup>, so seeks to carry through a helpful element of the town and country planning and compulsory purchase regime into the NSIP regime. Under the 1990 Act, sections 91(3A) and (3B) only apply to planning permissions for the development of land in England. The effect of these provisions is that if there is a legal challenge to the Order, the time limit in Article 24 (time limit for exercise of authority to acquire land compulsorily) and the time within which the authorised development must be commenced (requirement 2) are extended by an equivalent period (or one year if shorter) to account for the delay resulting from the legal challenge. In light of the importance of ensuring that requirements of implementation do not lapse this drafting is considered necessary to include within the DCO.

#### 4.14. **Article 10 (Application of the Community Infrastructure Levy Regulations 2010)**

4.14.1. This Article clarifies that, for the purposes of the Community Infrastructure Levy Regulations 2010 (**CIL Regulations**)<sup>30</sup>, any building forming part of the authorised development falls within the exemption under regulation 6 and will not be considered as “development” for the purposes of levying CIL. Precedent for this approach can be found in Schedule 19 to the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014<sup>31</sup> and Article 36(3) of the Southampton to London Pipeline Order<sup>32</sup>.

### Part 3 Streets

#### 4.15. **Article 11 (Street works)**

4.15.1. This Article allows works to be carried out in or upon streets identified in Schedule 5 (streets subject to street works) within the Order limits and follows the general Model Provisions except in the following respects:

- Article 8(3) of the general Model Provisions is deleted as this may cause confusion. Instead Article 11 has been extended, which applies selected provisions of the New Roads and Street Works Act 1991<sup>33</sup> (**1991 Act**) to temporary stopping up of streets even if no street works are being carried out;
- a new sub-paragraph (1)(c) has been included to reflect the street works powers available to the undertaker in paragraph 1(b)(iii) of Schedule 4 to the Electricity Act 1989<sup>34</sup> (**Electricity Act**); and

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<sup>28</sup> 1990 c. 8.

<sup>29</sup> 1981 c. 66.

<sup>30</sup> S.I. 2010/948.

<sup>31</sup> S.I. 2014/2384.

<sup>32</sup> S.I. 2020/1099.

<sup>33</sup> 1991 c.22.

<sup>34</sup> 1989 c.29.

- a new sub-paragraph (5) has been included to make it clear that any powers conferred by this Article do not prejudice those granted to licence holders under the Electricity Act.

4.15.2. This Article was contained within the Richborough Order<sup>35</sup> (Article 10).

#### 4.16. **Article 12 (Application of the 1991 Act)**

4.16.1. This Article departs from the Model Provisions to provide that relevant provisions of the 1991 Act shall apply to a temporary stopping up of a street under Article 12, even if no street works (within the meaning of the 1991 Act) are being carried out. This would, for example, require the undertaker to make arrangements, so far as practicable, for utilities to gain access to their apparatus. Comparable provisions are commonly included in TWAOs and also appeared in Article 10 of the Richborough Order<sup>36</sup>.

4.16.2. This prevents confusion as to whether works in respect of a temporarily stopped up street are 'street works' for the purposes of the 1991 Act and also simplifies the implementation of those works by providing for a single process in respect of streets which are stopped up and those which are not.

4.16.3. Article 12(3) provides that certain provisions of the 1991 Act as listed will not apply, as well as any equivalent or modified provisions in any permit scheme. The disapplication of these provisions (which are designed primarily to regulate the carrying out of street works by utility companies in respect of their apparatus) is appropriate given the scale of works proposed under the DCO, the specific authorisation given for those works by the DCO, and the specific provisions in the DCO which would regulate the carrying out of the works included in the DCO.

4.16.4. Comparable provisions have been included at Article 12(3) of the Southampton to London Pipeline Order<sup>37</sup> and also at Article 15(2) of the Sizewell C (Nuclear Generating Station) Order 2022<sup>38</sup>.

#### 4.17. **Article 13 (Power to alter layout etc. of streets)**

4.17.1. This Article allows the undertaker to alter the layout of existing streets within the Order limits for the purpose of constructing and maintaining the authorised development. The streets to be altered permanently are listed in Part 1 of Schedule 7 (streets subject to permanent alteration of layout), and the streets to be altered temporarily are listed in Part 2 of Schedule 7 (streets subject to temporary alteration of layout), together with a description of the layout alterations proposed. In the majority of cases, this relates to the creation of bellmouths for means of access (with one instance of widening and one instance of creating passing places). Requirement 14 of the DCO requires that works to construct or temporarily alter any new or existing

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<sup>35</sup> S.I. 2017/817.

<sup>36</sup> Ibid.

<sup>37</sup> S.I. 2020/1099.

<sup>38</sup> S.I. 2022/853.

means of access must not commence until written details of the design and layout of the means of access have been approved by the relevant highway authority.

- 4.17.2. In addition, paragraph 2 allows the undertaker to permanently or temporarily alter the layout of any street within or adjacent to the Order limits (i.e. streets which are not specified in Schedule 7). However, this power is subject to the consent of the street authority who must be given 28 days' notice in advance of exercising the power, with consent deemed if the street authority does not respond within 28 days.
- 4.17.3. There is a requirement in this Article to restore any streets temporarily altered to the reasonable satisfaction of the street authority.
- 4.17.4. This Article is necessary under section 120(5)(c) of the Act to give full effect to Articles 3 (Development consent etc granted by the Order) and 4 (Maintenance of authorised development).
- 4.17.5. Article 13 is based on Article 12 of the Richborough Order<sup>39</sup>.

#### **4.18. Article 14 (Temporary stopping up of streets, cycle tracks, and public rights of way)**

- 4.18.1. This Article provides for the temporary stopping up, alteration or diversion of streets, cycle tracks, or public rights of way shown on the access, rights of way and public rights of navigation plan or within the Order limits. In relation to those streets and public rights of way listed in Schedule 8, the undertaker must first consult with the relevant street authority. In relation to streets, cycle tracks and public rights of way not listed in Schedule 8, the consent of the street authority (which may impose reasonable conditions) must first be obtained (such consent not to be unreasonably withheld or delayed), and will be deemed within 28 days if the street authority fails to notify its decision within this period. Requirement 5 of the DCO also requires construction works to be undertaken in accordance with the public rights of way management plan, which is certified under Article 48 (certification of plans, etc.) of the DCO.
- 4.18.2. This Article is based on Article 13 of the Richborough Order<sup>40</sup> and also the approach adopted in the National Grid (King's Lynn B Power Station Connection) Order 2013<sup>41</sup> and the Hinkley Connection Order<sup>42</sup>.

#### **4.19. Article 15 (use of private roads for construction)**

- 4.19.1. This Article authorises the temporary use, in common with other users, of private roads within the Order limits by persons or vehicles, for the purposes of, or in connection with, the construction and maintenance of the authorised

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<sup>39</sup> S.I. 2017/817.

<sup>40</sup> Ibid.

<sup>41</sup> S.I. 2013/3200.

<sup>42</sup> S.I. 2016/49.

development, without the need for the undertaker to acquire a permanent right of way over that land or take temporary possession of the land under Articles 36 to 38 of the DCO (for example, there may be private farm roads within the Order limits that provide key access routes to parts of the authorised development). The undertaker will be liable to compensate any person who has suffered loss or damage as a result of the exercise of this power.

4.19.2. This Article, therefore, creates a power to “use” a private road for a temporary period that is proportionate to the limited nature of the use, rather than extinguishing, suspending or permanently interfering with the private rights of a landowner (through the acquisition of a permanent right). This is akin to the powers for temporary use under Articles 36 (temporary use of land for carrying out the authorised development) to 38 of the Order; however, it is distinguished because the undertaker does not require the exclusive use and possession of the private roads whilst exercising this power.

4.19.3. This wording contains precedent in the London to Southampton Pipeline Order<sup>43</sup> (Article 14) and Silvertown Tunnel Order 2018<sup>44</sup> (Article 13).

#### 4.20. **Article 16 (Access to works)**

4.20.1. This Article allows the undertaker to improve or form means of accesses to and from the public highway within the Order limits.

4.20.2. Such accesses to which Article 16 apply are listed in Schedule 9 (access to works). For accesses not listed in Schedule 9 (access to works) the consent of the relevant planning authority, in consultation with the relevant highway authority, is required. Consent is deemed within 28 days if a decision is not notified (as explained above), but otherwise, the article follows the general Model Provision. This Article is based on Article 14 of the Richborough Order<sup>45</sup> and the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014<sup>46</sup>.

#### 4.21. **Article 17 (Construction, alteration and maintenance of streets)**

4.21.1. This Article requires any streets constructed under the DCO to be completed to the reasonable satisfaction of the street authority. It also confirms that the altered streets resulting from the authorised development will be maintained by the street authority and, 12 months following its completion, will be dedicated as public highway.

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<sup>43</sup> S.I. 2020/1099.

<sup>44</sup> S.I. 2018/574.

<sup>45</sup> S.I. 2017/817.

<sup>46</sup> S.I. 2014/2384.



4.21.2. This Article has precedent in the A14 Cambridge to Huntingdon Improvement Scheme Development Consent Order 2016<sup>47</sup> and similar provisions have appeared in other DCOs for highway schemes. This Article is considered necessary to clarify construction and maintenance liabilities as a result of the permanent widening proposed to Overton Road, comprised in the authorised development.

#### 4.22. **Article 18 (Agreements with street authorities)**

4.22.1. This Article allows the undertaker and the relevant street authority to enter into agreements about the street works necessitated by the Project which would allow the relevant street authority to carry out such works under the terms of that agreement.

4.22.2. This power is separate to any agreements made under section 278 of the Highways Act 1980<sup>48</sup> which do not relate to powers under the DCO but to a relevant street authority devolving its powers (under section 278 of that Act).

4.22.3. This Article is based on Article 15 of the Richborough Order<sup>49</sup>.

### Part 4 Supplemental Powers

#### 4.23. **Article 19 (Discharge of water)**

4.23.1. This Article enables the undertaker to discharge water into any watercourse, public sewer or drain in connection with the construction and maintenance of the authorised development with the approval and superintendence (if provided) of the authority to which the watercourse, public sewer or drain belongs (such approval not to be unreasonably withheld) and subject to other conditions. Consent is deemed if a decision is not notified within 28 days. This Article follows the Model Provisions and the Richborough Order<sup>50</sup> (Article 16).

#### 4.24. **Article 20 (Protective work to buildings)**

4.24.1. This Article sets out the circumstances in which protective works can be carried out to buildings within the Order limits that it is considered might be damaged by the works. Except in an emergency, 14 days' notice must be given to the owner of the building, and the owner can seek arbitration by serving a counter-notice. The power lasts until five years after the relevant part of the project comes into operation. There is an entitlement to compensation for loss or damage.

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<sup>47</sup> S.I. 2016/547.

<sup>48</sup> 1980 c.66.

<sup>49</sup> S.I. 2017/817.

<sup>50</sup> Ibid.

- 4.24.2. The Article is identical to Article 15 in the Model Provisions except that the words ‘first opened for use’ has been replaced with ‘becomes operational’ to better reflect the nature of the authorised development.
- 4.24.3. Similar mechanisms are found in the Hinkley Connection Order<sup>51</sup> (Article 17 (Protective work to buildings)) and the Richborough Order<sup>52</sup> (Article 17 (Protective work to buildings)) which have been built upon in line with the precedented position in the London to Southampton Pipeline Order<sup>53</sup> (Article 19).
- 4.24.4. The DCO extends the power to carry out protective works from just buildings to land, buildings, structures, apparatus, equipment and the authorised development, and allows the undertaker access to land within or outside of the Order limits to exercise this power (where reasonably necessary). This wording is similar to Article 21 of the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014<sup>54</sup> and is necessary given the linear nature of the authorised development and also given the range of potential items that might necessitate protective works (which are defined in subparagraph (12) as being both protective and remedial works), and, in particular, the inclusion of this provision will help to mitigate the risk of unforeseen circumstances prejudicing the delivery of this NSIP.
- 4.24.5. Paragraph (11) applies section 13 of the Compulsory Purchase Act 1965<sup>55</sup> (**1965 Act**), thereby providing an enforcement mechanism (by way of a warrant) where entry onto, or possession of, land under the Article is refused. Equivalent provision is found in the Southampton to London Pipeline Order<sup>56</sup> and in the A303 (Amesbury to Berwick Down) Development Consent Order 2020<sup>57</sup>.

#### 4.25. **Article 21 (Authority to survey and investigate the land)**

- 4.25.1. This Article confers upon the undertaker a power to survey and investigate land, including the ability to make trial holes, boreholes or excavations, to use and leave apparatus on the land in question and to enter onto land. The Article also makes provision in relation to the payment of compensation and the notice period that must be given to owners and occupiers of land ahead of any surveys.
- 4.25.2. The Article is based on the Hinkley Connection Order<sup>58</sup> (Article 18). Paragraph (1)(b) includes the power to survey and investigate land or buildings to establish the effect of the authorised development or to enable the authorised development to begin. Paragraph (1)(e) allows equipment

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<sup>51</sup> S.I. 2016/49.

<sup>52</sup> S.I. 2017/817.

<sup>53</sup> S.I. 2020/1099.

<sup>54</sup> S.I. 2014/2384.

<sup>55</sup> 1965 c.56.

<sup>56</sup> S.I. 2020/1099.

<sup>57</sup> S.I. 2020/1297.

<sup>58</sup> S.I. 2016/49.

used for ecological or archaeological investigations to be left on the land (along with other apparatus used in connection with the survey, monitoring or investigation of land). These two additional powers are adapted from the provisions of the London to Southampton Pipeline Order<sup>59</sup> (Article 20) and are necessary to ensure that this Article provides authority for the types of activities that are likely to be necessary in respect of the authorised development.

- 4.25.3. In addition, the power in the general Model Provisions is extended to include the ability to take, and process, samples of water, air, soil or rock, flora, bodily excretions, non-human dead bodies, or any non-living thing present as a result of human action found on, in or over the land. This wording reflects the wording of section 53(3A) of the Act which clarifies that the right to enter land for the purposes of surveying includes the power to take and process certain types of samples. This may be included in a DCO under section 120(4) and paragraph 12 of Part 1 of Schedule 5 of the Act, which makes particular provision for the inclusion of powers for carrying out surveys or taking of soil samples.
- 4.25.4. Article 21(4) ensures that landowners are provided with details of the undertaker's purpose for surveying, monitoring or investigating the land before the undertaker enters the land, and authorises the undertaker to take necessary vehicles and equipment onto the land to carry out the survey, monitoring or investigations.
- 4.25.5. The provision relates to, or is ancillary to, the authorised development within the scope of section 120(3) of the Act and, in accordance with section 120(4) is a matter specifically identified in paragraph 12 of Part 1 of Schedule 12 of the Act, which states that a development consent order can provide for the carrying out of surveys or taking of soil samples.

## Part 5 Compulsory Acquisition Powers

### 4.26. **Article 22 (Compulsory acquisition of land)**

- 4.26.1. This Article authorises the acquisition of land by compulsory purchase. It grants the power to acquire the land that is required for the Project. This is subject to Articles 36 (temporary use of land by National Grid for carrying out the authorised development), 37 (temporary use of land by NPG for carrying out the authorised development) and 38 (temporary use of land by NGN for carrying out the authorised development), which are explained below.
- 4.26.2. This Article is based on Article 18 of the Model Provisions.

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<sup>59</sup> S.I. 2020/1099.

#### 4.27. **Article 23 (Compulsory acquisition of land – incorporation of the mineral code)**

- 4.27.1. This Article incorporates Parts 2 and 3 of Schedule 2 to the Acquisition of Land Act 1981<sup>60</sup> (**1981 Act**), exempting existing rights in minerals from the scope of compulsory acquisition unless they are expressly named and conveyed. It also makes provision for a situation where the owner of mines or minerals wishes to work such mines and minerals.
- 4.27.2. This Article was included in the Model Provisions as Article 19 and is also based on the Richborough Order<sup>61</sup>.

#### 4.28. **Article 24 (Time limit for exercise of authority to acquire land and rights compulsorily)**

- 4.28.1. This Article gives the undertaker five years to issue notices to treat or to execute a general vesting declaration to acquire the land that may be compulsorily acquired under the DCO. These are the two main procedural methods by which the process of compulsorily acquiring land may be undertaken should the DCO be made.
- 4.28.2. The Article also sets a 5 year time limit on the power of National Grid to take temporary possession of land under Article 36 (as well as NPG and NGN), although it does not prevent them remaining in possession of land after that time if it took possession within the 5 year limit (this has consistently been approved by the Secretary of State, see for example Article 20 of the Richborough Order<sup>62</sup>).
- 4.28.3. This Article was included in the Model Provisions as Article 20.

#### 4.29. **Article 25 (Compulsory acquisition of rights)**

- 4.29.1. This Article allows the undertaker to acquire rights over the DCO land, including by creating new rights for the purpose of the authorised development.
- 4.29.2. Paragraph (1) provides that the undertaker may acquire or create rights as described in the book of reference and shown within Schedule 13 (land in which only new rights and restrictive covenants etc. may be acquired) with the general nature and extent of these rights also shown in the land plan.
- 4.29.3. As well as providing for the acquisition of rights, the Article enables the undertaker to impose restrictions (as described in the book of reference) over the Order land for the purposes of the authorised development. This power to impose restrictions on the use of land is considered a proportionate means of protecting the authorised development whilst minimising the extent of land to be compulsorily acquired. This power has appeared in Orders

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<sup>60</sup> 1981 c.67.

<sup>61</sup> S.I. 2017/817.

<sup>62</sup> S.I. 2017/817.

made under the Transport and Works Act 1992<sup>63</sup> (**1992 Act**), particularly in contexts where it is necessary to restrict use of land or airspace above or beneath an authorised development which consists of a viaduct or tunnel. The power to impose restrictions is appropriate in the context of the authorised development to restrict use of land or airspace above or beneath the overhead electric lines or underground cables. The plots and the restrictions to be imposed are confirmed and described in the book of reference.

- 4.29.4. General model provision paragraph (2) has not been included as similar provision is instead included in Article 23 (Extinguishment and suspension of private rights). Paragraph (3) provides that where National Grid, NPG or NGN needs only to acquire rights over land, it shall not be obliged to acquire any greater interest in that land.
- 4.29.5. Paragraph (4) and Schedule 10 impose modifications to the compulsory purchase and compensation provisions under general legislation. They do not affect the entitlement to compensation, but generally ensure that the compensation procedure applies to the additional categories of acquisition covered by the DCO – the creation of new rights and the imposition of restrictions in particular. This is a consequence of the extension of land acquisition powers to these categories (done to allow lesser land interests to be acquired), and is commonplace in TWAOs and other compulsory purchase orders made by local authorities. For the purpose of section 126(2) of the Act, the relevant compensation provisions are modified only to the extent necessary to ensure that they apply properly to the acquisition of rights, and not to affect the amount of compensation to which landowners would be entitled.
- 4.29.6. Paragraphs (5) and (6) provide that the undertaker, with the consent of the Secretary of State, may transfer to statutory undertakers its power to acquire rights or impose restrictions, where the diversion, replacement or protection of apparatus is required on Order land. The benefit of this is that it would avoid possible delay and uncertainty by statutory undertakers being required to exercise their own powers. For them to do so would be unnecessary given that the action taken would be no different than if the powers were created within the DCO.
- 4.29.7. This Article is based on Article 21 of the Richborough Order<sup>64</sup>.

#### **4.30. Article 26 (Extinguishment and suspension of private rights)**

- 4.30.1. As outlined above in the commentary to Article 25, this Article has expanded upon the Model Provision so as to apply to private rights generally and not just to rights of way.
- 4.30.2. It provides for the extinguishment of private rights over land subject to compulsory acquisition and the extinguishment of private rights over land

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<sup>63</sup> 1992 c.42.

<sup>64</sup> S.I. 2017/817.

subject to the compulsory acquisition of rights (in so far as the continuance of the existing right would be inconsistent with the right acquired) from the date of the acquisition rights. This includes the plots shown on the extinguishment of easements, servitudes and other private rights plan. The plots shown on the extinguishment of easements, servitudes and other private rights plan are only included for the purposes of extinguishing those rights and are described as Class 2A rights in the book of reference. Private rights on land already owned by the undertaker within the Order limits would be extinguished on the commencement of any activity authorised by the DCO which interferes with or breaches such rights. This draws on the approach taken in Article 23 of the Richborough Order<sup>65</sup>. It allows the undertaker to “clear title” on land it already owns.

- 4.30.3. All private rights over land that is temporarily occupied by National Grid, NPG or NGN are suspended and unenforceable for the duration of the occupation (save as provided for in Article 28 below).
- 4.30.4. The Article makes provision in relation to the payment of compensation.
- 4.30.5. There is a saving for statutory undertakers. Private rights are defined in Article 24(9). This builds on the definition of rights given in Article 21(2) of the general Model Provisions and includes the wider definition used in Article 18(3) of the Richborough Order<sup>66</sup>.

#### 4.31. **Article 27 (Extinguishment of private rights and restrictive covenants relating to apparatus removed from land subject to temporary possession)**

- 4.31.1. All private rights over land that is temporarily occupied by the undertaker are suspended and unenforceable for the duration of the occupation insofar as inconsistent with the exercise of the DCO powers. Rights in relation to apparatus which is removed from the land are extinguished when the undertaker no longer remains in lawful possession of the land. This Article is not a Model Provision, but is identical to Article 24 of the Hinkley Connection Order<sup>67</sup>.
- 4.31.2. Paragraph (3) provides that the extinguishment of any right does not give rise to a cause of action relating to any foundations save for those which lie less than 1.5 metres underground. Whilst the intention is to remove apparatus from the land, the foundations (below 1.5 metres underground) will be left in situ and this paragraph is intended to confirm that leaving the foundations in the ground would not result in a cause of action of trespass in relation to the foundations once the right to leave the foundations in the ground is extinguished.

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<sup>65</sup> Ibid.

<sup>66</sup> Ibid.

<sup>67</sup> S.I. 2016/49.

4.31.3. A new paragraph (4) is included, in line with the approach in the Richborough Order<sup>68</sup>, to explicitly give effect to Schedule 11 (extinguishment of private rights and restrictive covenants relating to apparatus removed from land subject to temporary possession).

#### 4.32. **Article 28 (Power to override easements and other rights)**

4.32.1. This Article provides a power to override easements and other rights and reflects the terms of section 120(3) and (4), and paragraphs 2 and 3 of Part 1 of Schedule 5 to the Act. It provides statutory authority for carrying out any authorised activity that interferes with any of the interests listed in paragraph (2) including restrictions on user of land arising by the virtue of a contract. Paragraph (3) provides for compensation to be payable where the interests listed in paragraph (2) are overridden.

4.32.2. Notwithstanding the coming into force of section 203 of the Housing and Planning Act 2016<sup>69</sup> (**2016 Act**), the power to override easements and other rights is required in respect of the exercise of Articles 21 (authority to survey and investigate land), 20 (protective work to buildings) and 46 (felling or lopping of trees and removal of hedgerows) in circumstances where the undertaker has not acquired the land.

4.32.3. The principle of this Article has precedent in Article 30 of the Sizewell C (Nuclear Generating Station) Order 2022<sup>70</sup>.

#### 4.33. **Article 29 (Disregard of certain interests and improvements)**

4.33.1. This Article provides for the Lands Tribunal to disregard certain interests in and enhancements to the value of land for the purposes of assessing compensation with respect to its compulsory acquisition where the creation of the interest or the making of the enhancement was designed with a view to obtaining compensation or increased compensation.

4.33.2. It complies with section 126 of the Act as it does not have the effect of modifying or excluding the application of an existing provision relating to compulsory purchase compensation. The Article has precedent in the River Humber Gas Pipeline Replacement Order 2016<sup>71</sup> and TWAOs such as the London Underground (Northern Line Extension) Order 2014<sup>72</sup> and the Midland Metro (Wolverhampton City Centre Extension) Order 2016<sup>73</sup>.

4.33.3. The wording of this Article mirrors section 4 (assessment of compensation) of the 1981 Act. It is necessary to specifically apply the effect of section 4 of

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<sup>68</sup> S.I. 2017/817.

<sup>69</sup> 2016 c.22.

<sup>70</sup> S.I. 2022/853.

<sup>71</sup> S.I. 2016/853.

<sup>72</sup> S.I. 2014/3102.

<sup>73</sup> S.I. 2016/684.

the 1981 Act in the DCO. This is because the 1981 Act only applies to a compulsory purchase to which any other statutory instrument has applied its provisions and the Act (nor standard Order provisions) does not apply these. Sections 120(3) and 120(5)(a) and Schedule 5 (by virtue of section 120(3)) of the Act allow the application in a DCO of statutory provisions which relate to the payment of compensation.

#### **4.34. Article 30 (Set-off for enhancement in value of retained land)**

- 4.34.1. This Article provides that in assessing the compensation payable to any person in respect of the acquisition of any land, the Lands Tribunal shall set off against the value of the land any increase in value of any contiguous or adjacent land belonging to that person arising out of construction of the authorised development.
- 4.34.2. This Article complies with section 126(2) of the Act as it does not have the effect of modifying the application of an existing provision relating to compulsory purchase compensation. The Article has precedent in the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014<sup>74</sup> and TWAOs such as the London Underground (Northern Line Extension) Order 2014<sup>75</sup> and the Midland Metro (Wolverhampton City Centre Extension) Order 2016<sup>76</sup>.
- 4.34.3. The principle in this Article is established in section 7 of the Land Compensation Act 1961<sup>77</sup> (effect of certain actual or prospective development of adjacent land in same ownership), which needs to be applied. Sections 120(3) and 120(5)(a) of and Schedule 5 (by virtue of section 120(3)) to the Act allow the application in a DCO of statutory provisions which relate to the payment of compensation.

#### **4.35. Article 31 (No double recovery)**

- 4.35.1. This Article provides that compensation is not payable both under this DCO and other compensation regimes for the same loss or damage. In addition, the Article provides that there is not to be double recovery under two or more different provisions of this DCO.
- 4.35.2. The principle of equivalence, namely that a claimant in a compulsory purchase matter shall be compensated for no more than and no less than their loss, is long established and no part of the compensation code conflicts with this principle.

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<sup>74</sup> S.I. 2014/2384.

<sup>75</sup> S.I. 2014/3102.

<sup>76</sup> S.I. 2016/684.

<sup>77</sup> 1961 c.33.



4.35.3. This Article has precedent in the Richborough Order<sup>78</sup> and the North London Heat and Power Generating Station Order 2017<sup>79</sup>.

#### 4.36. **Article 32 (Modification of Part 1 of the 1965 Act)**

4.36.1. The purpose of this Article is to ensure consistency between the terms of the DCO and the 1965 Act (as amended by the 2016 Act) as applied by section 125 of the Act.

4.36.2. This Article has precedent in Article 26 of the London to Southampton Pipeline Order<sup>80</sup>.

#### 4.37. **Article 33 (Application of the 1981 Act)**

4.37.1. This Article applies (with minor modifications to make the provisions appropriate to the context of acquisition under powers in a development consent order) the provisions of the Compulsory Purchase (Vesting Declarations) Act 1981<sup>81</sup> to compulsory acquisition under the DCO so that the undertaker has the option to acquire land via the vesting declarations procedure.

4.37.2. Vesting declarations are one of two ways of acquiring land that is subject to compulsory purchase. The other method involves serving a notice to treat on the landowner to commence the process of establishing the acquisition price, after which title in the land is transferred. The date on which title will transfer is uncertain under the notice to treat method.

4.37.3. A vesting declaration, in contrast, sets the date on which title in the land is transferred to the acquiring authority. Compensation is negotiated or determined and paid later. Vesting declarations, therefore, allow title in the land to pass to the acquirer more quickly than using the notice to treat method, and also allow several parcels to be acquired at once. Their use is subject to serving notices and observing time limits as required by the 1981 Act (as amended by the 2016 Act).

4.37.4. The modifications ensure consistency with the standard five year period sought under the DCO for acquisition of rights. It further ensures that the appropriate references are made to the Act. The Article is based on Article 23 of the Model Provisions, and is similar to previous National Grid orders such as the Hinkley Connection Order<sup>82</sup> (Article 25) as well as the Richborough Order (Article 25)<sup>83</sup>.

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<sup>78</sup> S.I. 2017/817.

<sup>79</sup> S.I. 2017/215.

<sup>80</sup> S.I. 2020/1099.

<sup>81</sup> 1981 c.66.

<sup>82</sup> S.I. 2016/49.

<sup>83</sup> S.I. 2017/817.

#### 4.38. **Article 34 (Acquisition of subsoil or airspace only)**

- 4.38.1. This Article allows the undertaker to acquire or create rights in land below the surface or above the surface, rather than having to acquire all of the land.
- 4.38.2. The purpose of this Article is to give the undertaker the flexibility to minimise so far as is possible the extent of interests to be acquired, with consequently less impact on affected landowners and lower payments of compensation, both of which are in the public interest. Any subsoil or airspace acquired under this provision can only be used for the same purposes for which the undertaker could have acquired all of the land. This provision allows acquisition of the minimum interest needed to deliver the Project.
- 4.38.3. This Article is based on Article 24 of the Model Provisions, which related to subsoil only, and previous National Grid orders such as the Richborough Order<sup>84</sup> (Article 26) and the Hinkley Connection Order<sup>85</sup> (Article 26).

#### 4.39. **Article 35 (Use of subsoil under or airspace over streets)**

- 4.39.1. The purpose of this Article is to allow the undertaker to appropriate and use land above or below streets within the Order limits, without having to acquire the street or any right or easement in it. The exercise of this power, without full acquisition, is prohibited in the circumstances set out in paragraph (3). Compensation is payable for any loss or damage caused to an owner or occupier of land affected by the power of appropriation where no acquisition has taken place.
- 4.39.2. The Article was included in the Model Provisions as Article 27 and also appears in the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 (Article 48)<sup>86</sup>.

#### 4.40. **Article 36 (Temporary use of land by National Grid)**

- 4.40.1. This Article which applies only to National Grid follows, in part Article 28 of the Model Provisions and allows the land set out in Part 1 of Schedule 12 to be occupied temporarily by National Grid while the works are carried out. A modification to the Model Provision has been made to allow National Grid to also take temporary possession of any of the Order land which may be subject to compulsory acquisition of land or rights but in respect of which National Grid has not yet served a notice of entry or made a general vesting declaration. This provision has appeared in Orders made under the 1992 Act.

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<sup>84</sup> S.I. 2017/817.

<sup>85</sup> S.I. 2016/49.

<sup>86</sup> S.I. 2014/2384.

- 4.40.2. It allows National Grid to occupy land to construct the authorised development without having to acquire the land, or a right over the land. Once constructed, that land, or rights in the land, may be compulsorily acquired. This means that National Grid will be able to compulsorily acquire rights to retain, operate and maintain the authorised development over an area of land which matches the final footprint of the authorised development. This provides flexibility to National Grid and, for the landowner, minimises the area of land required for the compulsory acquisition of land or rights, which has a lesser impact on the landowner. There is a consequent amendment to paragraph (3) to refer to the two different categories of land.
- 4.40.3. Paragraph (1)(d) has also been added to the Model Provision to allow specified works to be constructed on the land listed in Part 1 of Schedule 12.
- 4.40.4. Paragraph (4) provides that National Grid must provide written notice of the date of completion of the work for which possession was taken.
- 4.40.5. Paragraph (5) provides that before giving up temporary possession of land listed in Part 1 of Schedule 12 National Grid must remove all temporary works and restore the land save for the exceptions listed in sub-paragraphs (a) to (d) which has been amended to allow works of mitigation and other works (such as the pylons) to be constructed and left on the land, without a requirement for these to be removed. This would apply, for example, where mitigation is provided but National Grid does not need to retain a permanent interest in the land and has precedent in the Richborough Order. The provision would allow National Grid to leave, in place, foundations more than 1.5 metres below adjoining ground level. Novel drafting has been included to clarify that it is not necessary for any archaeological artefacts identified within temporarily acquired land to be returned to the land. This is necessary because the Archaeological Written Scheme of Investigation (secured under Requirement 5 of the DCO) provides that artefacts should be removed if this is in line with the professional body's standards.
- 4.40.6. Paragraph (6) is similar to paragraph (5) but provides that where temporary possession has been taken over land which may be subject to compulsory acquisition but in respect of which National Grid has not yet served a notice of entry or made a general vesting declaration, National Grid must acquire the interest on, over or in the land or remove the temporary works.
- 4.40.7. Paragraph (9) has been amended to make clear that compensation payable under this Article is compensation payable for injurious affection which would normally arise under section 10 of the 1965 Act but which, by virtue of section 125(3)(b) of the 2008 Act is payable under section 152 of the Act instead.
- 4.40.8. Paragraph (12) makes clear that the power in this Article can be exercised on more than one occasion. This change is intended to clarify the intention behind the model provision rather than to expand its scope.
- 4.40.9. The amended Article reflects the wording of the Richborough Order<sup>87</sup>.

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<sup>87</sup> S.I. 2017/817

#### 4.41. **Article 37 (Temporary use of land by NPG)**

4.41.1. This Article mirrors Article 36 (Temporary use of land by National Grid) and provides that NPG may, in connection with the carrying out of the NPG Works (only) take temporary possession of the Order land specified in Part 2 of Schedule 12.

#### 4.42. **Article 38 (Temporary use of land by NGN)**

4.42.1. This Article is similar to Article 36 (Temporary use of land by National Grid), subject to amendments which accommodate the different types of works which NGN will be carrying out, and provides that NGN may, in connection with the carrying out of the NGN Works (only) take temporary possession of the Order land specified in Part 3 of Schedule 12.

#### 4.43. **Article 39 (Temporary use of land for maintaining the authorised development)**

4.43.1. This Article provides that the undertaker may take temporary possession of land within the Order limits, as required for the purpose of maintaining the authorised development, at any time within a period of five years from the date on which that part of the authorised development is first opened for use.

4.43.2. Paragraph (1)(c) authorises the construction of such temporary works and buildings on the land as may be reasonably necessary for that purpose. Under paragraph (6) all temporary works must be removed before the undertaker gives up possession under this Article and the land must be restored to the reasonable satisfaction of the owners.

4.43.3. This power does not apply in relation to houses, gardens or any other buildings for the time being occupied (paragraph (2)).

4.43.4. Paragraph (3) requires at least 28 days' notice of intended entry to be served on the owners and occupiers of the land in question save in the circumstances outlined in paragraph (4).

4.43.5. Paragraphs (8) to (10) provide for compensation to be paid to owners and occupiers of land of which temporary possession is taken under this Article.

4.43.6. This Article is substantially based on the wording used in the Richborough Order<sup>88</sup> (see Article 30) and Hinkley Connection Order<sup>89</sup> (see Article 31). It is also based on Article 29 of the Model Provisions.

4.43.7. This Article is required to enable the undertaker to carry out maintenance during the maintenance period and is considered appropriate as it would impose a lesser burden than permanently acquiring rights to achieve the same purpose.

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<sup>88</sup> S.I. 2017/817.

<sup>89</sup> S.I. 2016/49.

#### 4.44. **Article 40 (Statutory undertakers)**

- 4.44.1. This Article allows the undertaker to extinguish rights of statutory undertakers and remove and reposition their apparatus. Reference is made to the Order land so that this power is not restricted to apparatus which has been specifically shown on the land plan and described in the book of reference. In practice it is impractical to show and describe all such apparatus and so a general power for the extinguishment of rights and the removal or relocation of apparatus belonging to statutory undertakers over or within any of the Order land is required.
- 4.44.2. As the land over which this power may be exercised is shown on the land plan, and the beneficiaries of such rights are described in the book of reference, the requirements of Regulations 5(2)(i)(iii) and 7(1)(c) of the APFP Regulations are satisfied.
- 4.44.3. Paragraph (2) restricts the undertaker's power to extinguish rights or remove or reposition apparatus by excluding apparatus in streets. If the streets in question are to be stopped up as part of the authorised development then the provisions of Article 40 will apply.
- 4.44.4. This Article is based on Article 31 of the Model Provisions and the Richborough Order<sup>90</sup> (Article 33).

#### 4.45. **Article 41 (Recovery of costs of new connections)**

- 4.45.1. This Article provides that if any statutory undertaker's apparatus is removed and this interrupts the supply from that apparatus to owners or occupiers of premises such that they have to seek a connection to other apparatus, then their reasonable costs in obtaining a new supply can be claimed from the undertaker.
- 4.45.2. This Article was included in the Model Provisions as Article 33 as well as the Richborough Order (Article 33) and Hinkley Connection Order (Article 34).

### Part 6 Miscellaneous and General

#### 4.46. **Article 42 (Application of landlord and tenant law)**

- 4.46.1. This Article governs the leasing of land by the undertaker to any other person. It allows the terms of the lease to override any statutory provisions relating to landlord and tenant law. The Article is identical to the general Model Provisions Article 35 as well as the Richborough Order (Article 35) and Hinkley Connection Order (Article 36).

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<sup>90</sup> S.I. 2017/817.

#### **4.47. Article 43 (Defence to proceedings in respect of statutory nuisance)**

- 4.47.1. Section 158 of the Act confers statutory authority for the purposes of a defence in statutory nuisance generally. This Article amends the terms of the defence in the case of noise nuisance (other types of nuisance continue to have the general defence afforded by section 158). The defence is available if the noise relates to the construction or maintenance of the project and is in accordance with any controls imposed by the local authority under the Control of Pollution Act 1974<sup>91</sup> or cannot reasonably be avoided, or the use of the project is in accordance with any scheme of monitoring or attenuation of noise agreed with the relevant local authority or cannot reasonably be avoided.
- 4.47.2. This Article is based on the general Model Provision Article 7 except that paragraph (1)(b)(i) has been amended to reflect that a noise and vibration management plan may be agreed but is not required. The noise and vibration management plan has been secured separately under Requirement 5 of the DCO and is a certified document under Article 48 (certification of plans, etc) of the DCO. This approach has precedent in the Richborough Order (Article 38) and Hinkley Connection Order (Article 38).

#### **4.48. Article 44 (Maintenance of drainage works)**

- 4.48.1. The purpose of this Article is to make it clear that any realignment of drainage works or other works to them that are carried out as part of the authorised development do not affect the existing allocation of responsibility for maintenance of those drains, unless this is agreed between the undertaker and the responsible party. Responsibility for maintenance of drainage works may sit with the Environment Agency, an internal drainage board, a lead local flood authority or a landowner.
- 4.48.2. This provision is well precedented (see for example Article 5 of the London to Southampton Pipeline Order<sup>92</sup> and Article 5 of the Testo's Junction Alteration Order 2018<sup>93</sup>).

#### **4.49. Article 45 (Traffic Regulation)**

- 4.49.1. This Article allows the undertaker, with the consent of the traffic authority, to make traffic regulation orders so that it can implement traffic management measures and regulate traffic necessary to construct the authorised development. The traffic management measures are required to ensure the safe and efficient construction of the authorised development and to the extent specified in Schedule 14 (traffic regulation) or to any other extent that

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<sup>91</sup> 1974 c.40.

<sup>92</sup> S.I. 2020/1099.

<sup>93</sup> S.I. 2018/994.

is expedient or necessary for the construction of the authorised development.

- 4.49.2. The Article is not in the general Model Provisions but has precedent in the Richborough Order<sup>94</sup> (Article 40) and the Hinkley Connection Order<sup>95</sup> (Article 40). It is necessary for the purpose of the construction of the authorised development.
- 4.49.3. A provision has been added to provide that consent from the traffic authority is deemed to have been given if the authority fails to notify the undertaker of its decision within 28 days of receipt of the application.

#### 4.50. **Article 46 (Felling or lopping of trees and removal of hedgerows)**

- 4.50.1. This Article allows any tree or shrub that is near the Project to be felled or lopped, or have its roots cut back, if it is considered to obstruct the construction, operation or maintenance of the Project or endanger anyone using it. Compensation is payable for any loss or damage caused.
- 4.50.2. Further, this Article also authorises the removal of any hedgerow as defined in the Hedgerow Regulations 1997<sup>96</sup> (**Hedgerow Regulations**). The Project includes the removal of a number of identified hedgerows (as set out in the **Trees and Hedgerows Potentially Affected Plan (Volume 2, Document 2.11.1-2.11.6)**) but it does not limit the application of this Article to those hedgerows only. This wider application reflects the powers that the undertaker would otherwise be able to exercise under the Hedgerow Regulations to remove any hedgerows when carrying out its functions. This Article is based on Article 39 of the Model Provisions and recent orders such as the A14 Order (Article 36) and the North Wales Wind Farms Connection Order 2016<sup>97</sup>.

#### 4.51. **Article 47 (Protection of interests)**

- 4.51.1. This Article provides that Parts 1 to 4 of Schedule 15 (protective provisions) has effect.

#### 4.52. **Article 48 (Certification of plans, etc.)**

- 4.52.1. This Article requires the undertaker to submit the final versions of the plans for certification to the Secretary of State. The Article is based on the general Model Provision which has been amended to refer to the names of the plans that are part of the Application and referred to in the DCO.

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<sup>94</sup> S.I. 2017/817.

<sup>95</sup> S.I. 2016/49.

<sup>96</sup> S.I. 1997/1160.

<sup>97</sup> S.I. 2016/818.

This approach is in line the Hinkley Connection Order 2016<sup>98</sup> (Article 44) and the Richborough Order<sup>99</sup> (Article 43).

#### **4.53. Article 49 (Service of notices)**

4.53.1. This Article governs how any notices that may be served under the DCO shall be deemed to have been served properly. In particular, it allows service by email with the consent of the recipient, and deals with the situation of service on an unknown landowner. Although the Article is not in the general Model Provisions it is common within previous DCOs, such as the Richborough Order<sup>100</sup> (Article 44) and Hinkley Connection Order<sup>101</sup> (Article 45). The provision is necessary because the service of notice provisions under sections 229 and 230 of the Act would not apply to notices served under a DCO.

#### **4.54. Article 50 (Procedure regarding certain approvals, etc.)**

4.54.1. This Article contains additional provisions in respect of any approval, consent or agreement which is required to be given under the DCO. It provides that any such approval, consent or agreement given by the relevant body must be given in writing.

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

4.54.3. Schedule 4 sets out the appeal process in relation to such matters and where an appeal can be made to the Secretary of State to discharge matters including the requirements in Schedule 3 (requirements) and other consents or approvals required under the DCO.

4.54.4. This Article and associated Schedule 4 (discharge of requirements) reflect the approach taken in the National Grid (North London Reinforcement Project) Order 2014<sup>102</sup> (Article 45 and Schedule 3), the Richborough Order<sup>103</sup> (Article 45 and Schedule 4) and the Hinkley Connection Order (Article 46, Schedule 4).

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

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<sup>98</sup> S.I. 2016/49.

<sup>99</sup> S.I. 2017/817.

<sup>100</sup> Ibid.

<sup>101</sup> S.I. 2016/49.

<sup>102</sup> S.I. 2014/1052.

<sup>103</sup> S.I. 2017/817.



#### 4.55. **Article 51 (Removal of human remains)**

- 4.55.1. The purpose and effect of this Article is to disapply section 25 of the Burial Act 1857<sup>104</sup> and replace it with an alternative procedure for managing the removal of any human remains disturbed during the course of carrying out the authorised development. This Article is based on a Model Provision and is required to ensure that the appropriate treatment of such remains does not delay the implementation of the authorised development.
- 4.55.2. This Article departs from the model provision in that paragraph (12) excludes the requirement to give notice before the removal of remains which the undertaker is satisfied were interred more than 100 years ago and that no relative or personal representative of the deceased is likely to object to their removal. This approach has precedent in the Crossrail Act 2008<sup>105</sup>. Paragraph (13) requires that the undertaker seeks and complies with direction from the Secretary of State under paragraph (14) regarding the treatment of such remains following their removal.
- 4.55.3. Paragraph (17) applies section 239 of the 1990 Act to land, and rights over land, acquired under the DCO and permits the use of such land notwithstanding any obligation or restriction imposed under ecclesiastical law or law relating to burial grounds, save as provided for in the remainder of the Article. Paragraph (18) excludes the application of Town and Country Planning (Churches, Places of Religious Worship and Burial Grounds) Regulations 1950<sup>106</sup>. The drafting in paragraphs (17) and (18) has precedent in the River Humber Gas Pipeline Replacement Order 2016<sup>107</sup>, although the DCO does not apply section 238 (use and development of consecrated land) of the 1990 Act as there is no consecrated land within the Order limits.
- 4.55.4. Taken together the effect of this Article is to replace the existing and disparate regimes for regulating the removal of human remains and consolidate the applicable provisions in a single Article in the DCO. It is required by the undertaker to ensure that archaeological remains are recovered appropriately without causing unacceptable delay to the implementation of this NSIP.

#### 4.56. **Article 52 (Amendment of local legislation)**

- 4.56.1. This Article is similar in effect to Article 6 of the Model Provisions and seeks to exclude local legislation and byelaws listed in Schedule 15 further to section 120(5) of the 2008 Act. There is precedent in the Richborough Order (Article 46) and the Hinkley Connection Order (Article 47)<sup>108</sup>.
- 4.56.2. This Article is limited in scope in only seeking to identify legislation of local application, which may prohibit the delivery of this NSIP. It is, therefore,

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<sup>104</sup> 1857 c.81.

<sup>105</sup> 2008 c.18.

<sup>106</sup> S.I. 1950/792.

<sup>107</sup> S.I. 2016/853.

<sup>108</sup> S.I. 2016/49.

considered proportionate to exclude such legislation which may serve to impede the delivery of the authorised development.

- 4.56.3. The DCO does not remove the requirement to obtain any consents or permits which are prescribed for the purposes of section 150 of the PA 2008 under the Infrastructure Planning (Miscellaneous Prescribed Provisions) Regulations 2010. Therefore, no consent is required from a relevant body to the inclusion of Article 52 of the DCO.

#### 4.57. **Article 53 (Arbitration)**

- 4.57.1. This Article governs what happens when two parties disagree over the implementation of any provision of the DCO. The matter is to be settled by arbitration, and if the parties cannot agree on whom the arbitrator should be, this is decided by the Secretary of State. The Article is based on the general Model Provision with the insertion of the Secretary of State as the appropriate body to reflect the agreed position in recently made DCOs.

#### 4.58. **Article 54 (Temporary closure of, and works in, the river Ouse)**

- 4.58.1. This Article provides for suspension of the public right of navigation over the River Ouse within the Order limits in order to enable installation of the new overhead line, as well as removal of a section of the existing overhead line that will become redundant, over the River Ouse. It requires the power to be exercised in a way which minimises the extent of the river affected by the closure and also that any period of closure is minimised. Compensation is payable for any person who suffers loss as a result of the suspension of any private right of navigation under this Article.

#### 4.59. **Article 55 (Trees subject to tree preservation orders)**

- 4.59.1. This Article enables the undertaker to fell or lop the roots of any tree which is subject to a tree preservation order to prevent it obstructing or interfering with the construction, maintenance or operation of the authorised project. Compensation is payable if loss or damage is caused. Whilst there are no trees currently subject to tree preservation orders being affected by the Project, paragraph (2) of this Article clarifies that if any tree preservation orders are made in the future within the Order limits, this will not prevent felling or lopping of any tree which is made subject to a tree preservation order following the date survey data was collected for the purposes of identifying relevant trees. Paragraph (3) controls and restricts the powers of paragraph (2).

## **5. Schedules**

### **5.1. Schedule 1 (Authorised development)**

- 5.1.1. This Schedule specifies numbered works comprised in the authorised development for which development consent is sought and other associated development works. The works should be read alongside the works plan.
- 5.1.2. Certain utilities works to be undertaken by NPG and NGN, including undergrounding of overhead distribution lines and a pipeline diversion, have been separated out into specific works as identified with a 'U' before the work number. This allows clarity over which works will be carried out by National Grid and which will be carried out by either NGN or NPG.
- 5.1.3. Where necessary and appropriate, each Work No. is split into components identified by subparagraphs in the works description. These correlate to different elements of the respective work. For example, Work No. 1 contains four components, the first component "installation of conductors, insulators and fittings from YR001A to YR001C" is identified by labelling the "Centreline of new YR OHL within Work No. 1". As the subparagraphs form part of a single Work No., they are not labelled individually on the works plan, and only the separate Work Nos. are shown on the works plan.

### **5.2. Schedule 2 (Plans and drawings)**

- 5.2.1. This Schedule lists the design drawings, works plan, land plan, access, rights of way and public rights of navigation plan and other plans submitted with the application and to be certified by the Secretary of State in accordance with Article 48 (certification of plans etc.).

### **5.3. Schedule 3 (Requirements)**

- 5.3.1. This Schedule contains draft requirements corresponding to conditions which, under section 120(2) of the Act, could have been imposed on the grant of planning permission for the authorised development had it not fallen within the regime of the Act. The requirements have a similar purpose to planning conditions.
- 5.3.2. Requirement 1 (Interpretation) provides for the interpretation of words and phrases used in this Part of the Schedule.
- 5.3.3. Requirement 2 (Time limits) accords with the model requirement in providing that the authorised development must be commenced within 5 years of the date of the DCO.
- 5.3.4. Requirement 3 (design drawings) provides that the authorised development shall be carried out in general accordance with the design drawings so as to

allow the necessary but proportionate degree of flexibility in the construction of the authorised development. The Requirement makes clear that any departures from the design drawings which would give rise to materially new or materially different significant effects would not be 'in general accordance', as is also stated in paragraph 1(4) (interpretation) of Schedule 3 (requirements).

- 5.3.5. Requirement 4 (Stages of authorised development) provides for the production of a single staging plan for the authorised development before development can commence and for any amendments to this staging plan to be notified to the relevant planning authority.
- 5.3.6. Requirement 5 (Construction management plans) requires all construction works for the authorised development to be carried out in accordance with the construction management plans. These are full plans which have been submitted as part of the DCO application, and are to be certified by the Secretary of State in accordance with Article 48 of the DCO. The construction management plans include those plans, scheme and strategies listed in requirement 5(2). Sub-paragraph (3) provides that all pre-commencement works (as defined in paragraph 1 (interpretation) of Schedule 3 (requirements)) must be carried out in accordance with the construction management plans specified at paragraph 5(2). Paragraph 5(3) also requires the pre-commencement works to be carried out in accordance with the outline soil management plan. Post commencement, soil management procedure controls will be secured through the soil and aftercare management plan secured under Requirement 6(1) and for that reason, the outline soil management plan is not included in the list of construction management plans in Requirement 5(2). Although Requirement 5(1) allows the relevant planning or highway authority to deviate from the construction management plans, this can only be done if it would not give rise to materially new or materially different effects from those assessed in the environmental statement as made clear in paragraph 1(3) (interpretation) of Schedule 3 (requirements)). This may be required, for example, in the event that baseline conditions change, there are updates to best practice, or there is an improvement in techniques which would allow the development to be constructed more efficiently or effectively. It would enable minor changes in circumstances which would otherwise warrant or necessitate changes to the construction management plans. This is necessary given the wide geographical area covered by the Project and, for example, the associated differing ground conditions that may be encountered in delivering the Project.
- 5.3.7. Requirement 6 (Outline construction management plans) provides for the submission to, and approval by, the relevant planning authority of the plans listed in the requirement, which must accord with the relevant construction management plans as referred to within Requirement 5. The construction works must be carried out in accordance with those plans (or any amended plans) once approved. Paragraphs 6(4) and 6(5) make clear that the drainage management plan and the lighting strategy must include details of both temporary and permanent works, and therefore include operational as well as construction requirements.

- 5.3.8. Requirement 7 (Construction hours) confirms construction hours during which construction work may be carried out. Core working hours are set out in paragraphs 7(1) and 7(2) as defined in paragraph 1 (interpretation) of Schedule 3 (requirements). Paragraph 7(3) sets out the circumstances in which certain works can be undertaken outside of the core working hours.
- 5.3.9. Requirement 8 (Landscaping and Mitigation planting) confirms arrangements for necessary landscaping and mitigation planting, including a mitigation planting scheme and landscape mitigation strategy. Paragraph 8(2) sets out the details which the mitigation planting scheme and landscape mitigation strategy must include.
- 5.3.10. Requirement 9 (Implementation of landscaping and mitigation planting) is concerned with the implementation of the mitigation planting and landscaping requirements set out in requirement 8. There is a five year maintenance obligation for all landscaping and mitigation planting.
- 5.3.11. Requirement 10 (Retention and protection of existing trees) requires the preparation of a Tree and Hedgerow Protection Strategy for each relevant stage to be submitted to and approved by the relevant planning authority with the relevant stage of the authorised development not to commence until the approved protection measures are in place. Paragraph 10(2) sets out the details that the Tree and Hedgerow Protection Strategy must include, and paragraph 10(3) provides that those trees and groups of trees identified must not be felled in connection with the construction of the authorised development.
- 5.3.12. Requirement 11 (Reinstatement schemes) provides for the reinstatement of land subject to the provisions of Articles 36 (temporary use of land by National Grid), 37 (temporary use of land by NPG), 38 (temporary use of land by NGN) and Article 39 (temporary use of land for maintaining the authorised development).
- 5.3.13. Requirement 12 (Contamination of land or groundwater and controlled waters) provides that where contamination unexpectedly occurs, and it is likely to cause a significant possibility of significant harm to persons or pollution of controlled waters or the environment, then no further development can be undertaken (except in the case of emergency) until a written scheme to identify and remediate the contamination is approved by the relevant planning authority, following consultation with the Environment Agency. Once approved, remedial measures must be undertaken and a verification report submitted to the relevant planning authority.
- 5.3.14. Requirement 13 (Removal of temporary bridges and culverts) provides for the removal of such temporary structures within 12 months (or longer if agreed) of completion of the construction of that stage of the authorised development for which it was required.
- 5.3.15. Requirement 14 (Highway works) provides that no work to construct or temporarily alter any new or existing means of access to a highway may commence until written details have been submitted and approved by the highway authority. The highway accesses must be constructed as approved, unless otherwise agreed with the relevant highway authority (subject to

paragraph 1(3) (interpretation) of Schedule 3 (requirements)) as set out above.

- 5.3.16. Requirement 15 (Removal of existing overhead line) provides that all sections of existing overhead line to be dismantled must be removed no later than 12 months after the authorised development is first brought into operational use.
- 5.3.17. Requirement 16 (Decommissioning) provides that in the event that any part of the authorised development (except for those parts comprised of the dismantling and removal of existing infrastructure) is to be decommissioned, a written scheme of decommissioning must be submitted for approval by the relevant planning authority at least six months prior to the commencement of any decommissioning works.
- 5.3.18. Requirement 17 (Clearance over the River Ouse) sets a minimum height of 10 metre clearance over the River Ouse.

#### 5.4. **Schedule 4 (Discharge of Requirements)**

- 5.4.1. This Schedule applies to any consent, agreement or refusal which needs to be obtained under the Requirements set out in Schedule 3 or under any other provision of the DCO. It clarifies the procedure which applies in respect of these additional consents.
- 5.4.2. This Schedule is based on Schedule 4 of the Richborough Order<sup>109</sup>.

#### 5.5. **Schedule 5 (Benefit of the Order Rules)**

- 5.5.1. This Schedule governs the relationship between the three undertakers granted the benefit of the DCO. The provisions mirror those previously included in the 'Benefit of the Order' Article from the Richborough Order and Hinkley Connection Order but have been separated out into a schedule to make the drafting clearer.

#### 5.6. **Schedule 6 (Streets subject to street works)**

- 5.6.1. This Schedule sets out the streets referred to in Article 11 subject to street works.

#### 5.7. **Schedule 7 (Streets subject to alteration of layout)**

- 5.7.1. This Schedule sets out the streets, referred to in Article 13, the layouts of which are subject to permanent (Part 1) or temporary (Part 2) alterations.

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<sup>109</sup> S.I. 2017/817.

## 5.8. **Schedule 8 (Streets, cycle tracks or public rights of way to be temporarily stopped up)**

- 5.8.1. This Schedule sets out the streets, cycle tracks and public rights of way which are subject to temporary stopping up under Article 14.

## 5.9. **Schedule 9 (Access to works)**

- 5.9.1. This Schedule sets out the locations, referred to in Article 16, where access would be taken from the public highway, for construction and/or operation / maintenance purposes.

## 5.10. **Schedule 10 (Modification of compensation and compulsory purchase enactments for creation of new rights)**

- 5.10.1. This Schedule, pursuant to Article 32, sets out the modifications to the statutory provisions applicable to compensation and compulsory purchase under the Order.

## 5.11. **Schedule 11 (Extinguishment of private rights and restrictive covenants relating to apparatus removed from land subject to temporary possession)**

- 5.11.1. This Schedule sets out those plots where rights in relation to removed apparatus are to be extinguished under Article 27.
- 5.11.2. This Schedule, together with Schedule 12 and Schedule 13 have been split into the relevant areas of City of York Council, Leeds City Council and North Yorkshire County Council. This is in anticipation of the new single council (North Yorkshire Council) which will be formed on 1 April 2023 as a result of Local Government Reorganisation. The newly formed North Yorkshire Council will cover the same geographical area as the current North Yorkshire County Council (and the respective districts which will be disbanded) and, therefore, the decision has been taken to pre-empt this in the drafting of these schedules of the DCO. Notwithstanding this, Schedule 1 does split out the authorised development so that it is clear to each district (and members of the public) which elements of the works will affect their authority area at the time of application.

## 5.12. **Schedule 12 (Land of which temporary possession may be taken)**

- 5.12.1. This Schedule sets out the land referred to in Articles 36 to 38 which National Grid, NPG and NGN may temporarily occupy and the purpose for which that temporary possession may be taken.

### 5.13. **Schedule 13 (Land in which only new rights and restrictive covenants etc. may be acquired)**

5.13.1. This Schedule sets out the land referred to in Article 25 over which National Grid, NPG and NGN may acquire new rights and restrictive covenants.

### 5.14. **Schedule 14 (Traffic regulation)**

5.14.1. This Schedule sets out the streets that are subject to traffic regulation measures further to Article 45. The Traffic Regulation Order plan tied to this Schedule show traffic regulation orders which commence and terminate at points outside of the Order limits. This is necessary to give full effect to the measures and enable the safest passage of traffic in and around the Project. This reflects the wording in Article 45, which gives effect to these powers and is preceded in previous projects brought forward by National Grid, including the Richborough Order<sup>110</sup>.

### 5.15. **Schedule 15 (Protective Provisions)**

5.15.1. This Schedule sets out the standard provisions for the protection of statutory undertakers whose equipment may be affected by the authorised development. The undertaker has engaged with the relevant statutory undertakers: Network Rail Infrastructure Limited (**NRIL**), Northern Gas Networks (**NGN**), Yorkshire Water (**YW**), National Grid Gas (**NGG**), Northern Power Grid (**NPG**), the Canal and River Trust (**CRT**), Cellnet, Hutchinson/Three/EE, and Vodafone and will continue to do so following submission of the Application. The current format of Protective Provisions within the DCO are split into four parts:

5.15.2. Part 1 sets out standard protective provisions for the protection of water, gas and electricity undertakers. In summary, these provisions provide as follows:

- All other provisions of this Schedule do not apply to apparatus whereby the undertaker and statutory undertaker relationship is regulated by the provisions of Part 3 of the 1991 Act<sup>111</sup>.
- Alternative apparatus is to be provided where a statutory undertaker's apparatus needs to be removed under the DCO.
- Before removing or diverting a statutory undertaker's apparatus, 28 days' notice, alongside a plan of the proposed works, will be provided to the statutory undertakers and complied with, subject to cases of emergency.
- Proper and reasonable expenses accrued by the statutory undertaker pursuant to works to their apparatus under the DCO will be reimbursed by the undertaker, deductible by the value of the apparatus removed and any additional costs incurred as a result of the statutory undertaker's

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<sup>110</sup> S.I. 2017/817.

<sup>111</sup> 1991 c.22.



specific request (such as a replacement asset being of higher quality than the existing).

- all disputes are to be resolved through the procedure outlined in Article 53 (arbitration).

5.15.3. Part 2 sets out standard protective provisions for the protection of operators of electronic communications code networks. In summary, these provisions provide as follows:

- the exercise of powers under Article 40 (statutory undertakers) is subject to paragraph 23 of Schedule 2 to the Telecommunications Act 1984<sup>112</sup>.
- if the works of the Project result in damage to any statutory undertaker apparatus, (other than apparatus not requiring repair in view of its intended removal for the purposes of those works, or other property of a statutory undertaker) the undertaker must pay for making good any such damage.
- the undertaker has no liability for damage caused by an act or omission of the statutory undertaker.
- notice must be given of any claims the statutory undertaker brings and any disputes will be resolved pursuant to Article 53 (arbitration).
- Specific exclusions apply where the undertaker and statutory undertaker relationship is regulated by the provisions of Part 3 of the 1991 Act<sup>113</sup> or any damage, or any interruption, is caused by electro-magnetic interference arising from the construction or use of the Project. Further, nothing in Schedule 15, Part 2, overrides the provisions of any enactment or agreement regulating the relations between the undertaker and Statutory Undertaker to date.

5.15.4. Part 3 sets out protective provisions for the protection of CRT. Article 54 (temporary closure of, and works in, the river Ouse) provides the necessary powers required to string (and remove) the overhead line over the River Ouse. This is required by virtue of Work No. 6. The associated protective provisions ensure that certain conditions will be adhered to throughout this process, which benefit CRT. In summary, these protections include:

- 28 days' notice will be given to CRT before any obstruction or interference with navigation rights.
- Certain requirements must be met when doing works which affect the waterway, such as being in such manner as to cause as little detriment as is reasonably practicable.

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<sup>112</sup> 1984 c.12. Paragraph 23 of Schedule 2 has been repealed by the Digital Economy Act 2017 (c. 30), Part 2 Section 4(1) and subject to the transitional provisions specified in section 4(10) and Schedule 2 and S.I. 2017/1008 regs 3 and 5.

<sup>113</sup> 1991 c.22.

- The waterway must be restored to the same condition following the works within the waterway, subject to the existence of the new overhead line and National Grid will make good any damage caused.
- Any differences will be settled through arbitration in accordance with Article 53 (arbitration).

5.15.5. Part 4 sets out protective provisions for the benefit of railway interests. This is necessary because the Project crosses the railway line. In summary, these provisions provide as follows:

- Prior to commencing works within 15 metres of a railway line, the undertaker must gain approval of plans for these works from an engineer for Network Rail, such plans having been provided 28 days prior to commencement of these works.
- The undertaker must construct works around the railway line to prevent electromagnetic interference.
- The undertaker is under an obligation to maintain the constructed work in a manner which will not adversely affect the railway.
- No illumination will be provided by the undertaker in the vicinity of the railway.
- Reasonable costs incurred by Network Rail will be paid for by the undertaker.

## 5.16. **Schedule 16 (Amendment of local legislation)**

5.16.1. This Schedule lists the local legislation and byelaws the undertaker seeks to exclude in relation to the authorised development further to Article 52. The specific legislation to be disapplied has been carefully selected to reflect only those local acts and byelaws which will potentially impede the Project. For example, because the Project crosses the River Ouse the related byelaws of the internal drainage boards controlling this part of the watercourse have been disapplied to the extent they may contradict anticipated works at that location. The disapplied provisions include provisions of the West Yorkshire Act 1980 relating to culverting of streams and dust from operations; provisions of the Leeds City Council Byelaws for Good Rule and Governance relating to preservation of road margins, mud and noise; provisions of the Ainsty (2008) Internal Drainage Board Byelaws 2022 and Kyle and Upper Ouse Internal Drainage Board Byelaws 1996 relating to obstructions on the edge of a water course, vehicles being driven on a bank, storage on banks, and those regarding pylons and cables across watercourses. The mitigations measures secured through the Requirements of the DCO and further expanded upon in the **Embedded Measures Schedule (Volume 5, Document 5.3.3A)** are the most efficient means of providing the necessary protections for the anticipated activities of the undertaker.

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