

**Comment [AJ1]:** ExAs draft DCO contains drafting suggestions and questions using a combination of track-change and post-it comments. Responses from the Applicant and Interested Parties requested by D7, 17 February 2016 as R8 timetable

201[●] No. [●]

## INFRASTRUCTURE PLANNING

### The River Humber (Gas Pipeline Replacement) Order 201[●]

*Made* - - - - - \*\*\*  
*Coming into force* - - - - - \*\*\*

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An application was made to the Secretary of State in accordance with section 37 of the Planning Act 2008(a) for an order under sections 37, 114, 115, 120 and 122 of that Act.

The Examining authority(b) appointed by the Secretary of State examined the application in accordance with Chapter 4 of Part 6 of that Act(c) and made a recommendation under section 83 of that Act(d) that the application should be granted.

The Secretary of State, having the function of deciding the application(e), in exercise of the powers conferred by sections 103, 114, 115, 120 and 122 of that Act, makes the following Order—

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(a) 2008 c.29; section 37 is amended by the Localism Act 2011 (c. 20) s.137 and Sch. 13, para.5(2), (3).  
 (b) See section 86 of the Planning Act 2008 as amended by the Localism Act 2011, Sch. 13 para.37.  
 (c) The provisions of that Part are amended by the Localism Act 2011.  
 (d) Section 74 is amended by the Localism Act 2011, Sch.13 para.29(3) and Sch. 25 para.1.  
 (e) See section 103 of the Planning Act 2008 as amended by the Localism Act 2011 Schs. 13, 25.

## PART 1

### PRELIMINARY

#### Citation and Commencement

1. This Order may be cited as the River Humber (Gas Pipeline Replacement) Order 201[●] and comes into force on [●] 201[●].

#### Interpretation

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

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

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

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

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

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

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

“the 2008 Act” means the Planning Act 2008;

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

“access and rights of way plans” means the plans certified as the access and rights of way by the Secretary of State for the purposes of this Order and listed in Part 3 of Schedule 2 (*plans*);

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

“AGI” means an Above Ground Installation facility for the safe operation and maintenance of a pipeline;

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

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

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

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

“cathodic protection” means a technique used to control corrosion of a metal surface by making the metal surface a cathode of an electrochemical cell;

“commence” means the carrying out of a material operation, as defined in section 155 of the 2008 Act (when development begins), comprised in or carried out for the purposes of the authorised development, but does not include any remediation, environmental (including archaeological) surveys and investigation, site or soil survey, erection of site office, erection of fencing to site boundaries or marking out of site boundaries, the diversion or laying of services or environmental mitigation measures;

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

“drainage works” means that part of the authorised development comprised in paragraph (j) (further associated development) of Schedule 1 (*authorised development*) and such other

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- (a) 1961 c.33.
  - (b) 1965 c.56.
  - (c) 1980 c.66.
  - (d) 1984 c. 27.
  - (e) 1990 c.8.
  - (f) 1991 c.22.
  - (g) 2009 c.23.

further associated development in connection with that paragraph as is listed at paragraphs (a), (c), (d), (e), (f), (g), (h), (i), (k) of that Schedule;

“environmental statement” means the statement certified as the environmental statement by the Secretary of State for the purposes of this Order, together with any supplemental or additional environmental statement submitted for the purposes of complying with and/or discharging the requirements in Schedule 3 (*requirements*) or conditions in Schedule 9 (*deemed marine licence*);

“Goxhill AGI” means the existing National Grid Gas AGI at Goxhill in North Lincolnshire as indicated on works plan 5;

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

“highway authority” means North Lincolnshire Council or East Riding of Yorkshire Council as the case may be including their successor and where the relevant matter is located in the administrative areas of both then it means both;

“initial CEMP” means the construction environmental management plan certified by the Secretary of State for the purposes of this Order;

“initial TMP” means the traffic management plan certified by the Secretary of State for the purposes of this Order;

“the land plans” means the plans certified as the land plans by the Secretary of State for the purposes of this Order and listed in Part 2 of Schedule 2 (*plans*);

“maintain” (except as provided in Part 5 of Schedule 9) includes inspect, maintain, adjust, alter, repair, test, cleanse, re-lay, divert (in accordance with articles 5 (*maintenance of authorised development*) and 6 (*limits of deviation*)), make safe, reconstruct, abandon, replace, remove and improve the authorised development or any of its parts (but not so as to vary from the description of the authorised development in Schedule 1); and any derivative of “maintain” must be construed accordingly;

“National Grid Gas” means National Grid Gas Plc (company number 2006000) whose registered office is at 1 - 3 Strand, London, WC2N 5EH or any successor company performing the same functions;

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

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

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

“Paull AGI” means the existing National Grid Gas AGI at Paull in the East Riding of Yorkshire as indicated on works plan 7;

“relevant planning authority” means North Lincolnshire Council or East Riding of Yorkshire Council as the case may be including their successor and where the relevant matter is located in the administrative areas of both then it means both;

“statutory undertaker” means any person falling within section 127(8) and 138(4A) of the 2008 Act or who has the benefit of the protective provisions in Schedule 10 (*protective provisions*);

“stopple” means a device inserted into a pipeline and opened to achieve the isolation or stopping of flow in a live pipeline;

“stopple and bypass pit” means an excavation around the existing gas pipeline for the purposes of fitting a series of stopple tees to allow the tie-in of Work No. 1 to the existing gas pipeline, and a temporary bypass to maintain the supply of gas during tie-in works;

“stopple tee” means an encirclement device to allow insertion of a stopple into a pipeline;

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(a) 1981 c.67; the definition of “owner” is amended by the Planning and Compensation Act 1991 (c. 34), Sch.15(I) para.9.

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

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

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

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

“true clean bed” means the interface between accumulated deposits and the underlying drift or solid geology of the Humber Estuary;

“UK marine area” has the same meaning as in section 42 of the 2009 Act<sup>(b)</sup>;

“undertaker” means the person who has the benefit of this Order in accordance with article 8 of this Order;

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

“the works plans” means the plans certified as the works plans by the Secretary of State for the purposes of this Order and listed in part 1 of Schedule 2 (*plans*).

(2) Save for the definition of the “undertaker”, the definitions in paragraph (1) do not apply to Schedule 9 (*deemed marine licence under Part 4 (marine licensing) of the Marine and Coastal Access Act 2009*).

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

(4) All distances, directions and lengths referred to in this Order and any document referred to in this Order are approximate and distances between points on a work comprised in the authorised development are taken to be measured along that work (and in particular in respect of scheduled linear works referred to in this Order all distances are measured along the indicative pipeline route as shown on the works plans for that work).

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

(6) A reference in this Order to a work designated by a number, or by a combination of letters and numbers (for example, “Work No. 2”), is a reference to the work so designated in Schedule 1 (*authorised development*).

(7) A reference in this Order to a document or plan required to be submitted for certification under article 43 (*certification of plans etc.*) is a reference to the version of that document or plan that has been certified under article 43.

### Application, modification and **disapplication** of legislative provisions

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

- (a) Section 109 (*structures in, over or under a main river of the Water Resources Act 1991*)(c); and
- (b) The provisions of any byelaws made under paragraphs 5,6 or 6a of Schedule 25 to the Water Resources Act 1991, which require consent or approval for the carrying out of the works.

(2) A power conferred by this Order may be exercised despite, and without having regard to, any provision of byelaws made by the East Riding of Yorkshire Council in its capacity as lead local flood authority; but this paragraph does not apply to a provision which permits the taking of any action with the consent of East Riding of Yorkshire Council, of an internal drainage board or of the Environment Agency.

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(a) Section 48 is amended by the Local Transport Act 2008 (c. 26), Pt 7 s.124(2).  
 (b) 2009 c.23.  
 (c) 1992 c.57.

**Comment [AJ2]: Applicant/EA Are Protective Provisions (implications for the relevant Lead Local Flood Authorities and/or Internal Drainage Boards - raised by EA now agreed?**

**PART 2**  
**WORKS PROVISIONS**  
*Principal powers*

**Development consent etc. granted by the Order**

4. Subject to the provisions of this Order and to the requirements in Schedule 3 (*requirements*) the undertaker is granted—

- (a) development consent for the authorised development to be carried out within the Order limits; and
- (b) consent to use the authorised development for the purposes for which it is designed.

**Maintenance of the authorised development**

5.—(1) The undertaker may at any time maintain the authorised development within the Order limits.

(2) No maintenance works whose likely significant effects on the environment are not described in the environmental statement may take place, except for the maintenance works associated with an emergency.

**Limits of deviation**

6.—(1) Save in relation to the drainage works (in which case paragraph (2) applies), the undertaker may—

- (a) in respect of the location of any work comprised in the authorised development deviate laterally from the lines or situations shown on the works plans to the extent of the limits of deviation for that work shown on those plans; and
- (b) in respect of Work No.1 deviate vertically;
  - (i) for each or any part of Work No. 1 referred to in column 1 of the table below, to the limit upwards specified in relation to that part of Work No.1 in column 2 of that table;
  - (ii) to any extent downwards as may be found necessary or practical to a maximum depth of 70 metres below the surface of the ground; and
  - (iii) except that subparagraph (i) does not apply to those parts of Work No.1 that are built within the Goxhill AGI and the Paull AGI.

**Comment [AJ3]: Applicant/EA** Are EA now satisfied that protection is afforded to a minimum depth of cover beneath the managed realignment site (flood defence)?

(1) <i>Scheduled Work</i>	(2) <i>Upwards Vertical Deviation Limits</i>			
	Below ground level (m)	Below watercourses (m)	Below true clean bed (m)	Below highways (m)
1A	1.2	1.7	Not applicable	Not applicable
1B	4.0	1.7	7.0	Not applicable
1C	1.2	1.7	Not applicable	2.0

- (c) deviate or place Work Nos. 2, 3, 4, 7 and 8 laterally and vertically to the limits set for these works in part 1 of Schedule 1.

- (d) carry out construction activities for the purposes of the authorised development anywhere within the Order limits.
- (2) The undertaker may construct the drainage works anywhere within the Order limits.

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

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

- (a) the defendant shows that the nuisance—
  - (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (*prior consent for work on construction site*) or 65 (*noise exceeding registered level*), of the Control of Pollution Act 1974(b); or
  - (ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance—
  - (i) relates to premises used by the undertaker for the purposes of or in connection with the use of the authorised development and that the nuisance is attributable to the use of the authorised development which is being used in accordance with paragraph 13 of Schedule 3 (*requirements*); or
  - (ii) is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) Section 61(9) (*consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990*) of the Control of Pollution Act 1974 and section 65(8) of that Act (corresponding provision in relation to consent for registered noise level to be exceeded), do not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

#### *Benefit of Order*

### **Benefit of Order**

8.—(1) Subject to article 9 (*Transfer of benefit of Order*), the provisions of this Order have effect solely for the benefit of National Grid Gas.

(2) Paragraph (1) does not apply to the benefit of the consent granted by this Order for works carried out by the undertaker for the benefit or protection of land or persons (including statutory undertakers) affected by the authorised development.

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

9.—(1) The undertaker may with the consent of the Secretary of State—

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(a) 1990 c.43; section 82 is amended by section 5 of the Noise and Statutory Nuisance Act 1993 (c.40), Schedule 17 to the Environmental Act 1995 (c.25) and section 103 of the Clean Neighbourhoods and Environment Act 2005 (c.16).  
(b) 1974 c.40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990, c.25. There are other amendments to the 1974 Act which are not relevant to this Order.



- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions in this Order an such related rights as may be agreed between the undertaker and the transferee; or
  - (b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order and such related statutory rights as may be so agreed.
- (2) Where an agreement has been made in accordance with paragraph (1) references in this Order to the undertaker, except in paragraph (3), include references to the transferee or the lessee.
- (3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

### *Streets*

#### **Street works**

**10.**—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets specified in Schedule 4 (*streets subject to street works*) as is within the Order limits and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it (including for the purposes of carrying out surveys to ascertain the location of apparatus);
- (b) tunnel or bore under the street;
- (c) place apparatus in or under the street;
- (d) maintain apparatus in or under the street or change its position; and
- (e) execute any works required for or incidental to any works referred to in sub-paragraphs (a) to (d) above.

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

(3) The provisions of sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1) save that—

- (a) section 61(1) of the 1991 Act (*under which the consent of the street authority is required for the placing of apparatus in a protected street*) does not apply to the placing of apparatus in the course of the authorised development;
- (b) section 62(2) of the 1991 Act (*power following the designation of a protected street to require removal or repositioning of apparatus already placed in the street*) does not, unless otherwise agreed with the undertaker, apply in relation to apparatus placed in the course of the authorised development;
- (c) section 62(4) of the 1991 Act (*power when a designation as a protected street commences or ceases to give directions with respect to works in progress*) does not, unless otherwise agreed with the undertaker, apply in relation to the authorised development.

(4) In this article “apparatus” and “street works” have the same meanings as in Part 3 of the 1991 Act save that “apparatus” further includes pipelines (and parts of them), aerial markers, cathodic protection test posts, field boundary markers, monitoring kiosks and electricity cabinets.

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<sup>(a)</sup> Section 48 is amended by the Local Transport Act 2008 (c.26) s.124(2); section 51 is amended by Schedule 1 to the Traffic Management Act 2004 (c.18).

### **Power to alter layout, etc. of streets**

**11.**—(1) The undertaker may alter the layout of a street specified in column (2) of Schedule 5 (*streets subject to alteration of layout*) in the manner specified in relation to that street in column (3).

(2) Without prejudice to the specific powers conferred by article 4 (*development consent etc. granted by the Order*) or paragraph (4) but subject to paragraph (3), the undertaker may, for the purposes of constructing and maintaining the authorised development, alter the layout of any street within the Order limits and the layout of any street having a junction with such a street; and, without limiting the scope of this paragraph, the undertaker may—

- (a) increase the width of the carriageway of the street by reducing the width of any kerb, footpath, footway, cycle track, verge or central reservation within the street;
- (b) alter the level or increase the width of any such kerb, footpath, footway, cycle track, verge or central reservation;
- (c) reduce the width of the carriageway of the street;
- (d) make crossovers and passing places;
- (e) carry out works for the provision or alteration of parking places, loading bays and cycle tracks; and
- (f) execute any works required for or incidental to any works referred to in sub-paragraphs (a) to (e) above.

(3) The powers conferred by paragraph (2) must not be exercised without the consent of the street authority but such consent must not be unreasonably withheld or delayed.

(4) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets specified in Schedule 4 (*streets subject to street works*) and Schedule 5 (*streets subject to alteration of layout*) as is within the Order limits and may—

- (a) execute any works to provide or improve sight lines required by the highway authority;
- (b) remove and replace kerbs and flume ditches for the purposes of creating permanent and temporary accesses;
- (c) execute and maintain any works to provide hard and soft landscaping;
- (d) carry out re-lining and placement of new temporary markings; and
- (e) execute any works required for or incidental to any works referred to in sub-paragraphs (a) to (e) above.

### **Construction and maintenance of new, altered or diverted streets**

**12.**—(1) Any street to be constructed under this Order in respect of which the undertaker has given the highway authority notice that this paragraph applies must be completed to the reasonable satisfaction of the highway authority and, unless otherwise agreed with the highway authority, must be maintained by and at the expense of the undertaker for a period of 24 months from its completion and at the expiry of that period by and at the expense of the highway authority.

(2) Where a street is altered or diverted under this Order, the altered or diverted part of the street must, when completed to the reasonable satisfaction of the street authority, unless otherwise agreed with the street authority, be maintained by and at the expense of the undertaker for a period of 24 months from its completion and at the expiry of that period by and at the expense of the street authority.

(3) Where any street not previously part of the public highway is constructed pursuant to this Order it will on the undertaker giving notice to the highway authority (and street authority if different) that this paragraph applies be deemed to be dedicated for public use as highway on the completion of that street.

(4) Paragraphs (1) to (3) do not apply in relation to the structure of any bridge carrying a street.

(5) In any action against the undertaker in respect of loss or damage resulting from any failure by it to maintain a street under this article, it will be a defence (without prejudice to any other

defence or the application of the law relating to contributory negligence) to prove that the undertaker had taken such care as in all the circumstances was reasonably required to secure that the part of the street to which the action relates was not dangerous to traffic.

(6) For the purposes of a defence under paragraph (5), the court must in particular have regard to the following matters—

- (a) the character of the street and the traffic which was reasonably to be expected to use it;
- (b) the standard of maintenance appropriate for a street of that character and used by such traffic;
- (c) the state of repair in which a reasonable person would have expected to find the street;
- (d) whether the undertaker knew, or could reasonably have been expected to know, that the condition of the part of the street to which the action relates was likely to cause danger to users of the street;
- (e) where the undertaker could not reasonably have been expected to repair that part of the street before the cause of action arose, what warning notices of its condition had been displayed,

but for the purposes of such a defence it is not relevant to prove that the undertaker had arranged for a competent person to carry out or supervise the maintenance of the part of the street to which the action relates unless it is also proved that the undertaker had given the competent person proper instructions with regard to the maintenance of the street and that the competent person had carried out those instructions.

(7) Nothing in this article—

- (a) prejudices the operation of section 87 of the 1991 Act (*prospectively maintainable highways*); and the undertaker is not by reason of any duty under that section to maintain a street to be taken to be a street authority in relating to that street for the purposes of Part 3 of that Act; or
- (b) has effect in relation to the street works with regard to which the provisions of Part 3 of the 1991 Act apply.

### **Temporary stopping up of streets and public rights of way**

**13.—**(1) The undertaker, during and for the purposes of carrying out the authorised development, may temporarily stop up, alter or divert any street or any public right of way and may for any reasonable time—

- (a) divert the traffic or a class of traffic from the street or public right of way; and
- (b) subject to paragraph (2), prevent all persons from passing along the street or public right of way.

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

(3) Without prejudice to the generality of paragraph (1), the undertaker may temporarily stop up, alter or divert the streets or public rights of way specified in Schedule 6 (*streets and public rights of way to be temporarily stopped up*) to the extent specified, by reference to the letters and numbers shown on the access and rights of way plans, in column 3.

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

- (a) any street or public right of way specified as mentioned in paragraph (3) without first consulting the highway authority; and
- (b) any other street or public right of way without the consent of the highway authority, which must not be unreasonably withheld or delayed but the highway authority may attach reasonable conditions to any such consent.

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

#### **Access to works**

**14.**—(1) The undertaker may, for the purposes of the construction and/or the maintenance of the authorised development—

- (a) form and lay out means of access, or improve existing means of access, as specified in columns (1) and (2) of Schedule 7 (*access to works*); and
- (b) with the approval of the relevant planning authority, which is not to be unreasonably withheld or delayed, after consultation with the highway authority, form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

#### **Traffic regulation**

**15.**—(1) Subject to the provisions of this article and the consent of the traffic authority in whose area the road concerned is situated, which consent must not be unreasonably withheld or delayed, the undertaker may, in so far as may be expedient or necessary for the purposes of or in connection with construction, operation, or maintenance of the authorised development—

- (a) revoke, amend or suspend in whole or in part any order made, or having effect as if made, under the 1984 Act;
- (b) permit, prohibit or restrict the stopping, parking, waiting, loading or unloading of vehicles on any road;
- (c) authorise the use as a parking place of any road;
- (d) make provision as to the direction or priority of vehicular traffic on any road; and
- (e) permit or prohibit vehicular access to any road;

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

(2) The undertaker may not exercise the powers in paragraph (1) unless it has—

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

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

- (a) has effect as if duly made by, as the case may be—
  - (i) the traffic authority in whose area the road is situated as a traffic regulation order under the 1984 Act; or
  - (ii) the local authority in whose area the road is situated as an order under section 32 of the 1984 Act; and
- (b) is deemed to be a traffic order for the purposes of Schedule 7 to the Traffic Management Act 2004<sup>(a)</sup> (*road traffic contraventions subject to civil enforcement*).

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

**Comment [AJ4]: Applicant/EA - At D4 the EA highlighted a concern about the right to create new access routes which might affect flood defences and other operational assets. Is a position now agreed?**

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(a) 2004 c.18.

(5) Before complying with the provisions of paragraph (2) the undertaker must consult the chief officer of police and the traffic authority in whose area the road is situated.

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

#### Agreements with street authorities

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

- (a) the construction of any new street including any structure carrying the street over or under any part of the authorised development;
  - (b) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;
  - (c) any stopping up, alteration or diversion of a street authorised by this Order; or
  - (d) the carrying out in the street of any of the works referred to in article 10(1) (*street works*).
- (2) Such an agreement may, without prejudice to the generality of paragraph (1)—
- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question;
  - (b) include an agreement between the undertaker and street authority specifying a reasonable time for completion of the works; and
  - (c) contain such terms as to payment and otherwise as the parties consider appropriate.

#### *Supplemental powers*

#### Discharge of water

17.—(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits make opening into, and connections with, that watercourse, public sewer or drain.

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

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

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

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

(5) The undertaker must not, in carrying out or maintaining works pursuant to this article, damage or interfere with the bed or banks of any watercourse forming part of a main river unless otherwise authorised under the provisions of Part 3 (*for the protection of the Environment Agency*) of Schedule 10 (*protective provisions*) of this Order.

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

**Comment [AJ5]: Applicant/EA At D4**  
the EA requested that reference be made to the need for consent under section 109 of the Water Resources Act. Further legal discussions were taking place. Is a position now agreed?

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

(7) This article does not authorise a groundwater activity or a water discharge activity within the meaning of the Environmental Permitting (England and Wales) Regulations 2010(a).

(8) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to the Homes and Communities Agency, the Environmental Agency, a harbour authority within the meaning of section 57 of the Harbours Act 1964(b) (*interpretation*), an internal drainage board, a joint planning board, a local authority, a National Park Authority, a sewerage undertaker(c) or an urban development corporation; and
- (b) other expressions, excluding watercourse, used both in this article and in the Environmental Permitting (England and Wales) Regulations 2010 have the same meaning as in those Regulations.

#### **Authority to survey and investigate the land**

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

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

(2) The power conferred by sub-paragraph (1)(c) includes without prejudice to the generality of that sub-paragraph the power to take, and process, samples of or from any of the following found on, in or over the land—

- (a) water;
- (b) air;
- (c) soil or rock;
- (d) its flora;
- (e) bodily excretions, or dead bodies, of non-human creatures; or
- (f) any non-living thing present as a result of human action.

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

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

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

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

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

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(a) S.I.2010/675. “Groundwater activity” is defined in paragraph 3 of Schedule 22; and “water discharge activity” in paragraph 3 of Schedule 21.

(b) 1964 c.40.

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

(b) in a private street without the consent of the street authority, but such consent must not be unreasonably withheld or delayed.

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

### **Removal of human remains**

**19.—**(1) In this article “the specified land” means any land within the Order limits.

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

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

(a) publishing a notice once in each of two successive weeks in a newspaper circulating in the area of the authorised development; and

(b) displaying a notice in a conspicuous place on or near to the specified land.

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

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

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

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

(b) removed to, and cremated in, any crematorium,

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

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

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

(9) If—

(a) within the period of 56 days referred to in paragraph (5) no notice under that paragraph has been given to the undertaker in respect of any remains in the specified land; or

(b) such notice is given and no application is made under paragraph (7) within 56 days after the giving of the notice but the person who gave the notice fails to remove the remains within a further period of 56 days; or

(c) within 56 days after any order is made by the county court under paragraph (7) any person, other than the undertaker, specified in the order fails to remove the remains; or

(d) it is determined that the remains to which any such notice relates cannot be identified,

subject to paragraph (10) the undertaker must remove the remains and cause them to be re-interred in such burial ground or cemetery in which burials may legally take place as the

undertaker thinks suitable for the purpose; and, so far as possible, remains from individual graves must be re-interred in individual containers which must be identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

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

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

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

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

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

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

(15) Sections 238 and 239 of the 1990 Act (*use and development of consecrated land and burial grounds*) apply—

- (a) in relation to land, other than a right over land, acquired for the purposes of the authorised development (whether or not by agreement), so as to permit use by the undertaker in accordance with the provisions of this Order; and
- (b) in relation to a right over land so acquired (whether or not by agreement), or the temporary use of land pursuant to articles 26 (*temporary use of land for carrying out the authorised development*) and 27 (*temporary use of land for maintaining the authorised development*), so as to permit the exercise of that right or the temporary use by the undertaker in accordance with the provisions of this Order, without prejudice to the status of the land over which the right is exercised as consecrated land,

and in section 238(1)(b) of the 1990 Act reference to a “planning permission” includes this Order, in section 240(1) of the 1990 Act reference to “regulations made for the purposes of sections 238(3) and (4) and 239(2)” means, so far as applicable to land or a right over land acquired under this Order, paragraphs (2) to (13) of this article and in section 240(3) of the 1990 Act reference to a “statutory undertaker” includes the undertaker and reference to “any other enactment” includes this Order.

(16) The Town and Country Planning (Churches, Places of Religious Worship and Burial Ground) Regulations 1950<sup>(b)</sup> do not apply to the authorised development.

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(a) 1857 c.81; section 25 is amended by the Criminal Justice Act 1982 (c.48) s.46.

(b) S.I. 1950/792.



**PART 3**  
**ACQUISITION AND POSSESSION OF LAND**  
*Powers of acquisition*

**Compulsory acquisition of land**

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

(2) As from the date on which a compulsory acquisition notice under section 134(3) (*notice of authorisation of compulsory acquisition*) of the 2008 Act is served or the date on which the Order land, or any part of it, is vested in the undertaker, whichever is the later, all rights, trusts and incidents to which that land or that part of it which is vested (as the case may be) was previously subject are discharged or suspended, so far as their continuance would be inconsistent with the exercise of the powers under this Order.

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

(4) This article is subject to article 23 (*acquisition of subsoil only*) and article 26 (*temporary use of land for carrying out the development*).

**Compulsory acquisition of rights**

**21.**—(1) The undertaker may acquire compulsorily the existing rights and create and acquire compulsorily the new rights described in the book of reference and shown on the land plans.

(2) As from the date on which a compulsory acquisition notice is served or the date on which any new right is vested in the undertaker, whichever is the later, the land over which any new rights is acquired is discharged from all rights, trusts and incidents to which it was previously subject so far as their continuance would be inconsistent with the exercise of that new right.

(3) Subject to section 8 of the 1965 Act, as substituted by article 31 (*acquisition of part of certain properties*), where the undertaker acquires an existing right over land under paragraph (1), the undertaker is not required to acquire a greater interest in that land.

(4) Schedule 11 (*modification of compensation and compulsory purchase enactments for creation of new rights*) has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of a restrictive covenant.

(5) Any person who suffers loss as a result of the extinguishment or suspension of any private right under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

**Extinguishment and suspension of private rights**

**22.**—(1) Subject to the provision of this article, all private rights and restrictive covenants over land subject to compulsory acquisition under this Order are extinguished—

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

whichever is the earliest.

**Comment [AJ6]: Applicant** Why is this sweeping CA power required for this project when it was not considered necessary in the A14 Cambridge to Huntingdon Improvement Scheme DCO?

(2) Subject to the provisions of this article, all private rights and restrictive covenants over land owned by the undertaker which, being within the Order limits, is required for the purposes of this Order, are extinguished on the commencement of any activity authorised by this Order which interferes with or breaches such rights or such restrictive covenants.

(3) Subject to the provisions of this article, all private rights or restrictive covenants over land subject to compulsory acquisition of rights or the imposition of restrictions under the Order shall be extinguished in so far as their continuance would be inconsistent with the exercise of the right acquired or the burden of the restriction imposed—

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

whichever is the earliest.

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

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

(6) This article does not apply in relation to any right to which section 138 of the 2008 Act (*extinguishment of rights, and removal of apparatus, of statutory undertakers etc.*) or article 32 (*statutory undertakers*) applies.

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

- (a) any notice given by the undertaker before—
  - (i) the completion of the acquisition of the land or rights or the imposition of restrictive covenants over or affecting the land;
  - (ii) the undertaker's appropriation of it;
  - (iii) the undertaker's entry onto it; or
  - (iv) the undertaker's taking temporary possession of it,

that any or all of those paragraphs do not apply to any right specified in the notice; and

- (b) any agreement made, in so far as it relates to the authorised development, at any time between the undertaker and the person in or to whom the right or restrictive covenant in question is vested, belongs or benefits.

(8) If any such agreement as is referred to in paragraph 7(b)—

- (a) is made with a person in or to whom the right is vested or belongs; and
- (b) is expressed to have effect also for the benefit of those deriving title from or under that person,

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

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

### Acquisition of subsoil only

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

**Comment [AJ7]: Applicant/EA At D4** the EA raised concerns about Articles 22(4), 26(1a) and 27(1a) which provide that the undertaker could take temporary possession of any land within the order limits and potential conflict with operational assets. Is a position now agreed?

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

(3) Paragraph (2) does not prevent article 31 (*acquisition of part of certain properties*) from applying where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

#### **Power to override easements and other rights**

**24.**—(1) Any authorised activity which takes place on land within the Order limits (whether the activity is undertaken by the undertaker or by any person deriving title from the undertaker or by any servants or agents of the undertaker) is authorised by this Order if it is done in accordance with the terms of this Order, notwithstanding that it involves—

- (a) an interference with an interest or right to which this article applies; or
- (b) a breach of a restriction as to the user of land arising by virtue of a contract.

(2) In this article “authorised activity” means—

- (a) the erection, construction or carrying out, operation or maintenance of any part of the authorised development;
- (b) the exercise of any power authorised by this Order; or
- (c) the use of any land (including the temporary use of land).

(3) The interests and rights to which this article applies include any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support and include restrictions as to the user of land arising by virtue of a contract.

(4) Where an interest, right or restriction is overridden by paragraph (1), compensation—

- (a) is payable under section 7 or 10 of the 1965 Act<sup>(a)</sup>; and
- (b) must be assessed in the same manner and subject to the same rules as in the case of other compensation under those sections where—
  - (i) the compensation is to be estimated in connection with a purchase under that Act; or
  - (ii) the injury arises from the execution of works on or use of land acquired under that Act.

(5) Nothing in this article may be construed as authorising any act or omission on the part of any person which is actionable at the suit of any person on any grounds other than such an interference or breach as is mentioned in paragraph (1) of this article.

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

**25.**—(1) The Compulsory Purchase (Vesting Declarations) Act 1981<sup>(b)</sup> applies as if this Order were a compulsory purchase order and as if the undertaker were a public authority under section 1(2) of that Act.

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

(3) In section 3 (*preliminary notices*), for subsection (1) there is substituted—

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

- (a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession); and

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(a) There are amendments that are not relevant to this Order.

(b) 1981 c.66.

- (b) published in a local newspaper circulating in the area in which the land is situated.”.

(4) In that section, in subsection (2), for “(1)(b)” there is substituted “(1)” and after “given” there is inserted “and published”.

(5) In that section, for subsections (5) and (6) there is substituted—

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

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

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

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

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

(8) References to the 1965 Act in the Compulsory Purchase (Vesting Declarations) Act 1981 are to be construed as references to that Act as applied by section 125 of the 2008 Act to the compulsory acquisition of land under this Order.

#### *Temporary possession of land*

### **Temporary use of land for carrying out the authorised development**

**26.**—(1) The undertaker may, in connection with the carrying out of the authorised development—

(a) enter on and take temporary possession of—

- (i) the land specified in columns (1) and (2) of Schedule 8 (*land of which temporary possession may be taken*) for the purpose specified in relation to that land in column (3) of that Schedule relating to the part of the authorised development specified in column (4) of that Schedule;
- (ii) any Order land in respect of which no notice of entry has been served under section 11 of the 1965 Act (*powers of entry*) (other than in connection with the requisition of rights only) and no declaration has been made under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 (*execution of declaration*) for the purposes of constructing and carrying out the authorised development;

(b) remove any buildings and vegetation from ~~the that~~ land referred to in paragraphs (1)(a)(i) and (a)(ii);

(c) construct temporary works (including the provision of means of access) and buildings on ~~the that~~ land referred to in paragraphs (1)(a)(i) and (a)(ii); and

(d) construct and carry out any mitigation works on ~~the that~~ land referred to in paragraphs (a)(i) and (a)(ii).

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

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

- (a) in the case of land specified in paragraph (1)(a)(i) after the end of the period of two years beginning with the date of completion the authorised development; or

**Comment [AJ8]:** The extent of the temp possession will increase as a result of the accepted change request; **Applicant** – see R17 (2) **Interested Parties** – see R17 (4) dated 1.02.16.

**Comment [AJ9]: Applicant** Please confirm the scope of this work. Should this be more specific and should ‘mitigation’ be defined in the order?

**Comment [AJ10]: Applicant** This Article allows possession to continue for one or two years, therefore up to 5 years for the mitigation land after ‘*completion of the authorised development*’. The model provisions provide for such time periods to run from the date of ‘*completion of the part of the authorised development specified in relation to that land*.’ How is the drafting in its current form justified? Why is such a long period required? Could the period be reduced and the drafting be tightened?

- (b) in the case of land referred to in paragraph (1)(a)(ii), after the end of the period of one year beginning with the date of completion of the authorised development unless the undertaker has, before the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the Compulsory Purchase (Vesting Declaration) Act 1981,
- (c) and in this paragraph the date on which the authorised development is completed means the date on which the undertaker has certified that it is first capable of being brought into operational use for the purpose for which it was designed.
- (4) Before giving up possession of land of which temporary possession has been taken under this article, unless otherwise agreed by the owners of the land, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not required to—
- (a) replace a building removed under this article;
  - (b) restore the land on which any permanent works have been constructed under subparagraph (1)(d); or
  - (c) remove any ground-strengthening works which have been placed in that land to facilitate construction of the authorised development.
- (5) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of any power conferred by this article.
- (6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, must be determined under Part 1 of the 1961 Act.
- (7) Nothing in this article affects any liability to pay compensation under section 10(2) of the 1965 Act (further provisions as to compensation for injurious affection) or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).
- (8) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i) except that the undertaker is not to be precluded from—
- (a) acquiring new rights over any part of that land under article 21 (*compulsory acquisition of rights*); or
  - (b) acquiring any part of the subsoil or of the airspace over (or rights in the subsoil or of the airspace over) that land under article 23 (*acquisition of subsoil only*).
- (9) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.
- (10) Section 13 of the 1965 Act (a) (*refusal to give possession to acquiring authority*) applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (*application of compulsory acquisition provisions*).
- (11) Subject to paragraph (3), nothing in this article prevents the taking of temporary possession pursuant to it more than once in relation to any land specified in paragraph (1).

**Comment [AJ11]: Applicant** – The extent of the temp possession will increase as a result of the accepted change request; See R17 (3) 1.02.16

### Temporary use of land for maintaining the authorised development

- 27.**—(1) Subject to paragraph (2) the undertaker may during the maintenance period—
- (a) enter on and take temporary possession of any land within the Order limits if such possession is reasonably required for the purpose of maintaining the authorised development;
  - (b) enter on any land within the Order limits for the purpose of gaining access as is reasonably required for the purpose of maintaining the authorised development; and

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(a) Section 13 is amended by section 139 of the Tribunals, Courts and Enforcement Act 2007 (c.15).

- (c) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.
- (2) Paragraph (1) does not authorise the undertaker to take temporary possession of—
- (a) any house or garden belonging to a house; or
  - (b) any building (other than a house) if it is for the time being occupied.
- (3) Not less than 28 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land, except as provided in paragraph (11).
- (4) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised development for which possession of the land was taken.
- (5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.
- (6) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.
- (7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, must be determined under Part 1 of the 1961 Act.
- (8) Nothing in this article affects any liability to pay compensation under section 10(2) of the 1965 Act (*further provisions as to compensation for injurious affection*) or under any other enactment in respect of loss or damage arising from the maintenance of the authorised development, other than loss or damage for which compensation is payable under paragraph (6).
- (9) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.
- (10) Section 13 of the 1965 Act (*refusal to give possession to acquiring authority*) applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (*application of compulsory acquisition provisions*).
- (11) Where the undertaker has identified a potential risk to the safety of—
- (a) the authorised development or any part of it; or
  - (b) the public; or
  - (c) the surrounding environment,

the requirement to serve not less than 28 days' notice under paragraph (3) does not apply and the undertaker may enter the land pursuant to paragraph (1) subject to giving such period of notice (if any) as is reasonably practicable in all the circumstances.

(12) In this article the "maintenance period" means in relation to any part of the authorised development the period of five years beginning with the date on which the authorised development is first brought into operational use for the purpose for which it was designed.

#### *Compensation*

#### **Disregard of certain interests and improvements**

**28.—**(1) In assessing the compensation payable to any person on the acquisition from that person of any land or right over any land under this Order, the tribunal must not take into account—

- (a) any interest in land; or
- (b) any enhancement of the value of any interest in land by reason of any building erected, works executed or improvement or alteration made on relevant land,

if the tribunal is satisfied that the creation of the interest, the erection of the building, the execution of the works or the making of the improvement or alteration as part of the authorised

development was not reasonably necessary and was undertaken with a view to obtaining compensation or increased compensation.

(2) In paragraph (1) “relevant land” means the land acquired from the person concerned or any other land with which that person is, or was at the time when the building was erected, the works executed or the improvement or alteration made as part of the authorised development, directly or indirectly concerned.

#### **Set-off for enhancement in value of retained land**

**29.**—(1) In assessing the compensation payable to any person in respect of the acquisition from that person under this Order of any land (including the subsoil) the tribunal must set off against the value of the land so acquired any increase in value of any contiguous or adjacent land belonging to that person in the same capacity which will accrue to that person by reason of the construction of the authorised development.

(2) In assessing the compensation payable to any person in respect of the acquisition from that person of any new rights over land (including the subsoil), under article 21 (*compulsory acquisition of rights*), the tribunal must set off against the value of the rights so acquired—

- (a) any increase in the value of the land over which the new rights are required; and
- (b) any increase in value of any contiguous or adjacent land belonging to that person in the same capacity,

which will accrue to that person by reason of the construction of the authorised development.

(3) The 1961 Act has effect, subject to paragraphs (1) and (2), as if this Order were a local enactment for the purposes of that Act.

#### **No double recovery**

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

#### *Supplementary*

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

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

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

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

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

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

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

- (a) without material detriment to the remainder of the land subject to the counter-notice; or

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

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

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

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

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

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

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

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

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

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

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

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

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

### **Statutory undertakers**

**32.—**(1) Subject to the provisions of Schedule 10 (*protective provisions*), the undertaker may—

- (a) acquire compulsorily the land belonging to statutory undertakers shown on the land plans within the limits of the land to be acquired and described in the book of reference;
- (b) extinguish the rights of, remove or reposition the apparatus belonging to statutory undertakers where such apparatus is anywhere within the Order limits; and
- (c) acquire compulsorily the new rights over land belonging to statutory undertakers described in the book of reference and shown on the land plans.



### Recovery of costs of new connections

**33.**—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 32 (*statutory undertakers*) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 32 (*statutory undertakers*) any person who is—

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

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

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

(4) In this article—

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

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

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

**34.**—(1) After the end of the period of five years beginning on the day on which this Order is made—

- (a) no notice to treat is to be served under Part 1 of the 1965 Act; and
- (b) no declaration is to be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981(b) as applied by article 25 (*application of the Compulsory Purchase (Vesting Declarations) Act 1981*).

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

### Rights under or over streets

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

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

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

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

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(a) 2003 c.21; there are amendments to section 151 that are not relevant to this Order.

(b) 1981 c.66.

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

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

#### **Incorporation of the mineral code**

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

- (a) for “the acquiring authority” substitute “the undertaker”;
- (b) for “undertaking” substitute “authorised development”; and
- (c) for “compulsory purchase order” substitute “this Order”.

## **PART 4**

### **MISCELLANEOUS AND GENERAL**

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

**37.**—(1) This article applies to—

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

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

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

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

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

#### **Deemed consent under Part 4 (marine licensing) of the Marine and Coastal Access Act 2009**

**38.**—(1) A marine licence is deemed to have been issued to the undertaker under Part 4 (*marine licensing*) of the Marine and Coastal Access Act 2009(b).

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(a) 1981 c.67.

(b) 2009 c.23; there are amendments that are not relevant to this Order.

(2) The marine licence deemed to have been issued under this article is set out at Schedule 9 (*deemed marine licence under Part 4 (marine licensing) of the Marine and Coastal Access Act 2009*).

#### **Operational land for purposes of the 1990 Act**

**39.** Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (*cases in which land is to be treated as not being operational land for the purposes of that Act*).

#### **Felling or lopping of trees or shrubs**

**40.—**(1) The undertaker may fell or lop any tree or shrub near any part of the authorised development, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

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

(2) In carrying out any activity authorised by paragraph (1), the undertaker must not cause unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

(3) The undertaker may remove—

- (a) hedgerows shown on the works plans;
- (b) with the approval of the relevant planning authority, which is not to be unreasonably withheld or delayed, any other hedgerow within the Order limits if the undertaker reasonably believes it to be necessary to do so for the purposes of the construction and/or carrying out of the authorised development.

(4) The undertaker is not required to obtain any consent to remove a hedgerow referred to in paragraph (3) under the Hedgerows Regulations 1997(b).

(5) Reference to “planning permission” in regulation 6 (*permitted work*) of the Hedgerows Regulations 1997 includes this Order.

(6) In this article—

- (a) “hedgerow” includes—
  - (i) hedgerows to which the Hedgerows Regulations 1997 apply; and
  - (ii) any part of a hedgerow.

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

#### **Protective provisions**

**41.** Schedule 10 (*protective provisions*) to this Order has effect.

#### **Crown Rights**

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

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(a) 2009 c.23; there are amendments that are not relevant to this Order.  
(b) S.I. 2010/948.

- (a) to take, use, enter upon or in any matter interfere with any land or rights of any description (including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary)—
  - (i) belonging to Her Majesty in right of the Crown and forming part of the Crown Estate without the consent in writing of the Crown Estate Commissioners;
  - (ii) belonging to Her Majesty in right of the Crown and not forming part of the Crown Estate without the consent in writing of the government department having the management of that land; or
  - (iii) belonging to a government department or held in trust for Her Majesty for the purposes of a government department without the consent in writing of that government department; or
- (b) to exercise any right under this Order compulsorily to acquire an interest in any land which is Crown Land (as defined in the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown without consent in writing of the appropriate Crown authority (as defined in the 2009 Act).

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

**Certification of plans etc.**

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

- (a) the access and rights of way plans;
- (b) the book of reference;
- (c) the environmental statement;
- (d) the land plans;
- (e) the works plans;
- (f) the initial CEMP; and
- (g) the initial TMP

for certification that they are true copies of the plans or documents referred to in this Order.

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

**Service of notices**

**44.**—(1) A notice or other document required or authorised to be served, given or supplied under this Order may be served, given or supplied in any of these ways—

- (a) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied;
- (b) by leaving it at the usual or last known place of abode of that person or, in a case where an address for service has been given by that person, at that address;
- (c) by sending it by post, addressed to that person at that person’s usual or last known place of abode or, in a case where an address for service has been given by that person, at that address;
- (d) by sending it in a prepaid registered letter, or by the recorded delivery service, addressed to that person at that person’s usual or last known place of abode or, in a case where an address for service has been given by that person, at that address;
- (e) in a case where an address for service using electronic communications has been given by that person, by sending it using electronic communications, in accordance with the condition set out in paragraph (2), to that person at that address;
- (f) in the case of an incorporated company or body—

**Comment [AJ12]:**  
**Applicant** - The updated master document control [current version - REP5-009], at Deadline 8 should set out the final version of the entire application/examination contents. It would be helpful for this Article to identify key relevant documents using the published examination library references.

- (i) by delivering it to the secretary or clerk of the company or body at their registered or principal office;
  - (ii) by sending it by post, addressed to the secretary or clerk of the company or body at that office; or
  - (iii) by sending it in a prepaid registered letter or by the recorded delivery service, addressed to the secretary or clerk of the company or body at that office.
- (2) The condition mentioned in sub-paragraph (e) is that the notice or other document must be -
- (a) capable of being accessed by the person mentioned in that provision;
  - (b) legible in all material respects; and
  - (c) in a form sufficiently permanent to be used for subsequent reference.

(3) For the purposes of paragraph (2), “legible in all material respects” means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served, given or supplied by means of a notice or document in printed form.

**Arbitration**

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

**Requirements**

46. Schedule 3 (*requirements*) to this Order has effect.

**Procedure in relation to certain approvals etc.**

47. Schedule 12 (*procedure in relation to certain approvals etc*) to this Order has effect.

Signatory by authority of the Secretary of State

Date

[*Name of Secretary of State*]  
Department of [ ]

## SCHEDULES

### SCHEDULE 1

Article 4

#### AUTHORISED DEVELOPMENT

1. A nationally significant infrastructure project as defined in sections 14 and 20 of the 2008 Act and associated development within the meaning of section 115 of the 2008 Act comprising the works described below.

##### **In North Lincolnshire and the East Riding of Yorkshire—**

**Work No. 1** - A high-pressure gas transporter pipeline up to 6 kilometres in length and up to 1050 millimetres in diameter between the Goxhill AGI and Paull AGI and comprised of the following:

**Work No. 1A** – A high-pressure gas pipeline approximately 1,100 metres in length—

- (a) starting at the Goxhill AGI and ending at the indicative start point of Work No 1B, with the indicative route shown by the blue line on works plans sheet 5 and subject to the limits of deviation in article 6 (*limits of deviation*); and
- (b) construction and installation of the pipeline by trenched and trenchless methods which may include the installation of a concrete-lined sleeve tunnel, drive shaft, backfilling of permanent structures.

**Work No. 1B** – A high-pressure gas pipeline approximately 3,800 metres in length—

- (a) starting at the indicative end point of Work No 1A and ending at the indicative start point of Work No 1C, with the indicative route shown by the pink line on works plans sheets 5 to 7 and subject to the limits of deviation in article 6 (*limits of deviation*); and
- (b) construction and installation of the pipeline by trenchless methods which may include the installation of a concrete-lined sleeve tunnel, backfilling of permanent structures.

**Work No. 1C** – A high-pressure gas pipeline approximately 750 metres in length—

- (a) starting at the indicative end point of Work No 1B and ending at the Paull AGI, with the indicative route shown by the blue line on works plans sheet 7 and subject to the limits of deviation in article 6 (*limits of deviation*);
- (b) construction and installation of the pipeline by trenched and trenchless methods which may include the installation of a concrete-lined sleeve tunnel, reception shaft, backfilling of permanent structures; and
- (c) reinforcement of existing high-pressure gas pipeline within the Paull AGI.

##### **In North Lincolnshire—**

**Work No. 2A** – A buried array of cathodic protection anode canisters with relevant associated equipment, at the indicative location shown on works plans sheet 5, comprising an area not greater than 1,536 square metres at a depth not less than 1 metre below ground.

**Work No. 2B** – Underground cathodic protection cables connecting Works No 2A and 2C to Work No 1, at the indicative location shown on works plans sheet 5, comprising a strip not greater than 10 metres in width and not less than 1 metre below ground.

**Work No. 2C** – Works for the connection of Work No 1A into the Goxhill AGI and associated capping works to the existing Feeder 09 pipeline comprising an area no greater than 792 square metres at the indicative location shown in works plan sheet 5 —

- (a) temporary stopple and bypass pit;

- (b) buried permanent stopple tees deviating vertically to a depth no greater than 4 metres;
- (c) permanent above-ground nitrogen monitoring kiosk with dimensions not greater than 1 metre x 2 metres and not greater than 2 metres in height;
- (d) cathodic protection facility including up to four transformer rectifier kiosks each comprised of control cabinet and junction box on a concrete plinth with dimensions not greater than 1 metre x 2 metres and not greater than 2 metres in height; and
- (e) permanent post and rail fencing not greater than 1.5 metres in height.

**In the East Riding of Yorkshire—**

**Work No. 3A** – Works within the Paull AGI for the installation of above and below ground piping, and relevant associated insulation joints, valves, actuators and vents for the purposes of connecting Work No. 1C into the Paull AGI at the location shown on works plan sheet 7, such works not to be greater than 4 metres in height;

**Work No. 3B** – A cathodic protection facility including up to four transformer rectifier kiosks and distribution network operator kiosk, each comprised of control cabinet and junction box on a concrete plinth with dimensions not greater than 1 metre x 2 metres and not greater than 2 metres in height, surrounded by a post and rail fence, at the indicative location on works plan sheet 7.

**Work No. 3C** – Underground cathodic protection cables connecting Works No 3B to Work No 1, at the indicative location shown on works plans sheet 7, comprising a strip not greater than 6 metres in width and not less than 1 metre below ground.

**Work No. 3D** – Isolation works for the existing Feeder 09 pipeline at the indicative location shown in works plan sheet 7, comprising an area no greater than 154 square metres and—

- (a) temporary stopple and bypass pit;
- (b) buried permanent stopple tees deviating vertically to depth no greater than 4 metres; and
- (c) permanent above-ground nitrogen monitoring kiosk with dimensions not greater than 1 metre x 2 metres and not greater than 2 metres in height.

**Work No. 3E** –

- (a) a buried array of cathodic protection anode canisters with relevant associated equipment at the indicative location on works plan sheet 7 shown coloured blue, comprising an area not greater than 99 square metres at a depth not less than 1 metre below ground;
- (b) associated temporary construction areas for the installation of Work No. 3E(a) shown hatched green;
- (c) temporary widening and improvement works for construction access for the authorised development.

**Associated development** in connection with the authorised development within the order limits:

**In North Lincolnshire—**

**Work No. 4** – Temporary construction and work areas for use during the construction of the authorised development shown hatched green on sheet 5 of the works plans described as **Work Nos. 4A, 4B** and **4C** to include—

- (a) office, staff training, welfare and security facilities;
- (b) power supplies and temporary lighting;
- (c) enclosures;
- (d) pipeline construction and pre-testing;
- (e) pipe equipment and fittings storage;
- (f) tunnel construction and drive pit, equipment and fittings storage;
- (g) plant storage;
- (h) fabrication area;

- (i) waste processing and management areas;
- (j) spoil treatment and storage areas;
- (k) installation of drainage, drainage attenuation and land drainage including outfalls;
- (l) internal haul roads;
- (m) access and parking;
- (n) vehicle maintenance area including washing facilities;
- (o) de-watering, recharging and water management areas including settlement lagoons; and
- (p) grout batching plant and up to four silos for the storage of grout (not greater than 15 metres in height),

**Work No. 4D** to include—

- (a) de-watering pipes, pumps and temporary groundwater discharge point at East Halton Beck (Skitter Drain);
- (b) safety ramps at the point/s where the hoses will cross Footpath 50 on the Goxhill side of the Humber Estuary;
- (c) temporary telemetry gauge for monitoring water levels; and
- (d) demarcation fencing, access and laydown.

together with any works required in connection with the above.

**In the East Riding of Yorkshire—**

**Work No. 5** – Temporary construction and work areas for use during the construction of the authorised development shown hatched green on sheet 7 of the works plans described as **Work No. 5A** to include—

- (a) office, welfare and security facilities;
- (b) power supplies and temporary lighting;
- (c) enclosures;
- (d) pipeline construction;
- (e) pipe equipment and fittings storage;
- (f) tunnel construction and reception pit, equipment and fittings storage;
- (g) plant storage;
- (h) fabrication area;
- (i) waste storage areas;
- (j) installation of drainage, drainage attenuation and land drainage including outfalls,
- (k) internal haul roads;
- (l) access and parking;
- (m) vehicle maintenance area including washing facilities;
- (n) de-watering and water management areas including settlement lagoons; and
- (o) spoil treatment and storage

**Work No. 5B** to include—

- (a) de-watering pipes and temporary groundwater discharge point to the Humber Estuary,
- (b) enclosures and pipe, equipment and fittings storage for the purposes of Work No 3D; and
- (c) access and laydown.

together with any works required in connection with the above.

**In North Lincolnshire—**



**Work No. 6** – Access works for use during the construction of the authorised development at the indicative locations shown in Schedule 5 described below:

**Work No. 6A** – Temporary widening of the junction of Thornton Road and College Road at the location shown on sheet 1 of the works plans.

**Work No. 6B** – Temporary widening of Soff Lane and an existing private access to be improved to provide temporary construction access at the location shown on sheet 1 of the works plans connecting with Work No. 6C.

**Work No. 6C** – Temporary construction access to the east of Brantwood at the location shown on sheet 1 of the works plans.

**Work No. 6D** – Widening of Chapel Field Road at the location shown on sheet 1 of the works plans.

**Work No. 6E** – Temporary widening of Chapel Field Road at the location shown on sheet 1 of the works plans.

**Work No. 6F** – Widening of Chapel Field Road at the location shown on sheet 2 of the works plans.

**Work No. 6G** – Widening of Chapel Field Road at the location shown on sheet 2 of the works plans.

**Work No. 6H** – Widening of Ferry Road at the location shown on sheet 3 of the works plans.

**Work No. 6I** – Widening of Ferry Road at the location shown on sheet 3 of the works plans.

**Work No. 6J** – Widening of Ferry Road at the location shown on sheet 3 of the works plans.

**Work No. 6K** – Widening of Ferry Road at the location shown on sheet 4 of the works plans.

**Work No. 6L** – Widening of Ferry Road at the location shown on sheet 4 of the works plans.

**Work No. 6M** – Widening of the junction of Ferry Road and East Marsh Road at the location shown on sheet 4 of the works plans.

**Work No. 6N** – Widening of East Marsh Road at the location shown on sheet 4 of the works plans.

**Work No. 6O** – Widening of East Marsh Road at the location shown on sheet 4 of the works plans.

**Work No. 6P** – Widening of East Marsh Road at the location shown on sheet 5 of the works plans.

**Work No. 6Q** – Widening and reinforcing of the junction of East Marsh Road and Chapel Field Road at the location shown on sheet 5 of the works plans.

**Work No. 6R** – Temporary widening of Chapel Field Road at the location shown on sheet 5 of the works plans.

#### **In the East Riding of Yorkshire—**

**Work No. 7** – Temporary settlement monitoring areas for Work No 1 shown hatched blue on sheet 7 of the works plans to include demarcation fencing, marker posts and monitoring pegs no greater than 2.4 metres in height.

#### **In North Lincolnshire—**

**Work No. 8** – Temporary settlement monitoring areas for Work No 1 shown hatched blue on sheet 5 of the works plans to include demarcation fencing, marker posts and monitoring pegs no greater than 1 metre in height.

#### **In the East Riding of Yorkshire—**

**Comment [AJ13]: Applicant** Are the negotiations regarding the provision of passing places concluded? Please supply a simple table identifying work no, whether new or existing passing place as well as whether permanent or temporary.

**Work No. 9** – Temporary access works for use during the construction of the authorised development at the locations shown below:

**Work No. 9A** – Temporary widening of Thorngumbald Road at the location shown on sheet 7 of the works plans.

**Work No. 9B** – Temporary widening of and improvement works of the private track at Rose Hill Farm at the location shown on sheets 7 and 8 of the works plans.

**Work No. 9C** – Temporary widening of Farbridge Lane and the junction with Paull Road at the location shown on sheet 8 of the works plans.

#### **In North Lincolnshire—**

**Work No. 10** – Temporary spoil storage area shown dotted black on sheet 5 of the works plans to include spoil handling and storage bunds, re-grading of soil and earthworks (bunds not to be greater than 4 metres in height).

**Work No. 11** - Temporary environmental management and mitigation area shown cross-hatched grey on works plans sheet 5 to be set aside during the construction of the authorised development for alternative roosting or foraging for birds associated with the Humber Estuary Special Protection Area.

**Work No. 12** – Temporary abstraction hoses connected to temporary caged high head pumps shown hatched green on works plans sheet 5.

**Work No 13** - Environmental Mitigation Land

**Comment [AJ14]:** D6 change request [REP6-004] will mean more 'mitigation' land and possibly a new Work No 13

**Comment [AJ15]:** Applicant Field 8 – drafting to be updated to include temporary powers sought over the additional mitigation land.

#### **Further Associated Development**

2. Such associated development within the Order limits as may be necessary or expedient for the purposes of or in connection with the construction of the above Work Nos. or any of them (which are in accordance with the principles and assessment set out in the environmental statement) consisting of—

- (a) site preparation works, site clearance (including fencing and vegetation removal), earthworks (including soil stripping and storage) and site levelling, pre-construction drainage;
- (b) in relation to Work Nos. 1, 2, 3, 4, 5 and 10 pipeline construction works including:
  - (i) surveying and setting-out;
  - (ii) tunnel boring, drive and reception pits, hydraulic rams, rollers and brackets, pipe thrusters and winch;
  - (iii) topsoil and subsoil stripping and storage;
  - (iv) archaeological surveys/investigations and watching brief;
  - (v) pipeline installation including pipe stringing, pipe bending, end preparation, front end welding, back end welding, fabrication welding, pipeline coating, pipeline trench excavation, trenchless crossings, lower and lay, sand padding, backfilling, pipeline tie-ins, re-grading of soil, post construction drainage, cross-ripping and reinstatement of top-soil, internally swab and gauge pipeline test sections;
  - (vi) filling, testing and dewatering test sections;
  - (vii) aerial markers, cathodic protection test posts and field boundary markers;
  - (viii) reinstating test locations;
  - (ix) removing demarcation fencing;
  - (x) reinstating boundary walls, hedges, and fencing;
  - (xi) final gauge plate and calliper surveys;
  - (xii) drying and commissioning pipelines;

**Comment [AJ16]:** Applicant – why is this drafting necessary – does it add anything?

- (xiii) isolating the existing gas pipeline;
  - (xiv) demobilisation from site; and
  - (xv) works to enable power supplies;
  - (xvi) de-watering systems and water management areas;
  - (xvii) power supplies and temporary lighting; and
  - (xviii) installation of wires, cables, conductors, pipes and ducts
- (c) works to remove or alter the position of apparatus including mains, sewers, drains and cables;
- (d) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised development;
- (e) works for the benefit or protection of land affected by the authorised development;
- (f) temporary access tracks;
- (g) works required for the strengthening, improvement, maintenance or reconstruction of any streets;
- (h) the carrying out of street works pursuant to article 10 (*street works*), works to alter the layout of streets pursuant to article 11 (*power to alter layout, etc., of streets*) and the alteration or removal of road furniture;
- (i) ramps, means of access;
- (j) installation of drainage, drainage attenuation and land drainage including outfalls; and
- (k) such other works as may be necessary for the purposes of or in connection with the construction, operation or maintenance of the authorised development and which do not give rise to any materially different effects from those assessed in the environmental statement.

## SCHEDULE 2

### PLANS

#### PART 1

Article 2

#### WORKS PLANS

<i>Drawing title</i>	<i>Sheet Number</i>	<i>Drawing Number</i>
Works plans – Key plan	Key Plan	W001
Works plans	Sheet 1 of 8	W002
	Sheet 2 of 8	W003
	Sheet 3 of 8	W004
	Sheet 4 of 8	W005
	Sheet 5 of 8	W006
	Sheet 6 of 8	W007
	Sheet 7 of 8	W008
	Sheet 8 of 8	W009

**PART 2**  
**LAND PLANS**

Article 2

<i>Drawing title</i>	<i>Sheet Number</i>	<i>Drawing Number</i>
Land plans – Key Plan	Key Plan	L001
Land plans	Sheet 1 of 16	L002
	Sheet 2 of 16	L003
	Sheet 3 of 16	L004
	Sheet 4 of 16	L005
	Sheet 5 of 16	L006
	Sheet 6 of 16	L007
	Sheet 7 of 16	L008
	Sheet 8 of 16	L009
	Sheet 9 of 16	L010
	Sheet 10 of 16	L011
	Sheet 11 of 16	L012
	Sheet 12 of 16	L013
	Sheet 13 of 16	L014
	Sheet 14 of 16	L015
	Sheet 15 of 16	L016
	Sheet 16 of 16	L017

**PART 3**  
**ACCESS AND RIGHTS OF WAY PLANS**

Article 2

<i>Drawing title</i>	<i>Sheet Number</i>	<i>Drawing Number</i>
Access and rights of way plans – Key plan	Key Plan	A001
Access and rights of way plans	Sheet 1 of 8	A002
	Sheet 2 of 8	A003
	Sheet 3 of 8	A004
	Sheet 4 of 8	A005
	Sheet 5 of 8	A006
	Sheet 6 of 8	A007
	Sheet 7 of 8	A008
	Sheet 8 of 8	A009

**SCHEDULE 3**  
**REQUIREMENTS**

Article 46

**Interpretation**

**1. In this Schedule—**

“the 2010 Regulations” means the Conservation of Habitats and Species Regulations 2010(a);  
“AGIs” means Above Ground Installations, namely those parts of the authorised development that are the existing Paull and Goxhill AGIs;

“construction work” means works to construct the authorised development, or relevant part of it, excluding mobilisation of plant and equipment into, out of or within the Order limits;

“flood defence area” means the embankment bunds at Paull Holme Strays and Goxhill;

“initial site water management plan” means the site water management plan contained in the environmental statement;

“Requirement” means the appropriate numbered paragraph or paragraphs in this Schedule to which reference is made, for example “Requirement 6” or “these Requirements”;

“reinstatement” means the restoration of land within the Order limits for future use after construction of the authorised development;

“relevant highway authority” means North Lincolnshire Council or East Riding of Yorkshire Council as the case may be including their successor and where the relevant matter is located in the administrative areas of both then it means both;

“relevant planning authority” means North Lincolnshire Council or East Riding of Yorkshire Council as the case may be including their successor and where the relevant matter is located in the administrative areas of both then it means both; and

“stage” means part of the authorised development as approved under Requirement 3.

**Time limits**

2. The authorised development must be commenced within five years of the date of this Order.

**Stages of the authorised development**

3. No authorised development may commence until a written scheme setting out all stages of the authorised development has been submitted to and approved in writing by the relevant planning authority.

**Detailed design approval**

4.—(1) No stage of the authorised development may commence until details of the layout, scale and external appearance of the following works within that stage (including any consultation responses from the Environment Agency for those parts of the authorised development within the flood defence area) have been submitted to and approved, in writing, by the relevant planning authority—

(a) Works No. 1, 2 and 3 (the pipeline and associated permanent infrastructure);

(b) Works No. 4, 5, 7, 8, 10 and 12 (temporary construction and work areas);

(c) the detailed pipeline route alignment; and

~~(e)~~(d) tunnel construction methodology; and

~~(d)~~(e) additional lay down, storage and working areas.

(2) The works described in sub-paragraph (1)(a) to (e) must be carried out in accordance with the approved details or any subsequent revisions that have been submitted to and approved, in writing, by the relevant planning authority.

**Comment [AJ17]: Applicant/ Interested Parties:** In response to R17(Q15) the Applicant stated (D6a) – ‘NGG is in discussions with North Lincolnshire Council as the local planning authority in relation to this requirement’. Should (d) remain?

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(a) S.I. 2010/490.

### **Site Water Management Plan**

5.—(1) No stage of the authorised development may commence until, for that stage, a site water management plan substantially in accordance with the initial site water management plan has been submitted to and approved by the relevant planning authority, in consultation with the Environment Agency.

(2) The site water management plan must include the following—

- (a) an updated hydrogeological impact assessment of the detailed design approved under Requirement 4;
- (b) details of further pump tests to confirm ground conditions (including anisotropy) at the drive pit (as indicated on Works Plan No W006);
- (c) details of the recharge/reinjection measures to ensure that net abstraction is minimised and groundwater is discharged to a location agreed with the Environment Agency;
- (d) details of any discharge to the Humber Estuary to a location agreed with the Environment Agency;
- (e) details of the groundwater implications of decommissioning the drive and reception pits and proposals for any necessary ongoing groundwater management;
- (f) a pre-, during and post-construction groundwater monitoring strategy to include the following:
  - (i) details of monitoring of groundwater levels adjacent to the proposed at the drive pit (as indicated on Works Plan No W006) and reception shaft (as indicated on Works Plan No W008);
  - (ii) net groundwater abstraction rates;
  - (iii) flow gauging in relevant surface water features;
  - (iv) baseline water chemical analysis; and
  - (v) a monthly review of monitoring data for the first six months post-construction followed by quarterly reviews until the Environment Agency has confirmed that it is satisfied that no further groundwater impacts will be identified (such confirmation not to be unreasonably withheld).
- (g) details of measures to ensure discharge from dewatering is non-polluting and will not exacerbate flood risk;
- (h) details of areas at risk of water pollution from surface water run-off, and any special control measures required in those areas;
- (i) details of measures to minimise suspension of and pollution due to sediment;
- (j) where it is considered necessary to store material in the flood plain, the requirements for mitigation will be agreed with the Environment Agency before construction commences;
- (k) details of hydrostatic testing requirements, including water sources and discharge points, and water quality monitoring of test water discharged;
- (l) all necessary licenses and consents will be obtained.

(3) The construction works for each stage of the authorised development must be carried out in accordance with the approved site water management plan.

(4) The method of crossing main rivers and ordinary watercourses (including land drains) shall be undertaken in a manner which will not cause an increase in flood risk to any area upstream, downstream or surrounding the crossing.

### **Site Waste Management Plan**

6.—(1) No stage of authorised development may commence until a written site waste management plan has been submitted to and approved, in writing, by the relevant planning

authority in consultation with the Environment Agency and each stage of the authorised development must be carried out in accordance with the site waste management plan.

(2) The site waste management plan must include the following:

- (a) details of resource efficiency methods to be adopted;
- (b) register of resource efficiencies secured;
- (c) responsibilities for management of waste;
- (d) details of audits of the site waste management plan;
- (e) details of all waste to be generated on-site including quantities, EWC code, waste type and disposal route; and
- (f) details of all waste facilities to be used including the site name, address and site code.

### **Removal of trees and hedgerows**

7.—(1) No stage of the authorised development involving the felling or lopping of trees or hedgerows under article 40 (*felling or lopping of trees or shrubs*) as shown on works plans sheets 5 and 7 may commence until, for that stage, details (if any) identifying the trees, groups of trees and hedgerows to be removed and, where appropriate reinstated during that stage have been submitted to and approved by the relevant planning authority.

(2) Each stage of the authorised development must be carried out in accordance with the approved details (if any) for that stage.

(3) Any hedge or tree planting which is part of the approved details that, within 2 years after planting, is removed, dies or (in the opinion of the relevant planning authority) becomes seriously damaged or diseased, must be replaced in the first available planting season with planting material of the same specification as that originally planted.

### **Hard landscaping and drainage**

8.—(1) No stage of the authorised development may commence until, for that stage, details of drainage methods for both temporary and permanent works have after consultation with the drainage authority and the Environment Agency been submitted to and approved by the relevant planning authority.

(2) The authorised development must be carried out in accordance with the approved details.

### **Agricultural land drainage**

9.—(1) No stage of the authorised development may commence until a written scheme, applicable to that stage, to deal with agricultural land drainage within the Order limits has been submitted to and approved, in writing, by the relevant planning authority.

(2) The purpose of the scheme is to ensure that, during and following construction, the efficiency of drainage is maintained within and outside the works limits.

(3) The scheme must include an investigation and assessment report giving details of existing drainage arrangements and requirements for pre-construction works and post-construction reinstatement to be agreed with the relevant planning authority.

(4) Works must be carried out in accordance with the approved scheme.

### **Archaeology**

10.—(1) No stage of the authorised development may commence until a written scheme of archaeological investigation for that stage has been submitted to and approved by the relevant planning authority.

(2) The written scheme must identify areas where a programme of archaeological investigation is required and the measures to be taken to protect, record or preserve any significant archaeological remains that may be found.

(3) Any archaeological works or watching brief for a stage of the authorised development must be carried out in accordance with the approved written scheme for that stage.

### **Construction hours**

**11.**—(1) Subject to Requirements 11(3) and 11(4), construction work must not take place outside the following hours—

- (a) 07:00 and 19:00 from Monday to Friday; and
- (b) 08:00 and 16:00 on Saturdays

except in the event of an emergency.

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

(3) The following operations may take place outside the working hours referred to in Requirement 11(1)—

- (a) tunnel boring (including associated spoil movement within the Order limits, segment installation and slurry batching);
- (b) filling, testing, dewatering and drying;
- (c) dewatering activities; and
- (d) commissioning of Work No 1 and isolation of the existing gas pipeline.

(4) Nothing in Requirement 11(1) above precludes—

- (a) start-up and shut-down activities up to an hour either side of core working hours; and
- (b) maintenance at any time of plant and machinery engaged in the construction of the authorised development.

(5) In this Requirement “emergency” means a situation where, if the relevant action is not taken, there will be adverse health, safety, security or environmental consequences that in the reasonable opinion of the undertaker would outweigh the adverse effects to the public (whether individuals, classes or generally as the case may be) of taking that action.

### **Construction Environmental Management Plan**

**12.**—(1) No stage of the authorised development may commence until a construction environmental management plan relating to the works has been submitted to and approved by the relevant planning authority.

(2) The construction environmental management plan must be substantially in accordance with, and include the following plans and strategies, from the initial CEMP—

- (a) details of fencing and enclosures;
- (b) a pollution prevention and control plan;
- (c) a sustainable procurement plan;
- (d) a materials management plan;
- (e) a reinstatement plan, including soil handling and restoration measures;
- (f) an energy reduction plan;
- (g) an emergency response/ spill response plan;
- (h) a refuelling procedure;
- (i) a flood risk management plan;
- (j) flood incident response plan; and
- (k) marsh harrier monitoring and mitigation strategy.

(3) All construction works must be undertaken in accordance with the approved construction environmental management plan.

**Comment [AJ18]:** Applicant in response to EXQ2(31) you said the TMP would control the restricted inbound operational hours. Could Requirement 15 (2) be amended to say that the TMP will have to do that, or should an Article be inserted in the DCO?



(4) Any works carried out pursuant to the plans, scheme and strategy referred to in subparagraph (2) must be carried out in accordance with the approved plan, scheme or strategy.

### **Noise**

**13.—**(1) No stage of the authorised development may commence until a written scheme for noise management during construction and maintenance of that stage has been submitted to and approved, in writing, by the relevant planning authority.

(2) The scheme must set out the particulars of—

- (a) the works, and the method by which they are to be carried out;
- (b) the noise attenuation measures to be taken to minimise noise resulting from the works, including any noise limits; and
- (c) monitoring to be undertaken at identified sensitive receptors pre- and during construction.

(3) The approved noise management scheme must be implemented before and maintained during construction and maintenance of the relevant stage of the authorised development.

(4) The construction and maintenance works must be undertaken in accordance with the approved noise management scheme.

### **Contaminated land and groundwater**

**14.—**(1) In the event that contamination is found at any time when carrying out the authorised development that has not been previously identified it must be reported in writing immediately to the relevant planning authority.

(2) An investigation and risk assessment must be completed in accordance with a scheme to assess the nature and extent of any contamination on the part of the Order limits within which works are being carried out, whether or not that contamination originates on that part of the Order limits; and—

- (a) the contents of that scheme are subject to the approval in writing of the relevant planning authority; and
- (b) that investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced.

(3) Where remediation is required a detailed remediation scheme to bring a part of the Order limits within which works are being carried out to a condition suitable for the intended use must be prepared and submitted for the written approval of the relevant planning authority; and—

- (a) the approved remediation scheme must be carried out in accordance with its terms; and
- (b) following completion of measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out must be produced and approved in writing by the relevant planning authority.

### **Construction traffic and accesses**

**15.—**(1) No stage of the authorised development may commence until a traffic management plan, substantially in accordance with the initial TMP, has been submitted to and, following consultation with the highway authority and Highways England, been approved by the relevant planning authority.

(2) The plan must include details of:

- (a) siting, design and layout of works to the public highway for the purposes of construction traffic and access;
- (b) construction vehicle routing;
- (c) the scheduling and timing of movements and details of abnormal load movements;

**Comment [AJ19]: Applicant** Should this clause be extended, or a new clause be included to link to the Initial TMP and ensure that it has to restrict all HGV inbound movement along the haul route during school hours as offered as mitigation?

- (d) pre and post condition surveys of the construction traffic routes, the methodology used for assessing the need for improvements and the funding provision of required highway works;
- (e) management of junctions and crossings of public rights of way;
- (f) marking and identification of construction vehicles;
- (g) driver information packs;
- (h) planned monthly inspections of the access roads and associated verges to establish temporary works/repairs and the funding provision; and
- (i) temporary vehicle parking, loading, off-loading and manoeuvring facilities for contractors which will be in operation during the lifespan of the construction works.

(3) Each stage of the authorised development must be carried out in accordance with the traffic management plan for that stage.

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

16. Subject to article 26(4) (*temporary use of land for carrying out the authorised development*), any land within the Order limits which is used temporarily for or in connection with construction must be reinstated to a condition fit for its former use, or such other condition as the relevant planning authority may approve, within 12 months of completion of the authorised development.

#### **Temporary external lighting**

17.—(1) No stage of the authorised development may commence until details of any temporary external lighting to be installed at that stage, including measures to prevent light spillage, have been submitted to and approved, in writing, by the relevant planning authority.

(2) The details must include and take account of any consultation responses from the local highway authority.

(3) The temporary external lighting must be installed in accordance with the approved details.

(4) Any submission to vary the approved details must include copies of and take account of any consultation responses from the local highway authority.

#### **Environmental mitigation land**

18. During the construction of the authorised development no storage, use of plant, construction work or other development may take place above ground within Work No. 11.

#### **Ecological Surveys**

19.—(1) No stage of the authorised development is to commence until it has been established by survey work whether any water voles or badgers are present within the Order limits or may be affected by the works.

(2) Where water voles or badgers are shown to be present or may be affected, that stage must only be commenced following appropriate consultation with Natural England and after any necessary licence has been obtained from Natural England pursuant to regulation 53 (*licences for certain activities relating to animals or plants*) of the Conservation of Habitats and Species Regulations 2010(a).

**Comment [AJ20]: Applicant –** drafting to be updated as paras. 2.11 & 2.12 Change Request letter 13 Jan 2016 [REP6-0014]. Work 11 – management as short sward grassland; temporary gate to Work 4B; lockable barriers and field management details – (new) Work 13.

R17 (Q2) - how do you intend to ensure that this requirement can be adhered to?

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(a) S.I. 2010/490

### Requirement for written approval

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

### Amendments to approved details

21.—(1) With respect to any Requirement which requires the authorised development to be carried out in accordance with details approved by the relevant planning authority, the approved details include any amendments that may subsequently be approved in writing by the relevant planning authority to the extent that the authority may lawfully do so.

(2) Any amendment or variation from the approved details must be in accordance with the principles and assessment set out in the environmental statement.

## SCHEDULE 4

Article 10

### STREETS SUBJECT TO STREET WORKS

<i>(1)</i> Area	<i>(2)</i> Street subject to street works
East Riding of Yorkshire	Thorngumbald Road – Work No. 3E on sheet 7 of the works plans

## SCHEDULE 5

Article 11

### STREETS SUBJECT TO ALTERATION OF LAYOUT

<i>(1)</i> Area	<i>(2)</i> Street subject to alteration of layout	<i>(3)</i> Description of alteration
North Lincolnshire	Thornton Road and College Road	Temporary construction access Temporary widening of the junction of the roads at the location shown as Work No. 6A on sheet 1 of the access and rights of way plans.
North Lincolnshire	Soff Lane	Temporary construction access Temporary widening of the junction of Soff Lane and the existing private access at location 6B on sheet 1 of the access and rights of way plans.

North Lincolnshire	Chapel Field Road	Temporary construction access Widening of the road at points shown as Work Nos. 6D, 6F and 6G and temporary widening of Work Nos. 6E and 6R on sheets 2 and 5 of the access and rights of way plans.
North Lincolnshire	Ferry Road	Temporary construction access Widening of the road at points shown as Work Nos. 6H, 6I, 6J, 6K and 6L on sheets 3 and 4 of the access and rights of way plans.
North Lincolnshire	Ferry Road and East Marsh Road	Temporary construction access Widening of the junction of the roads at the point shown as Work No. 6M on sheet 4 of the access and rights of way plans.
North Lincolnshire	East Marsh Road	Temporary construction access Widening of the road and junction with the existing private track at Rose Hill Farm at the locations marked as Work Nos. 6N, 6O and 6P on sheets 4 and 5 of the access and rights of way plans.
North Lincolnshire	East Marsh Road and Chapel Field Road	Temporary construction access Widening of the junction of the roads at the point marked as Work No. 6Q on sheet 5 of the access and rights of way plans.
East Riding of Yorkshire	Thorngumbald Road	Temporary construction access Temporary widening of the road at the location marked as Work No. 9A on sheet 7 of the access and rights of way plans.
East Riding of Yorkshire	Farbridge Lane and the Junction with Paull Road	Temporary construction access Temporary widening at the location marked as Work No. 9C on sheet 8 of the access and rights of way plans.

## SCHEDULE 6

Article 13

### STREETS AND PUBLIC RIGHTS OF WAY TO BE TEMPORARILY STOPPED UP

(1) Area	(2) Street/Footpath subject to temporary stopping up	(3) Extent of temporary stopping up
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East Riding of Yorkshire	Footpath 1	Between points A and B as shown on the access and rights of way plans
East Riding of Yorkshire	Footpath 6	Between points C and D as shown on the access and rights of way plans

**SCHEDULE 7**  
**ACCESS TO WORKS**

Article 14

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Access details</i>
North Lincolnshire	Temporary construction access to the east of Brantwood at the location shown as Work No 6C on sheet 1 of the access and rights of way plans.
North Lincolnshire	Improvement of existing private access off Soff Lane to provide temporary construction access at location 6B on sheet 1 of the access and rights of way plans
East Riding of Yorkshire	Improvement works to the private track at Rose Hill Farm at the location shown as Work No. 9B on sheets 7 and 8 of the access and rights of way plans

**Comment [AJ21]:** Additional land (field 8) to be added due to accepted change request.

**SCHEDULE 8**

Article 26

**LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN**

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Plot number of land shown on land plans</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(4)</i> <i>Relevant part of the authorised development</i>
North Lincolnshire; East Riding of Yorkshire	31, 33, 37, 39, 40, 41, 42, 44, 45, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 72, 74, 75, 78, 79, 86	Construction and carrying out of the authorised development and purposes ancillary hereto	Work No. 1A Work No. 1B Work No. 1C

North Lincolnshire	75, 76, 77, 78, 82, 84, 86	Construction and carrying out of the authorised development and purposes ancillary hereto	Work No. 2A Work No. 2B
East Riding of Yorkshire	12, 14, 15, 17, 18, 35, 37, 40, 41, 44, 45	Construction and carrying out of the authorised development and purposes ancillary hereto	Work No. 3C Work No. 3E
North Lincolnshire	60, 61, 65, 66, 67, 68, 69, 70, 73, 74, 76, 79, 80, 81, 83, 88, 89, 90, 91, 100, 101, 105, 106	Temporary construction, laydown and work areas for the construction and carrying out of the authorised development and purposes ancillary or incidental thereto.	Work No. 4A Work No. 4B Work No. 4C Work No. 4D
East Riding of Yorkshire	9, 13, 16, 18, 19, 20, 21, 22, 23, 24, 25, 27, 28, 29, 32, 33, 34, 38, 39, 42, 43	Temporary construction, laydown and work areas for the construction and carrying out of the authorised development and purposes ancillary or incidental thereto.	Work No. 3E Work No. 5A Work No. 5B
East Riding of Yorkshire	46	Construction access for the construction and varying out of the authorised development and purposes ancillary and incidental hereto	Work No. 1C Work No. 5A
North Lincolnshire	92, 93, 94, 97, 98, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 129, 130, 131	Construction access works for the construction and carrying out of the authorised development and purposes ancillary or incidental thereto.	Works No. 6
East Riding of Yorkshire	47, 48, 49, 50, 51, 52, 53	Settlement monitoring in relation to Work No. 1 and purposes ancillary or incidental thereto.	Works No. 7

North Lincolnshire	60, 69	Settlement monitoring in relation to Work No. 1 and purposes ancillary or incidental thereto.	Work No. 8
East Riding of Yorkshire	1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 16, 30	Construction access works for the construction and carrying out of the authorised development and purposes ancillary or incidental thereto.	Works No. 9
North Lincolnshire	102, 103, 104	The storage of spoil in relation to the construction and carrying out of the authorised development and purposes ancillary or incidental thereto.	Work No. 10
	60, 71, 72, 74	Environmental management and mitigation for alternative roosting or foraging for birds during the construction of the authorised development and purposes ancillary or incidental thereto.	Work No. 11
	62, 63, 64	Construction and carrying out of the authorised development, temporary abstraction hoses, temporary caged high head pumps and purposes ancillary or incidental thereto.	Work No. 12

**Comment [AJ22]: Applicant** The Book of Reference, Land Plans, Works Plans, Schedule of Progress on Voluntary Negotiations and DCO to be audited against each other ahead of updated versions being submitted for deadline 7 and SoR for D8 (as stated in Applicant's submissions at D6 and D6a)

## SCHEDULE 9

Article 38

### DEEMED MARINE LICENCE UNDER PART 4 (MARINE LICENSING) OF THE MARINE AND COASTAL ACCESS ACT 2009

#### PART 1

#### INTRODUCTION

##### *Interpretation*

1.—(1) In this Schedule—

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

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

“authorised development” has the meaning given in paragraph 3(2);

“licence holder” means the undertaker and any agent, contractor sub-contractor acting on its behalf;

“licensable activity” means an activity licensable under section 66 of the 2009 Act;

“licensed activity” means any activity described in Part 2 of this Schedule;

(a) 2008 c.29.

(b) 2009 c.23.

“MMO” means the Marine Management Organisation, the body created under the Marine and Coastal Access Act 2009 which is responsible for the monitoring and enforcement of this licence;

“the Order” means the River Humber (Gas Pipeline Replacement) Order 2011 [a];

“the undertaker” means National Grid Gas plc (registered company number 2006000); and

“Work No. 12” means temporary abstraction hoses connected to temporary caged high head pumps shown hatched green on works plans sheet 5.

(2) Unless otherwise specified, all geographical co-ordinates given in this Schedule are in latitude and longitude degrees and minutes to two decimal places.

*Addresses*

2.—(1) Unless otherwise advised in writing by the MMO, the address for postal correspondence with the MMO for the purposes of this Schedule is the Marine Management Organisation, Marine Licensing Team, Lancaster House, Newcastle Business Park, Newcastle upon Tyne, NE4 7YH, telephone 0300 123 1032, and where contact to the local MMO office is required, the following contact details should be used: Eastern Marine Area, Marine Management Organisation, Estuary House, Wharnccliffe Road, Grimsby, Lincolnshire DN31 3QL, telephone 01472 355 112, email Grimsby@marinemmanagement.org.uk.

(2) Unless otherwise advised in writing by the MMO, the address for electronic communication with the MMO for the purposes of this Schedule is marine.consent@marinemmanagement.org.uk.

**PART 2**

**LICENSED ACTIVITIES**

3.—(1) Subject to the licence conditions in Part 4 of this Schedule, this licence authorises the licence holder to carry out any licensable marine activities under section 66(1) of the 2009 Act which—

- (a) form part of, or are related to, the authorised development; and
- (b) are not exempt from requiring a marine licence by virtue of any provision made under section 74 of the 2009 Act.

(2) In this paragraph the “authorised development” means the development and associated development described in Schedule 1 (*authorised development*) to the Order, and any other development authorised by the Order, which is development within the meaning of section 32 of the 2008 Act and more particularly:

*Work No 12* – the construction of works in or over the sea and/or on or under the sea bed by the temporary placing of caged high head pumps and suction hoses in the River Humber at Goxhill, North Lincolnshire.

(3) The grid coordinates for the offshore Order limits in Work No 12 are specified below and more particularly shown on sheet 5 of the works plans:

<i>Point</i>	<i>Latitude(DMS)</i>	<i>Longitude (DMS)</i>
A	53.695455	-0.264434
B	53.695119	-0.264190
C	53.694857	-0.265943
D	53.694520	-0.265639

**Comment [AJ23]: Applicant and MMO** - It doesn't work to define something as x and then say that more particularly it means y (which is a subset of x - 'authorised development' is defined for the purpose of the licence as Schedule 1 development and any other development authorised by the Order and....more particularly Work no 12.

The licence needs either to apply to all development (and by default it will only apply to development within the MMO jurisdiction) or to specific work (i.e. Work no 12).

**Comment [AJ24]: Applicant and MMO** - Do the grid coordinates here, or what is shown on sheet 5 define the extent of the application of the licence?

(a) S.I. 2011 [1]



**PART 3**  
**ENFORCEMENT**

4. Any breach of this Schedule does not constitute a breach of this Order but is subject to the enforcement regime in Chapter 3 of Part 4 of the 2009 Act as if this Schedule were a licence granted under that Act.

**PART 4**  
**CONDITIONS**

5. The conditions set out at paragraphs 6 to 11 of this Schedule are licence conditions attached to the deemed marine licence granted by article 38 (*deemed marine licence*).

6. The licence holder must inform the MMO in writing of the intended start date and the likely duration of licensed activities on a site at least 10 working days prior to the commencement of the first licensed activity on that site.

7. Should the licence holder become aware that any of the information on which the granting of this deemed marine licence was based has changed or is likely to change, the licence holder must notify the MMO at the earliest opportunity.

8. The licence holder must ensure that any coatings and treatments used are approved by the Health and Safety Executive as suitable for use in the marine environment and are used in accordance with Environment Agency Pollution Prevention Control Guidelines.

9. The licence holder must ensure that any equipment, temporary structures, waste and debris associated with the works are removed within 6 weeks of completion of the works.

10. The licence holder must ensure that the MMO local Marine Office is notified of the completion of works and operations at least 10 days following the completion of the works.

11. The licence holder must notify the MMO in writing of any agents, contractors or sub-contractors that will carry on any licensed activity listed in this licence on behalf of the licence holder. Such notification must be received by the MMO no less than 24 hours before the commencement of the licensed activity. The licence holder must ensure that a copy of this licence and any subsequent revisions or amendments has been provided to, read and understood by any agents, contractors or sub-contractors that will carry on the licensed activity on behalf of the licence holder.

**Comment [AJ25]: Applicant/MMO** A detailed design proposal is required to be submitted to the LPA in respect of Work no 12 (Requirement 4 in Schedule 3). Para 8 imposes a requirement in respect of coatings. Is that a matter that would be covered by the detailed design proposal? Does the overlap (if there is one) matter?

**Comment [AJ26]: Applicant/MMO** Could this be better defined as 'tunnel flooding operation'? What otherwise does the 'works' mean?

**Comment [AJ27]: Applicant/MMO** Should it not simply remain the responsibility of the undertaker to ensure compliance with the licence? What does this drafting achieve?

**SCHEDULE 10**

Article 41

**PROTECTIVE PROVISIONS**

**Comment [AJ28]: Applicant/EA** – Are these Protective Provisions now agreed with the EA?

**PART 1**

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

**Application**

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

## Interpretation

### 2. In this Part of this Schedule—

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

“apparatus” means—

- (a) in the case of an electricity statutory undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989(a), belonging to or maintained by that electricity statutory undertaker for the purposes of electricity supply;
- (b) in the case of a gas statutory undertaker, any mains, pipes or other apparatus belonging to or maintained by that gas transporter for the purposes of gas supply;
- (c) in the case of a water statutory undertaker, mains, pipes or other apparatus belonging to or maintained by that water statutory undertaker for the purposes of water supply; and
- (d) in the case of a sewerage statutory undertaker—
  - (i) any drain or works vested in the statutory undertaker under the Water Industry Act 1991(b) and Water Industry (Schemes for Adoption of Private Sewers) Regulations 2011(c); and
  - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,
  - (iii) and in each case includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works,
  - (iv) and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“commence” has the same meaning as in paragraph 1 of Schedule 3 (*requirements*);

“functions” includes powers and duties;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land;

“pipeline” means the whole or any part of a pipeline belonging to or maintained by an statutory undertaker and includes any ancillary works and apparatus;

“plan” includes a section and description of the works to be executed;

“statutory undertaker” means the statutory undertaker as defined in article 2 (*interpretation*) of this Order; “statutory undertaker” means—

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

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

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(a) 1989 c.29.  
(b) 1991 c.56.  
(c) S.I. 2011/1566.  
(d) 1986 c.44.

### **On-street apparatus**

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

### **Acquisition of apparatus**

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

### **Removal of apparatus**

5.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of a statutory undertaker to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the statutory undertaker in question.

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

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

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

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

### **Retained apparatus: protection**

6.—(1) Not less than 28 days before starting the execution of any works of the type referred to in sub-paragraph 5(2) that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under sub-paragraph 5(2), the statutory undertaker must submit to the undertaker in question a plan of the works to be executed.

(2) Those works are to be executed only in accordance with the plan submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the statutory undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it; and the statutory undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by a statutory undertaker under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan under sub-paragraph (1) is submitted to it.

(4) If a statutory undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives

written notice to the undertaker of that requirement, paragraphs 1 to 5 apply as if the removal of the apparatus had been required by the undertaker under sub-paragraph 5(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the statutory undertaker in question notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

### **Cathodic protection testing**

7. Where in the reasonable opinion of the statutory undertaker—

- (a) the authorised development might interfere with the existing cathodic protection forming part of a pipeline; or
- (b) a pipeline might interfere with the proposed or existing cathodic protection forming part of the authorised development,

the statutory undertaker to whom the pipeline belongs, or who maintains that pipeline, and the undertaker must co-operate in undertaking the tests which the statutory undertaker considers reasonably necessary for ascertaining the nature and extent of such interference and measures for providing or preserving cathodic protection.

### **Expenses**

8.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a statutory undertaker the reasonable expenses reasonably incurred by that statutory undertaker in, or in connection with—

- (a) the inspection, removal, alteration or protection of any apparatus; or
- (b) the construction of any new apparatus, which may be required in consequence of the execution of any such works as are required under this Part of this Schedule.

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

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

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 45 (*arbitration*) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the statutory undertaker in question by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

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

- (a) an extension of apparatus to a length greater than the length of existing apparatus must not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole must be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to an statutory undertaker in respect of works by virtue of sub-paragraph (1) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the statutory undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

### **Co-operation**

9.—(1) Where in consequence of the proposed construction of any of the authorised development, the undertaker requires the removal of apparatus under sub-paragraph 5(2)) or a statutory undertaker makes requirements for the protection or alteration of apparatus under paragraph 6(2), the undertaker must use its reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development; and each statutory undertaker must use its reasonable endeavours to co-operate with the undertaker for that purpose.

### **Arbitration**

10.—(1) Any difference or dispute arising between the undertaker and a statutory undertaker under this Schedule is, unless otherwise agreed in writing between the undertaker and that statutory undertaker, to be determined by arbitration in accordance with article 45 (*arbitration*).

## **PART 2**

### **FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS**

### **Effect**

11. For the protection of any operator, the following provisions, unless otherwise agreed in writing between the undertaker (as defined in Part 1 of this Schedule) and the operator, have effect.

### **Interpretation**

12. In this part of this Schedule—

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

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

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

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(a) 2003 c.21.

“the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act<sup>(a)</sup>;

“electronic communications code network” means—

- (a) so much of an electronic communications network or conduit system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the 2003 Act; and
- (b) an electronic communications network which the Secretary of State is providing or proposing to provide;

“electronic communications code operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act; and

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

### **On-street apparatus**

13. The exercise of the powers of article 32 (*statutory undertakers*) are subject to paragraph 23 of Schedule 2 to the Telecommunication Act 1984<sup>(b)</sup> as if the undertaker were a “relevant undertaker” for the purposes of that paragraph.

### **Enactments and agreements in respect of apparatus in the undertaker’s land**

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

### **Arbitration**

15. Any difference or dispute arising between the undertaker and an operator under this Part of this Schedule is, unless otherwise agreed in writing between the undertaker and that operator, to be referred to and settled by arbitration under article 45 (*arbitration*).

## **PART 3**

### **FOR THE PROTECTION OF THE ENVIRONMENT AGENCY**

16.—(1) The following provisions apply for the protection of the Agency unless otherwise agreed in writing between the undertaker and the Agency.

(2) In this part of this Schedule—

“the Agency” means the Environment Agency;

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

“drainage work” for the purposes of this part means any watercourse and includes any land which provides or is expected to provide flood storage capacity for any watercourse and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage, flood defence, sea defence or tidal monitoring and any ancillary works constructed as a consequence of works carried out for drainage purposes;

“a main river” and “ordinary watercourse” have the meanings given by respectively the Water Resources Act 1991 and the Land Drainage Act 1991;

“plans” includes sections, drawings, specifications and method statements;

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(a) See section 106.

(b) 1984 c.12.

“realignment scheme” means the future realignment of the flood defences at Goxhill by the Agency;

“specified work” means so much of any work or operation authorised by this Order as is in, on, under, over or within 8 metres of a drainage work, or is otherwise likely to:

- (a) affect any drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work;
- (b) affect the flow, purity or quality of water in any watercourse or other surface waters or groundwater; or
- (c) affect the conservation, distribution or use of water resources

**17.**—(1) Before beginning to construct any specified work, the undertaker must submit to the Agency plans of the specified work and such further particulars available to it as the Agency may within 28 days of the submission of the plans reasonably require.

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the Agency, or determined under paragraph 25.

(3) Any approval of the Agency required under this paragraph—

- (a) must not be unreasonably withheld or delayed;
- (b) is deemed to have been given if it is neither given nor refused within 14 days of the submission of the plans for approval, or submission of further particulars if required by the Agency under sub-paragraph (1), and, in the case of a refusal, accompanied by a statement of the grounds of refusal; and
- (c) may be given subject to such reasonable requirements as the Agency may make for the protection of water resources for the prevention of pollution or in the discharge of its environmental duties.

(4) The Agency must use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (3)(b).

**18.** Without limiting the scope of paragraph 17, the requirements which the Agency may make under that paragraph include conditions requiring the undertaker at its own expense to construct such protective works, whether temporary or permanent, during the construction of the specified works (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

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

by reason of any specified work.

**19.**—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the Agency under paragraph 3, must be constructed—

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

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

(2) The undertaker must give to the Agency not less than 14 days' notice in writing of its intention to commence construction of any specified work and notice in writing of its completion not later than seven days after the date on which it is brought into use.

(3) If the Agency shall reasonably require, the undertaker shall construct all or part of the protective works so that they are in place prior to the construction of specific works.

(4) If any part of a specified work or any protective work required by the Agency is constructed otherwise than in accordance with the requirements of this part of this Schedule, the Agency may

by notice in writing require the undertaker at the undertaker's own expense to comply with the requirements of this part of this Schedule or (if the undertaker so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as the Agency reasonably requires.

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

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

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

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

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

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

(5) This paragraph does not apply to drainage works which are vested in the Agency, or which the Agency or another person is liable to maintain and is not prescribed by the powers of the Order from doing so.

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

**22.** The undertaker must indemnify the Agency in respect of all costs, charges and expenses which the Agency may reasonably incur or have to pay or which it may sustain—

- (a) in the examination or approval of plans under this part of this Schedule;
- (b) in the inspection of the construction of the specified works or any protective works required by the Agency under this part of this Schedule; and
- (c) the carrying out of any surveys or tests by the Agency which are reasonably required in connection with the construction of the specified works.



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

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

24.—(1) The undertaker will not in the exercise of any powers conferred by this Order unreasonably interfere with the Agency's access to or maintenance of any drainage work unless a suitable alternative access is provided prior to and for the duration of any such interference.

(2) [The undertaker must not exercise the power conferred by articles 14 (*access to works*), 26 (*temporary use of land for carrying out the authorised development*) and 27 (*temporary use of land for maintaining the authorised development*) so as to interfere with any drainage work unless the exercise of such powers is with the consent of the Agency and in accordance with paragraphs 17 to 24 of this part of this Schedule].

25. Any dispute arising between the undertaker and the Agency under this part of this Schedule, if the parties agree, is to be determined by arbitration under article 45 (*arbitration*), but otherwise is to be determined by the Secretary of State for Environment, Food and Rural Affairs and the Secretary of State for Energy and Climate Change acting jointly on a reference to them by the undertaker or the Agency, after notice in writing by one to the other.

26.—(1) Any specified work capable of interfering with or risking damage to any drainage work for flood defence must not commence until a scheme for monitoring ground subsidence (referred to in this paragraph as "the monitoring scheme") has been submitted to and approved by the Agency, such approval not to be unreasonably withheld or delayed.

(2) The monitoring scheme described in sub-paragraph (1) must set out—

- (a) the drainage work which is to be subject to such monitoring;
- (b) the extent of land to be monitored;
- (c) the manner in which ground levels are to be monitored;
- (d) the timescales of any monitoring activities; and
- (e) the extent of ground subsidence which, if exceeded, will require the undertaker to submit for the Agency's approval a ground subsidence mitigation scheme in respect of such subsidence in accordance with sub-paragraph (4).

(3) The Agency must give notice of its decision as to whether or not it approves the monitoring scheme within 21 days beginning with—

- (a) where no further information is requested under sub-paragraph (4), the day immediately following that on which the application is received by the discharging authority; and
- (b) where further information is requested under sub-paragraph (4), the day immediately following that on which further information has been supplied by the undertaker.

(4) Where an application has been made under sub-paragraph (1) the Agency may request such reasonable further information from the undertaker as it considers necessary to enable it to consider the application.

(5) As soon as reasonably practicable after any ground subsidence identified by the monitoring activities set out in the monitoring scheme has exceeded the level described in sub-paragraph (2)(e), a scheme setting out necessary mitigation measures (if any) for such ground subsidence (referred to in this paragraph as a "mitigation scheme") must be submitted to the Agency for approval, such approval not to be unreasonably withheld or delayed; and any mitigation scheme must be implemented as approved, unless otherwise agreed in writing with the Agency.

27.—(1) [Within the Order limits on the south bank of the estuary, from the crest of the flood defences to a point [●] metres landward (measured perpendicular to the flood defences) of the

**Comment [AJ29]: Applicant** There appears to be potential for conflict between the monitoring and mitigation (remedial) measures here and in favour of Centrica at para 33(1). How will this be avoided?

crest of the said defences, the pipeline shall be laid with a minimum cover of 1.7 metres above the pipeline.]

## PART 4 FOR THE PROTECTION OF ANGLIAN WATER

**28.**—(1) For the protection of Anglian Water, the following provisions shall, unless otherwise agreed in writing between the undertaker and Anglian Water, have effect.

(2) In this part of this schedule—

“apparatus” means any works, mains, pipes or other apparatus belonging to or maintained by Anglian Water for the purposes of water supply and sewerage and—

- (a) any drain or works vested in Anglian Water under The Water Industry Act 1991; and
- (b) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102 (4) of The Water Industry Act 1991 or an agreement to adopt made under section 104 of that Act,

and includes a sludge main, disposal main or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any sewer, drain, or works (within the meaning of section 219 of that Act) and any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

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

“functions” includes powers and duties;p

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land; and

“plan” includes sections, drawings, specifications and method statements.

(3) The undertaker shall not interfere with, build over or near to any apparatus within the Order land or execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within the standard protection strips which are the strips of land falling the following distances to either side of the medial line of any relevant pipe or apparatus; 2.25metres where the diameter of the pipe is less than 150 millimetres, 3 metres where the diameter of the pipe is between 150 and 450 millimetres, 4.5 metres where the diameter of the pipe is between 450 and 750 millimetres and 6 metres where the diameter of the pipe exceeds 750 millimetres unless otherwise agreed in writing with Anglian Water, such agreement not to be unreasonably withheld or delayed, and such provision being brought to the attention of any agent or contractor responsible for carrying out any work on behalf of the undertaker.

(4) The alteration, extension, removal or re-location of any apparatus shall not be implemented until—

- (a) any requirement for any permits under the Environmental Permitting Regulations 2010 or other legislations and any other associated consents are obtained, and any approval or agreement required from Anglian Water on alternative outfall locations as a result of such re-location are approved, such approvals from Anglian Water not to be unreasonably withheld or delayed; and
- (b) the undertaker has made the appropriate application required under the Water Industry Act 1991 together with a plan and section of the works proposed and Anglian Water has agreed all of the contractual documentation required under the Water Industry Act 1991, such agreement not to be unreasonably withheld or delayed; and such works to be executed only in accordance with the plan, section and description submitted and in accordance with such reasonable requirements as may be made by Anglian Water for the alteration or otherwise for the protection of the apparatus, or for securing access to it.

(5) In the situation, where in exercise of the powers conferred by the Order, the undertaker acquires any interest in any land in which apparatus is placed and such apparatus is to be relocated, extended, removed or altered in any way, no alteration or extension shall take place until Anglian Water has established to its reasonable satisfaction, contingency arrangements in order to conduct its functions for the duration of the works to relocate, extend, remove or alter the apparatus.

(6) Regardless of any provision in this Order or anything shown on any plan, the undertaker must not acquire any apparatus otherwise than by agreement, and before extinguishing any existing rights for Anglian Water to use, keep, inspect, renew and maintain its apparatus in the Order land, the undertaker shall, with the agreement of Anglian Water, create a new right to use, keep, inspect, renew and maintain the apparatus that is reasonably convenient for Anglian Water such agreement not to be unreasonably withheld or delayed, and to be subject to arbitration under article 45.

(7) If in consequence of the exercise of the powers conferred by the Order the access to any apparatus is materially obstructed the undertaker shall provide such alternative means of access to such apparatus as will enable Anglian Water to maintain or use the apparatus no less effectively than was possible before such obstruction.

(8) If in consequence of the exercise of the powers conferred by the Order, previously unmapped sewers, lateral drains or other apparatus are identified by the company, notification of the location of such assets will immediately be given to Anglian Water and afforded the same protection of other Anglian Water assets.

(9) If for any reason or in consequence of the construction of any of the works referred to in paragraphs (4) to (6) and (8) above any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of Anglian Water, or there is any interruption in any service provided, or in the supply of any goods, by Anglian Water, the undertaker shall—

- (a) bear and pay the cost reasonably incurred by Anglian Water in making good any damage or restoring the supply; and
- (b) make reasonable compensation to Anglian Water for any other expenses, loss, damages, penalty or costs incurred by Anglian Water by reason or in consequence of any such damage or interruption.

## PART 5

### FOR THE PROTECTION OF CENTRICA

**29.** For the protection of Centrica the following provisions, unless otherwise agreed in writing between the undertaker and Centrica, have effect.

#### **Interpretation**

**30.** In this Part of this Schedule—

“apparatus” means Centrica’s pipelines, cables, structures or other electrical, gas or telecommunication infrastructure owned, occupied or maintained by Centrica for the purposes of its undertaking including the pipeline;

“Centrica” means Centrica Plc and all of its subsidiaries and group companies, including but not limited to Centrica Storage Limited, or any successor company performing the same functions; and

“pipeline” means the Centrica condensate pipeline 200NB.

### **Creation of rights for Centrica**

**31.** Before extinguishing any existing rights for Centrica to keep, inspect, renew and maintain its apparatus on, over or in the Order land or to cross the Order land to access its apparatus, the undertaker, with the agreement of Centrica, must create a new right, which is consistent with the existing right being extinguished, to keep, inspect renew and maintain the apparatus in the same location or a new right of access that it reasonably convenient for Centrica, such agreement not to be unreasonably withheld or delayed.

### **Apparatus**

**32.—**(1) Save where paragraph 36 of this Part applies, no works are to commence within 10 metres of apparatus until a construction method statement to protect the apparatus has been prepared by the undertaker and submitted to and agreed with Centrica (such agreement not to be unreasonably withheld or delayed).

(2) The construction method statement must include provisions in respect of—

- (a) the location and methods of reinforcement of crossing points over the apparatus and restrictions on building and altering the ground level over the apparatus elsewhere.
- (b) a mechanism for the enforcement of the relevant undertaker's use of designated crossing points over the apparatus and the agreed reinforcement methods; and
- (c) adoption of a prior notification and consent regime which would require the relevant undertaker to—
  - (i) seek Centrica's consent to the carrying out of the proposed development within the vicinity of the apparatus, such consent not to be unreasonably withheld; and
  - (ii) notify Centrica of its intention to carry out any development within the vicinity of the apparatus, such notification to be provided at least 7 days prior to any such development occurring; and

the authorised development must be carried out in accordance with the approved construction method statement.

(3) At all times when carrying out any works authorised under the Order the undertaker must comply with the undertaker's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Grid high pressure gas pipelines and associated installation requirements for third parties T/SP/SSW22".

### **Ground Subsidence Monitoring Scheme**

**33.—**(1) Any authorised works within 100 metres of any apparatus or alternative apparatus capable of interfering with or risking damage to the apparatus must not commence until a scheme for monitoring ground subsidence ("referred to in this paragraph as the monitoring scheme") has been submitted to and approved by Centrica, such approval not to be unreasonably withheld or delayed.

(2) The ground subsidence monitoring scheme described in sub-paragraph (1) must set out—

- (a) the apparatus which is to be subject to such monitoring;
- (b) the extent of land to be monitored;
- (c) the manner in which ground levels are to be monitored;
- (d) the timescales of any monitoring activities; and
- (e) the extent of ground subsidence which, if exceeded, will require the undertaker to submit for Centrica's approval a ground subsidence mitigation scheme in respect of such subsidence in accordance with sub-paragraph (3).

(3) The monitoring scheme required by sub paragraphs (1) and (2) must be submitted within 28 days prior to the commencement of any works authorised by this Order or comprised within the authorised development to which sub-paragraph (1) applies. Any requirements of Centrica will be

notified within 10 days of receipt of the monitoring scheme. Thereafter the monitoring scheme must be implemented as approved, unless otherwise agreed in writing with Centrica.

(4) As soon as reasonably practicable after any ground subsidence identified by the monitoring activities set out in the monitoring scheme has exceeded the level described in sub-paragraph (2)(e), a scheme setting out necessary mitigation measures (if any) for such ground subsidence (referred to in this paragraph as a "mitigation scheme") must be submitted to Centrica for approval, such approval not to be unreasonably withheld or delayed; and any mitigation scheme must be implemented as approved, unless otherwise agreed in writing with Centrica save that Centrica retains the right to carry out any further necessary protective works for the safeguarding of their apparatus.

(5) If the monitoring scheme or mitigation scheme would conflict with any aspect of any ground subsidence monitoring scheme or ground subsidence mitigation scheme approved by the relevant planning authority pursuant to Schedule 3 (*requirements*) the undertaker may submit a revised monitoring scheme or mitigation scheme to Centrica for its approval, such approval not to be unreasonably withheld or delayed; and the revised monitoring scheme or mitigation scheme must be implemented as approved, unless otherwise agreed in writing with Centrica.

### **Cathodic Protection Testing**

**34.**—(1) Where in the reasonable opinion of Centrica—

- (a) the authorised development might interfere with the existing cathodic protection forming part of a pipeline; or
- (b) a pipeline might interfere with the proposed or existing cathodic protection forming part of the authorised development,

Centrica and the undertaker must co-operate in undertaking the tests which the statutory undertaker considers reasonably necessary for ascertaining the nature and extent of such interference and measures for providing or preserving cathodic protection.

**35.**—(1) In the event that the undertaker uses an enhanced cathodic protection design for the authorised works, not less than 56 days before the commencement of any authorised works, the undertaker shall submit to Centrica plans detailing alterations to the cathodic protection design and setting out a pre- and post- construction monitoring scheme to assess any interactions with apparatus.

(2) The undertaker must not commence any works to which sub-paragraph (1) applies until Centrica has given written approval of the plan submitted.

(3) Any approval of Centrica required under sub-paragraph (2)—

- (a) may be given subject to reasonable conditions for the protection of apparatus; and
- (b) must not be unreasonably withheld.

(4) The undertaker must implement the monitoring scheme under sub-paragraph (1) in the construction and maintenance of the authorised works.

### **Removal of apparatus**

**36.**—(1) If the undertaker acquires or overrides any interest in the land in which apparatus is laid, the apparatus shall not be removed under this Part of this Schedule and any right of Centrica to maintain the apparatus in that land shall not be extinguished until alternative apparatus has been constructed at the undertaker's expense, and is in operation to the reasonable satisfaction of Centrica in accordance with sub-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker required the removal of apparatus in that land, it shall give Centrica 56 days' advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any powers conferred by this Order Centrica reasonably needs to remove any apparatus) the relevant undertaker shall,

subject to sub-paragraph (3), afford to Centrica to their satisfaction, (taking into account paragraph 37(1) below) the necessary facilities and rights for—

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

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker or Centrica, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, Centrica shall, on receipt of written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for Centrica to seek compulsory purchase powers to this end unless it elects to do so.

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

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

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

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

(2) If the facilities and rights to be afforded by the undertaker and agreed with Centrica under (1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to Centrica than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the matter must be referred to arbitration and, the arbitrator must make such provision for the payment of compensation by the relevant undertaker to Centrica as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

#### **Costs**

**38.** If for any reason or in consequence of the construction or operation of the authorised development, any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of Centrica, the undertaker must bear and pay the cost reasonably incurred by Centrica in making good any damage by reason or in consequence of such damage.

#### **Requirement for agreement**

**39.** Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference, the undertaker must not acquire any apparatus or override any easement or other interest of Centrica or acquire any land or other interest of Centrica or create any new rights over the same otherwise than by agreement of Centrica, which agreement must not be unreasonably withheld.

## Disputes

40. Any dispute arising between the undertaker and Centrica under this Part of this Schedule must be determined by arbitration as provided in article 45 (*arbitration*).

## PART 6 FOR THE PROTECTION OF NETWORK RAIL

**TO BE INSERTED**

### SCHEDULE 11

Article 21

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

#### *Compensation enactments*

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

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

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

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

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

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

#### *Application of the 1965 Act*

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

**Comment [AJ30]: Applicant**  
Following Nov hearings - has final clarity been provide by Network Rail in an updated SOCG or otherwise to evidence that weight limits will not prevent use of the proposed haul route?

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(a) 1973 c.26.

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

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

4. For section 7 of the 1965 Act (*measure of compensation*) there is substituted the following section—

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

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

- (a) section 9(4) (*failure by owners to convey*);
- (b) paragraph 10(3) of Schedule 1 (*owners under incapacity*);
- (c) paragraph 2(3) of Schedule 2 (*absent and untraced owners*); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (*common land*),

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

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

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

8. Section 22 of the 1965 Act (*protection of acquiring authority's possession where by inadvertence an estate, right or interest has not been got in*) is modified as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.



## SCHEDULE 12

Article 47

### PROCEDURE IN RELATION TO CERTAIN APPROVALS ETC.

#### *Determination of applications for specified consents*

1.—(1) Where an application has been made to the discharging authority for any specified consent, the discharging authority must give notice to the undertaker of its decision on the application within a period of 8 weeks beginning with—

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

(2) Where an application has been made under sub-paragraph (1) the discharging authority may request such reasonable further information from the undertaker as it considers is necessary to enable it to consider the application.

(3) If the discharging authority considers further information is necessary and this Order does not specify that consultation with a consultee is required, the discharging authority must, within 7 business days of receipt of the application, notify the undertaker in writing specifying the further information required.

(4) If a provision of this Order relating to a specified consent specifies that consultation with a consultee is required, the discharging authority must issue the consultation to the consultee within 1 business day of receipt of the application and must notify the undertaker in writing specifying any further information requested by the consultee within 1 business day of receipt of such a request and in any event within 21 business days of receipt of the application.

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

#### *Fees*

(6) Where an application is made to a relevant planning authority for any consent, agreement or approval required by a requirement listed in Schedule 3 (*requirements*) to this Order, a fee of £97 (or such other fee as may be prescribed in regulations made pursuant to sections 303 (*fees for planning applications etc.*) and 333(2A) (*regulations and orders*) of the 1990 Act for the confirmation by a local planning authority of compliance with a condition attached to a planning permission) must be paid to the discharging authority.

(7) Any fee paid under this Schedule must be refunded to the undertaker within 4 weeks of—

- (a) the application being rejected as invalidly made; or
- (b) the discharging authority failing to determine the application within 8 weeks from the date on which it is received,

unless within that period the undertaker agrees in writing that the fee may be retained by the discharging authority and credited in respect of a future application.

#### *Appeals*

2.—(1) The undertaker may appeal if—

- (a) the discharging authority refuses an application for any specified consent or grants it subject to conditions;
- (b) the discharging authority does not give notice of its decision to the undertaker within the period specified in sub-paragraph 1(1);

- (c) having received a request for further information under paragraph 1(3) the undertaker considers that either the whole or part of the specified information requested by the discharging authority is not necessary for consideration of the application;
  - (d) having received any further information requested, the discharging authority notifies the undertaker that the information provided is inadequate and requests additional information which the undertaker considers is not necessary for consideration of the application.
- (2) The procedure for appeals is as follows—
- (a) the undertaker must submit to the Secretary of State a copy of the application submitted to the discharging authority and any supporting documents which the undertaker may wish to provide (“the appeal documents”);
  - (b) the undertaker must on the same day provide copies of the appeal documents to the discharging authority and (if applicable) the consultee;
  - (c) as soon as is practicable after receiving the appeals documents the Secretary of State must appoint a person to determine the appeal (“the appointed person”) and notify the appeal parties of the identity of the appointed person and the address to which all correspondence for the appointed person should be sent;
  - (d) the discharging authority and (if applicable) the consultee may submit any written representations in respect of the appeal to the appointed person within 10 business days beginning with the first day immediately following the date on which the appeal parties are notified of the appointment of the appointed person and must ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;
  - (e) the appeal parties may make any counter-submissions to the appointed person within 10 business days beginning with the first day immediately following the date of receipt of written representations pursuant to paragraph (d) above; and
  - (f) the appointed person must make a decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable.
- (3) If the appointed person considers that further information is necessary to consider the appeal, the appointed person must as soon as practicable notify the appeal parties in writing specifying the further information required, the appeal party from whom the information is sought, and the date by which the information must be submitted.
- (4) Any further information required pursuant to sub-paragraph (3) must be provided by the party from whom the information is sought to the appointed person and to other appeal parties by the date specified by the appointed person.
- (5) The appeal parties may submit written representations to the appointed person concerning matters contained in the further information.
- (6) Any such representations must be submitted to the appointed person and made available to all appeal parties within 10 business days of the date mentioned in sub-paragraph (3).

#### *Outcome of Appeals*

- 3.—(1) On an appeal under paragraph 2, the appointed person may—
- (a) allow or dismiss the appeal; or
  - (b) reverse or vary any part of the decision of the discharging authority (whether the appeal relates to that part of it or not),
- and may deal with the application as if it had been made to the appointed person in the first instance.
- (2) The appointed person may proceed to a decision on an appeal taking into account only such written representations as have been sent within the time limits prescribed or set by the appointed person under this paragraph.

(3) The appointed person may proceed to a decision even though no written representations have been made within those time limits if it appears to the appointed person that there is sufficient material to enable a decision to be made on the merits of the case.

(4) The decision of the appointed person on an appeal is final and binding on the parties, and a court may entertain proceedings for questioning the decision only if the proceedings are brought by a claim for judicial review within 6 weeks of the date of the decision.

(5) Any approval given by the appointed person pursuant to this Schedule is deemed to be an approval for the purposes of this Order and any other enactment which required the specified consent as if it had been given by the discharging authority.

(6) The discharging authority may confirm any determination given by the appointed person in identical form in writing but a failure to give such confirmation (or a failure to give it in identical form) does not affect or invalidate the effect of the appointed person's determination.

(7) Except where a direction is given pursuant to sub-paragraph 8 requiring the costs of the appointed person to be paid by the discharging authority, the reasonable costs of the appointed person must be met by the undertaker.

(8) On application by the discharging authority or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid.

(9) In considering whether to make any such direction and the terms on which it is made, the appointed person must have regard to [Communities and Local Government Circular 03/2009] or any circular or guidance which may from time to time replace it.

(10) Where the undertaker appeals under paragraph 2—

- (a) this Schedule applies instead of article 43 (*arbitration*); and
- (b) in respect of any specified consent required pursuant to sections 54 to 106 of the 1991 act, this Schedule applies instead of section 99 (*arbitration*) of that Act.

#### *Interpretation of this Schedule*

4. In this Schedule—

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

“business day” means Monday to Friday excluding bank holidays;

“consultee” means any body named in a provision of this Order relating to a specified consent which is the subject of an appeal as a body to be consulted by the discharging authority in determining that specified consent;

“discharging authority” means the body responsible for determining whether a specified consent should be given or the local authority in the exercise of functions set out in sections 60 or 61 of the 1974 Act;

“specified consent” means any—

- (a) agreement, certificate, consent, permission, expression of satisfaction or other approval required by—
  - (i) a requirement listed in Schedule 3 (*requirements*) of this Order;
  - (ii) a document referred to in any requirement listed in Schedule 3 of this Order; and
  - (iii) article 40(3)(b) (*felling or lopping of trees or shrubs*); or
- (b) agreement, certificate, consent, permission, expression of satisfaction or other approval of the highway authority, street authority (where it is also the highway authority for the same area) or traffic authority required pursuant to articles—
  - (i) 10 (*street works*) (including pursuant to sections 54 to 106 of the 1991 Act as applied by article 11(3));
  - (ii) 11 (*power to alter layout, etc. of streets*);
  - (iii) 12 (*construction and maintenance of new, altered or diverted streets*);

- (iv) 13 (*temporary stopping up of streets and public rights of way*);
- (v) 15 (*traffic regulation*); or
- (vi) 18 (*authority to survey and investigate the land*).

**EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order authorises National Grid Gas plc (referred to as “the undertaker”) to construct and operate a high-pressure gas transmission pipeline and associated infrastructure from Paull Above Ground Installation (AGI) to Goxhill AGI within the authorities of East Riding of Yorkshire and North Lincolnshire

The Order permits the undertaker to acquire, compulsorily or by agreement, land and rights in land and to use land for this purpose. The Order also makes provision in connection with the maintenance of the network

A copy of the Order plans and the book of reference mentioned in this Order and certified in accordance with article 43 of this Order (*certification of plans, etc.*) may be inspected free of charge during working hours at the [*insert address*].

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STATUTORY INSTRUMENTS

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201[●] No. [●]

**INFRASTRUCTURE PLANNING**

The River Humber (Gas Pipeline Replacement) Order 201[●]

*Made* - - - - - \*\*\*

*Coming into force* - - - - - \*\*\*