

EXPLANATORY MEMORANDUM (TRACKED CHANGE)

HyNet Carbon Dioxide Pipeline DCO

Planning Act 2008

The Infrastructure Planning (Applications: Prescribed Forms and Procedure)
Regulations 2009 – Regulations 5(2)(c)

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SUMMARY

1.1 This memorandum explains the purpose and effect of each article of, and Schedule to, the draft Hynet Carbon Dioxide Pipeline Order (the “Order”), as required by Regulation 5(2)(c) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009¹ (the “Regulations”).

1.2 Regulation 5(2)(c) requires the explanatory memorandum to explain “*the purpose and effect of provisions in the draft order*”.

2 PURPOSE OF THE ORDER

2.1 Liverpool Bay CCS Limited, (incorporated under company number 13194018) and having its registered office at Eni House, 10 Ebury Bridge Road, London SW1W 8PZ (the “undertaker”), is applying to the Secretary of State for a development consent order (“DCO”) for the construction, operation and decommissioning of a carbon dioxide pipeline (the “authorised development”).

2.2 In summary the authorised development consists of:

- (a) Ince Above Ground Installation (AGI) to Stanlow AGI Pipeline – a section of new underground onshore pipeline (20” in diameter) to transport CO₂;
- (b) Stanlow AGI to Flint AGI Pipeline – a section of new underground onshore pipeline (36” in diameter) to transport CO₂;
- (c) Flint AGI to Flint Connection Pipeline – a section of new underground onshore pipeline (24” in diameter) to transport CO₂;
- (d) Flint Connection to Point of Ayr (PoA) Terminal Pipeline – a section of existing Connah’s Quay to PoA underground onshore pipeline (24” in diameter) which currently transports natural gas but would be repurposed and reused to transport CO₂;
- (e) Four AGIs - Ince AGI, Stanlow AGI, Northop Hall AGI, and Flint AGI;
- (f) Six Block Valve Stations (BVSs) - located along:
 - (i) the new Stanlow AGI to Flint AGI Pipeline (three in total);
 - (ii) the existing Flint Connection to PoA Terminal Pipeline (three in total);
- (g) Other above ground infrastructure, including Cathodic Protection (CP) transformer rectifier cabinets and pipeline marker posts;
- (h) Utility Connection infrastructure, including power utilities and Fibre Optic Cable (FOC); and
- (i) Temporary ancillary works integral to the construction of the Carbon Dioxide Pipeline, including Construction Compounds and temporary access tracks.

2.3 A detailed description of the authorised development is included in Chapter 3 of Volume 2 of the Environmental Statement (document number: D 6.2.3).

2.4 The Order seeks to confer upon the undertaker powers of compulsory acquisition of land or rights over land which is required for the authorised development, or to facilitate, or is incidental to the authorised development within the meaning of section 122 of the Planning Act 2008 (the “2008 Act”).

¹ S.I. 2009/2264

Nationally Significant Infrastructure Project

- 2.5 The authorised development is a nationally significant infrastructure project (“NSIP”) within sections 14 and 21 of the 2008 Act. When a pipeline will constitute an NSIP is set out in section 21(1) 2008 Act. A cross country pipeline is defined in section 235: “*Cross-country pipeline has the same meaning as in Pipe Lines Act 1962 s66*”.
- 2.6 The Pipe Lines Act 1962 (PLA) s66(1) provides that ‘Cross-country pipeline’ means ‘pipe-line’ whose length exceeds 16.093km. The authorised development would include new build pipeline of 36km and repurposing of an existing natural gas pipeline of 24km. The overall carbon dioxide pipeline is c60km.
- 2.7 A pipeline also includes infrastructure necessary for its operation and protection. What falls within the definition of a ‘pipeline’ and is therefore the NSIP needs to be considered with reference to s65 of the PLA which provides the definition which is incorporated into the Planning Act 2008:
- “In this Act “pipe-line” (except where the context otherwise requires) means a pipe (together with any apparatus and works associated therewith), or system of pipes (together with any apparatus and works associated therewith), for the conveyance of any thing other than air, water, water vapour or steam, not being ... [*list of excluded pipelines which are not relevant*]
- (2) For the purposes of the foregoing subsection, the following apparatus and works, and none other, shall be treated as being associated with a pipe, or system of pipes, namely,—
- (a) apparatus for inducing or facilitating the flow of any thing through the pipe or, as the case may be, through the system or any part thereof;
- (b) valves, valve chambers, manholes, inspection pits and similar works, being works annexed to, or incorporated in the course of, the pipe or system;
- (c) apparatus for supplying energy for the operation of any such apparatus as is mentioned in paragraph (a) of this subsection or of any such works as are mentioned in paragraph (b) thereof;
- (d) apparatus for the transmission of information for the operation of the pipe or system;
- (e) apparatus for affording cathodic protection to the pipe or system;
- (f) a structure for the exclusive support of a part of the line or system; and
- (fa) in relation only to a pipe, or system of pipes, which is used to convey carbon dioxide to a carbon dioxide storage site, apparatus for treating and cooling carbon dioxide which is to flow through, or through any part of, the pipe or system.
- (3) In subsection (2)(fa), the reference to a pipe, or system of pipes, being used to convey carbon dioxide includes a pipe or system which is not being used for any purpose but which is intended to be used to convey carbon dioxide.”
- 2.8 The Application also includes apparatus along the pipeline within the above definition, including above ground installation (AGIs) and Block Valve Stations (BVSs) being works annexed to or incorporated in the pipeline and cathodic protection, electricity and telecommunications cables. Works necessary to construct and operate the authorised development have also been included, for example creation of construction and operational access and inclusion of drainage and landscaping for AGIs and BVSs.
- 2.9 In determining what can be included within the Application, the undertaker has had regard to the restriction on the inclusion of Associated Development in Wales and previous decisions on that, particularly in the Swansea Bay Tidal Lagoon DCO application. A full

explanation of why the undertaker considers that all of the works applied for can be included in the Application is set out in the Planning Statement (document number: D.5.4).

- 2.10 As the authorised development is an NSIP, development consent must be obtained from the Secretary of State to authorise it, and an application for a development consent order must be made to the Secretary of State, care of the Planning Inspectorate, under section 37 of the 2008 Act.

3 ANCILLARY MATTERS

- 3.1 The Order also authorises ancillary works within the Order limits. These are works that do not constitute development but are required to facilitate the construction of the authorised development.
- 3.2 In addition to providing for the construction and operation of the authorised development, the Order will, in accordance with section 122, section 120(3) and Schedule 5 of the 2008 Act, authorise the acquisition of land and rights over land, and the extinguishment of, or interference with, interests in or rights over land. The Book of Reference (document number: D.4.3) sets out a description of the land and interests included in the Order. The Order and the Book of Reference should be read together with the Statement of Reasons (document number: D.4.1) which accompanies the Application and sets out the justification for the acquisition of or interference with the Order land.
- 3.3 Other ancillary matters include the application and disapplication of legislation, the power to undertake works to streets, and the ability to take temporary possession of land.

4 THE DRAFT ORDER

- 4.1 The Order is based on the model provisions set out in Schedule 1 to the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 (the “Model Provisions”) as well as relevant precedents. The general model provisions were followed because there are no model provisions for a pipeline development.
- 4.2 The Localism Act 2011 (“the 2011 Act”) removed the requirement for the decision maker to have regard to the Model Provisions Order 2009 in deciding applications and so they no longer have any formal legal status. Secondary legislation under the 2011 Act also removed the requirement for an undertaker to explain in the explanatory memorandum divergences from the Model Provisions Order 2009, although it is noted that the “Legislation” page of the Inspectorate’s website states that:

“... it may ... still be useful and helpful for undertakers to show how and why they have departed from the Model Provisions Order in their applications.”

- 4.3 In addition, Planning Inspectorate Advice Note 13 ‘Preparing the draft Order and Explanatory Memorandum, April 2012’ explains that they were intended as a guide for developers in drafting orders, rather than a rigid structure, but aided consistency and assisted in drafting a comprehensive set of lawful provisions.

- 4.4 Where there is a departure from the general model provisions, or an article is based on other precedent DCOs, an explanation of the new provision is provided. In general, the precedents followed in drafting the Order are other DCOs for pipeline development primarily:

(a) Southampton to London Pipeline Development Consent Order 2020 (“SLP 2020”); and

(b) Thorpe Marsh Gas Pipeline Order 2016 (2016/297) (“Thorpe Marsh 2016”),

and other recent orders:

(c) Hornsea Three Offshore Wind Farm Order 2020 (“Hornsea Three 2020”);

- (d) Norfolk Vanguard Offshore Wind Farm Order 2020 (“Norfolk Vanguard 2020”);
- (e) Norfolk Boreas Offshore Wind Farm Order 2021 (“Norfolk Boreas 2021”);
- (f) River Humber Gas Pipeline Replacement Order (SI 2016/853) (“River Humber 2016”);
- (g) Reinforcement to the North Shropshire Electricity Distribution Network Order 2020 (“North Shropshire 2020”);
- (h) National Grid (Richborough Connection Project) Development Consent Order 2017 (“Richborough Connection Project 2017”);
- (i) A19/A184 Testo’s Junction Alteration Order (SI 2018/994) (“Testo’s Junction 2018”);
- (j) Silvertown Tunnel Order 2018 (SI 2018/574) (“Silvertown 2018”); and
- (k) A14 Cambridge to Huntingdon Improvement Order 2016 (SI 2016/547).

4.5 The purpose and effect of the provisions of the Order are now explained in sequence.

Part 1 – Preliminary

Article 1 – Citation and commencement

4.6 Article 1 sets out the name of the Order and the date on which it comes into force.

4.7 This article did not appear in the Model Provisions. However, it is a standard article that is included in all development consent orders.

Article 2 – Interpretation

4.8 Article 2(1) defined the terms used in the Order. It is a standard article and was included in the Model Provisions as article 1.

4.9 Definitions to note include:

- (a) “Commence”. The definition of “commence” is based on the wording used in SLP 2020. It has been amended slightly so that site preparation works are outside the term.
- (b) “Maintain”. The definition of “maintain” is based on the wording used in SLP 2020, which was in turn based on the drafting of Thorpe Marsh and Silvertown. The list of maintenance activities is considered appropriate since it affords the flexibility required to enable the undertaker to respond to the range of maintenance activities that may need to be undertaken during the lifetime of the proposed development. The inclusion of “divert” within the definition of “maintain” is consistent with section 21 of the 2008 Act, which allows an NSIP pipeline to be diverted within the authorised limits of deviation, and is preceded in article 2, Thorpe Marsh 2016. The power to divert the proposed development may be necessary in case of urgent maintenance works.
- (c) “Order Limits” which means the red line boundary for authorised development as shown on the works plans and the lands plans.

4.10 Article 2(2) expands the definition of rights over land. This was included in the Model Provisions as article 1(2).

4.11 Articles 2(3) and 2(4) define measurements as approximate. The purpose of this is to ensure that if upon construction of the works it transpires that the distances are marginally

different to those listed in the Order, there is no issue over whether the Order permits the works. Thus this provision allows for a small tolerance, although all works will take place within the limits of deviation. It is now common practice to include such provision in development consent orders; the Model Provisions included similar wording in article 1(3) and similar wording is used in Hornsea Three 2020 and Norfolk Boreas 2021.

4.12 Article 2(6) confirms that references to works are to the works numbered in Schedule 1.

Part 2 – Principal Powers

Article 3 – Development consent etc. granted by the Order

4.13 Article 3 provides the principal power to construct and operate the authorised development within the Order limits. Schedule 1 describes the authorised development.

4.14 Development consent is granted subject to the provisions of the Order, including the requirements listed in Schedule 2. This is based on article 2 of the model provisions with the substantive difference being that this article confirms that the provisions of the order shall not relieve the undertaker from the requirements of the Pipeline Safety Regulations 1996.

Article 4 – Operation and use of the authorised development

4.15 Article 4 provides the principal power to use and operate the authorised development for the purpose for which it is designed. It also provides authorisation to use the existing pipeline for the conveyance of carbon dioxide.

4.16 Section 157(2) of the 2008 Act expressly allowed the authorisation for use of a “building” for the purpose for which it is designed. However, the authorised development includes key elements, such as the pipeline, which are not buildings and therefore the clarification provided in this article is necessary. This wording was used in River Humber 2016.

Article 5 – Power to maintain the authorised development

4.17 This article adapts article 3 of the model provisions and authorises the undertaker to maintain the proposed development, within the meaning of maintain as explained above.

4.18 The list of maintenance activities is consistent with other made DCOs, in particular Thorpe Marsh 2016 and SLP2020, includes a number of the activities that could have been included in a pipeline construction authorisation under the 1962 Act; and accords with the duties on the operators of pipelines in regulation 13 of the Pipelines Safety Regulations 1996 to ensure that a pipeline is maintained in an efficient state, in efficient working order and in good repair.

Article 6 – Limits of deviation

4.19 This article is broadly based on the wording of SLP 2020, with project specific changes.

4.20 Article 5 allows for both lateral and vertical limits of deviation in respect of the works. This is in contrast to SLP 2020 which limited limits of deviation to the pipeline and valve works. The ability to include such a power is contained in section 120(3) of the 2008 Act, which enables an Order granting development consent to make provision relating to, or to matters ancillary to, the development for which a consent is granted.

4.21 The limits of deviation provided within the article provides the undertaker with a reasonable and proportionate degree of flexibility in constructing the authorised development. By building in the flexibility into the DCO in this way, any deviation within the limits proposed would not give rise to any materially new or materially worse adverse environmental effects, as the Environmental Statement considers the impact of the project within the limits of deviation proposed.

- 4.22 The corridor of land within which the pipeline may be constructed, maintained or diverted under the Order is shown on the Works Plans and constitutes the lateral limits of deviation for the pipeline works. The lateral limits of deviation which are sought under the Order balance the need for flexibility, along with the any resultant impacts caused by the authorised development.
- 4.23 The lateral limits of deviation typically extend to the 100 metre corridor show on the works plans for the pipeline works. However, in some locations the undertaker has been able to commit to narrower limits of deviation, for example where the route of the pipeline passes through sensitive habitats or under streets. Notwithstanding the lateral limits of deviation shown on the Works Plans, it should also be noted that the undertaker has committed to a narrower working width in which construction can take place (generally 32m).
- 4.24 The lateral limits of deviation for valve works is the works area only. They may not extend outside the works area shown on the works plans. The works areas have been drawn with a 5m 'buffer' around the intended location to allow for micro-siting within that area.
- 4.25 The upwards vertical limit of deviation (i.e. the minimum depth at which the pipeline may be laid) is 1.2 metres from the surface of the ground, except where ground conditions make compliance with this upward limit impracticable, in which case the upwards limit is 0.452 metres below the surface of the ground. This upwards limit is included to avoid, insofar as possible, interference with ground level activities such as agricultural operations. Depth of cover greater than the minimum will be required in some location where 'deep-rip' ploughing is required. Commitments to provide greater depth in specific locations where that is required are set out in the register of environmental actions and commitments, document number D.6.5.1.
- 4.26 The downwards vertical limit of deviation in respect of those sections of the pipeline works which may be constructed using trenched construction methods is 4 metres below the surface of the ground, except where ground conditions or existing infrastructure make compliance with this downward limit impracticable, in which case deeper trenching will be required. These limits represent the lowest depths to which a trenching machine can excavate.
- 4.27 The downwards vertical limit of deviation in respect of those sections of pipeline works which may be constructed using trenchless installation techniques is generally 12 metres below the surface of the ground to allow for the use of horizontal directional drilling and to pass safely beneath surface features such as roads, rivers and railways. However it is considered that several crossings may need to be deeper to protect the surface features or avoid interference with existing infrastructure. For example the crossing of the river Dee will be at a maximum of 35m depth. These deeper limits are required in order to allow the undertaker the flexibility to select the appropriate construction methodology, including trenchless techniques, most suitable to the location and constraints.
- 4.28 In respect of the valve works, the upwards vertical limits of deviation are as described in Schedule 1 to the DCO.
- 4.29 This article also allows a potential extension to the vertical limits of deviation specified where the undertaker is able to demonstrate to the Secretary of State's satisfaction (and the Secretary of State has certified accordingly following consultation with the relevant planning authority) that such extension would not give rise to any materially new or materially worse environmental effects in comparison with those reported in the Environmental Statement. This provision appears in Testo's Junction 2018 and allows for unexpected ground conditions that make it dangerous or unduly difficult to install within the stated limits of deviation. Any such exemption, if granted, would be constrained laterally by the Order limits.

Article 7 – Benefit of the order

- 4.30 Article 7 overrides section 156(1) of the 2008 Act (as permitted by section 156(2)) to give the benefit of the Order to the undertaker rather than anyone with an interest in the land.

As the Order includes powers of compulsory acquisition that need to be backed by assurances regarding the ability of the undertaker to cover any compensation payable this is appropriate and in any event it would be impractical for a variety of landowners to implement the Order.

- 4.31 This article allows the benefit of the Order to be transferred or leased to others by the undertaker. This article is necessary to allow the undertaker commercial freedom to sell or lease the authorised development while ensuring that the Secretary of State can control such sale or lease through the need to obtain their consent. Without the ability to transfer the benefit, no party but the undertaker could operate the power station without committing a criminal offence. This article is therefore necessary to ensure that the authorised development is fundable and could be sold or leased in the future.
- 4.32 The exercise of any transferred benefits or rights is subject to the same restrictions, liabilities and obligations as would apply under the Order if those benefits or rights were exercised by the undertaker. The consent of the Secretary of State is required for a transfer or grant, except where it is made to specified categories of person.
- 4.33 Paragraphs (1) and (2) are based on article 4 of the Model Provisions, amended to clarify that they are subject to paragraph (3) and that it is the undertaker that benefits from the provisions of the Order, rather than particular articles applying for the benefit of other specified parties as per the Model Provisions. Paragraph (3) was not included in the Model Provisions but has been included in a number of previous orders including Hornsea Three 2020 and Norfolk Vanguard 2020.

Article 8 – Application and modification of legislative provisions

- 4.34 This article is empowered by section 120(5)(a) of the 2008 Act, it provides for the disapplication of certain requirements which would otherwise apply under public general legislation. Section 120(5)(a) provides that an order granting development consent may apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the Order.
- 4.35 Article 8(1)(a) and (b) disapply byelaws where the carrying out of the authorised development would conflict with such byelaws.
- 4.36 Article 8(1)(c) provides for the disapplication of consents ordinarily required in respect of the Land Drainage Act 1991. Specifically, these are the requirements for consents for the construction of culverts, together with the requirements for approval under byelaws made under the Land Drainage Act 1991. These are consents for activities which may be a necessary part of constructing the authorised development. To provide certainty that the authorised development can proceed, the Order disapplies the requirement for a separate statutory consent to be obtained in relation to these activities. These provisions were included in Hornsea Three 2020.
- 4.37 Article 8(1)(d) disapplies the provisions of the Neighbourhood Planning Act 2017 relating to the temporary possession of land. This is on the basis that the temporary possession of land is dealt with by articles 33 and 34 and the wording of those provisions is well established. The 2017 Act provisions differ from those in the Order and are untested, as they are not yet in force, it is therefore necessary to disapply them in case they should come into force in the future. This disapplication was included in Norfolk Vanguard 2020.
- 4.38 Article 8(2) clarifies that, for the purposes of the CIL Regulations,² any building forming part of the proposed development falls within the exemption under regulation 6 and will not be considered as “development” for the purposes of levying CIL. This wording can be found in SLP 2020.

² S.I 2021/948. Regulation 6 was amended by S.I 2011/987

Article 9 - Defence to proceedings in respect of statutory nuisance

- 4.39 Section 158 of the 2008 Act confers statutory authority for the purposes of a defence in civil or criminal proceedings for nuisance. This article provides a defence to proceedings brought in a magistrates' court under section 82(1) of the Environmental Protection Act 1990 in relation to certain nuisances set out in paragraph 79(1) of that Act.
- 4.40 A broad defence to civil and criminal proceedings for nuisance is provided by section 158 of the 2008 Act. However, the view taken under the NSIP regime is that section 158 does not extend to the rare situation by which if, somebody considers that the local authority ought to be tackling a nuisance using its statutory nuisance powers, but it is not, that person may apply to the magistrates' court under section 82 of the Environmental Protection Act 1990. Accordingly, this article is seeking to fill in a legislative gap by extending the effect of section 158.
- 4.41 As section 158 does not distinguish between different types of nuisance, the logical position is that this article should apply to all categories of nuisance. However, as a matter of practice other Projects have been more discriminating and have asked whether there is any possibility of a statutory nuisance occurring, leading to specific types of nuisance being referred to. The undertaker has followed this approach by seeking to restrict the application of this article so that it only applies to nuisances that have been identified as potentially resulting from the Project, as set out in the Statutory Nuisances Statement accompanying the application. This ensures that this article is focused only on those nuisances that may be of relevance, whilst also reflecting the logic and correct interpretation of section 158.
- 4.42 The defence is available if the nuisance relates to:
- (a) the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the Project and is attributable to the carrying out of the Project in accordance with a notice served, or consent given, under the Control of Pollution Act 1974; or
 - (b) the construction, maintenance or use of the Project and cannot reasonably be avoided.
- 4.43 This article is based on article 7 of the model provisions. The references to section 65 of the Control of Pollution Act 1974 are omitted because that section has been repealed.

Part 3 - Streets

Article 10 – Street works

- 4.44 Article 10 provides that the undertaker may undertake works in, on or under the streets identified in Schedule 3 and which are within the Order limits, for the purposes of the proposed development. The consent of the street authority is not required for these works.
- 4.45 Article 10(1) provides an indicative, but non-exhaustive list of the street works that may be carried out by the undertaker.
- 4.46 The authority given by this article is a statutory right for the purposes of section 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the 1991 Act, which means that the Order replaces the need to apply for a street works licence under that Act.
- 4.47 Article 10(5) confirms that where a street authority fails to respond to an application for consent under article 9(2) within 42 days of the application being made, it is deemed to have given that consent. This article is considered necessary to enable the undertaker to exercise its powers and undertake works in an efficient and expeditious manner and to give full effect to the power to carry out the proposed development, as provided for under section 120(5) of the 2008 Act.

- 4.48 In this article, “apparatus” has the same meaning as in Part 3 of the 1991 Act. However, for the purposes of the Order this has been expanded to include aerial markers, cathodic protection test posts, field boundary markers, monitoring kiosks, and electricity cabinets which are necessary for the safe operation of the pipeline.
- 4.49 Similar wording for this article can be found in SLP 2020, River Humber 2016, and Thorp Marsh 2016.

Article 11 – Power to alter layout etc. of streets

- 4.50 This article is not included in the model provisions but does appear in a similar form in other DCOs, for example SLP 2020, River Humber 2016. The article is provided for under section 120(3) and (4) together with paragraph 15 of Part 1 of Schedule 5 to the 2008 Act, namely the carrying out of civil engineering or other works.
- 4.51 Article 11(1) permits the undertaker to temporarily alter the layout of the streets listed Part 2 of Schedule 3 (streets subject to temporary alteration of layout) to the Order, in connection with the carrying out of the proposed development. The article also provides a power to carry out works in any of these streets.
- 4.52 Article 11(2) provides broader powers available for those streets not listed in Schedule 3, subject to the consent of the street authority, with such consent not to be unreasonably withheld or delayed as set out in 10(4). This enables the undertaker to acquire the necessary flexibility to alter streets which, at the date on which the Order is made, are not listed within Schedule 3. Article 10(2) also sets out a broad range of works that the undertaker may undertake on any street, including altering the level or increasing the width of any street, making and maintaining passing places, altering existing facilities in streets and providing facilities for the management and protection of pedestrians (for example, pedestrian crossings). The range of activities provided for in article 10(2) can be found in other DCOs for example SLP 2020 and River Humber 2016.
- 4.53 Article 11(3) ensures that any street temporarily altered must be restored to the reasonable satisfaction of the street authority.
- 4.54 Article 11(5) provides that where consent for the exercise of powers under paragraph (2) is not provided within 42 days of notification, the undertaker is to be treated as having been granted deemed consent.

Article 12 – Application of the 1991 Act

- 4.55 Article 12 provides for the application of the 1991 Act. Although not included in the Model Provisions, this wording can be found in other DCOs such as Hornsea Three 2020, SLP and 2020.
- 4.56 Paragraph (4) provides that certain provisions of the 1991 Act listed in that paragraph will not apply. In many cases, the exercise of the disapplied powers would be inappropriate to a project authorised by a DCO. For example, one of the powers is to direct undertakers to locate their works in a different street than that proposed (s56A). Where works are being carried out under permitted development rights that is not commonly problematic, however works under the Order are constrained by the Order limits and ES assessment, and no consent would be in place to move the works outside of that envelope. It is therefore appropriate to be clear within the Order that this power cannot be applied in this case.
- 4.57 The disapplication of these provisions (which are designed primarily to regulate the carrying out of street works by utility companies in respect of their apparatus) is appropriate given the scale of works proposed under the Order, the specific authorisation given for those works by the Order and the specific provisions in the Order which regulate the carrying out of the Order works.

Article 13 – Temporary restriction of public rights of way

- 4.58 This article can be found in Article 10 of the model provisions, similar wording can also be found in SLP 2020. The article permits the temporary restriction of use (often called stopping up) of the named public rights of way specified in column (2) of Schedule 6.

Article 14 – Temporary restriction of use of streets

- 4.59 This article allows for the temporary alteration, diversion or restriction of streets for the purposes of authorised development, whilst ensuring that essential pedestrian access to and from premises along that street is maintained if necessary (paragraph (3)). This power is required because it is necessary to be able to restrict the use of the street in order to allow installation of the pipeline. Closures and traffic management will also be required to facilitate the creation or improvement of junctions. Where possible and safe, closures for access junction works will be partial only and not close the full width of the carriageway.
- 4.60 Paragraph (2) confers a power on the undertaker where a street has been temporarily stopped up under this article to use it as a temporary working site. It is not anticipated that any street would be used as a working site except when undertaking works affecting the carriageway itself.
- 4.61 Paragraph (6) provides a right to compensation for any person suffering loss due to the suspension of a private right of way under this article. The undertaker is not aware of any private rights of way in streets however this article is retained as precautionary in the case that unidentified, extant title rights to take access exist along the same lines as the current public highway.
- 4.62 Paragraph (7) states that where the street authority fails to notify the undertaker of its decision in respect of an application for consent within 42 days of the application being made is deemed to have given its consent. This time limit is considered necessary to remove the possibility for delay and provide certainty that the authorised development can be delivered by the undertaker in a timely fashion. As a nationally significant infrastructure project, the authorised development should not be at risk of being held up due to a failure to respond to an application for consent.
- 4.63 This provision has been included in numerous previous orders including River Humber 2016, North Shropshire 2020, Norfolk Vanguard 2022, Hornsea Three 2020, Richborough Connection Project 2017.

Article 15 – Access to works

- 4.64 This article provides a general power to form and layout means of access within the Order limits, with the consent of the street authority, to provide an appropriate degree of flexibility in case the need for an access only becomes apparent at later stage in the implementation of the proposed development.
- 4.65 Paragraph 2 confirms that, where a street authority receives an application for consent under paragraph (1), it is deemed to have granted its consent to that application if it fails to notify the undertaker of its decision by the end of the period of 42 days beginning with the date on which the application was made. As elsewhere, it is considered necessary to remove the possibility for delay and provide certainty that the proposed development can be delivered by the Undertaker in a timely manner.
- 4.66 This article can also be found in SLP 2020, and constitutes an adapted model provision.

Article 16 – Agreements with street authorities

- 4.67 This article provides that the undertaker and street authorities may enter into agreements relating to various works on streets and bridges. The article provides a list which reflects the model provisions, save that sub-paragraph (1)(b) has been added to clarify that, as well as providing for the construction of streets (including any structures carrying those streets) an agreement may relate to strengthening, improving, repairing or reconstructing streets (or structures). It is anticipated that one bridge carrying a street may need to be

strengthened or otherwise improved to allow use by the undertaker during construction. This provision has precedent in River Humber 2016 and SLP 2020.

- 4.68 The power to enter into agreements with street authorities is necessary as section 278 of the Highways Act 1980 (agreements as to the execution of works) does not relate to the powers under this Order.

Article 17 – Use of private roads

- 4.69 The article authorises the temporary use of private roads within the Order limits by persons or vehicles, for the purposes of, or in connection with, the construction and maintenance of the proposed development, without the need for the undertaker to acquire a permanent right of way over that land. Paragraph 2 clarifies that the undertaker will be liable for any loss or damage a person may suffer by reason of the exercise of this power.
- 4.70 This article does not create a right of the undertaker to exclude other users. This article has been based on article 13, SLP 2020.

Article 18 – Traffic regulation.

- 4.71 This article provides that the undertaker may, with the consent of the relevant traffic authority, for the purposes of, or in connection with, the construction of the authorised development impose temporary and permanent traffic regulation orders (“TROs”). Paragraph 5 permits the removal of said orders by the undertaker from time to time by subsequent exercise of the same power.
- 4.72 Paragraph 1 permits the undertaker to impose TROs in respect of any road for the purposes of the proposed development, whether or not within the Order limits, provided the consent of the traffic authority is obtained. Paragraph 1 provides a number of examples for the types of orders that may be imposed.
- 4.73 Paragraphs (2) and (3) set out a notification process whereby the undertaker must notify and advertise its intention to impose a TRO on the road prior to the TRO coming into effect. The proposed timeframes are consistent with those approved the River Humber 2016. Paragraph (4) provides that any TRO made under this article has the same effect as if it was made by the traffic authority or local authority where the road is located thus granting the TRO the necessary status under the Road Traffic Regulation Act 1984 providing the undertaker with the necessary statutory footing to enforce the TRO.
- 4.74 Article 18(7) confirms that where a traffic authority fails to respond to an application for consent under paragraph (1) within 42 days of receiving the application, it is deemed to have given its consent.
- 4.75 Similar wording to this article is included in both River Humber 2016 and SLP 2020.

Part 4 – Supplemental Powers

Article 19 – Discharge of water

- 4.76 This article establishes statutory authority for the undertaker to discharge water into any watercourse, public sewer or drain in connection with the carrying out or maintenance of the authorised development. The undertaker must first obtain the consent of the owner of said watercourse, public drain or sewer, and that consent may be given with reasonable conditions, but cannot be unreasonably withheld.
- 4.77 The article does not authorise any damage to the bed or bank of any water course, and the undertaker cannot rely on this article to construct any works in under over or within eight metres of any watercourse forming part of a main river, or within 16 metres of a tidally influenced main river without the prior written consent of the Environment Agency or Natural Resources Wales as appropriate to the location.

4.78 Paragraph 6 of the article requires the undertaker to take reasonable practicable steps to ensure that any water that is discharged is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

4.79 This article is based on the model provisions, and can be found in other DCOs including Article 18 SLP 2020, Article 15 North Shropshire 2020, and Article 15 Norfolk Vanguard 2022.

Article 20 – Maintenance of drainage works

4.80 This article exists to clarify that the realignment of any drainage works or other works that are carried out as part of the proposed development do not affect any existing allocation of responsibility for the maintenance of those drains, unless the re-allocation of that responsibility to the undertaker is agreed with the pre-existing responsible party.

4.81 The provision is not included in the model provisions, but can be found in Article 5 of SLP 2020, which in turn found precedent in Article A14 Cambridge to Huntingdon Improvement Order 2016 and article 5 of the Testo's Junction Alteration Order 2018

Article 21 – Authority to survey and investigate the land

4.82 This article is based on the model provisions and confers on the undertaker a power to enter land for the purposes of surveying or investigating it, making trial holes, carrying out environmental or archaeological investigations and to place and leave apparatus on the land subject to giving the owner of the land at least 14 days' notice.

4.83 The power in the model provision is extended to include the ability to take, and process, sample of water, air, soil or rock, flora, bodily excretions, non-human dead bodies, or any non-living thing present as a result of human action found on, in or over the land. This wording is not contained in the model provision but reflects wording of section 53(3A) of the 2008 Act.

4.84 Trial holes cannot be made on public highway without the consent of the highway authority or on a private street without the consent of a street authority, not to be unreasonably withheld or delayed.

4.85 Paragraph 6 clarifies that compensation will be available for those owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article.

Article 22 – Protective work to buildings

4.86 This is a standard article, the drafting of which has been based on the model provisions, Article 19 SLP 2020, Richborough Connection Project 2017. The purpose of this article is to allow the undertaker to undertake protective works to buildings such as underpinning, as may be required, and to set out the procedure that will apply in those circumstances.

4.87 Paragraph 7 clarifies that compensation will be available to the owners and occupiers of any building or land in relation to which powers under this article have been exercised for any loss or damage arising to them by reason of the exercise of this article.

Article 23 – Removal of human remains

4.88 This article requires the undertaker, before it carries out any development or works which will or may disturb any human remains, to remove those remains. This article is included on a precautionary basis in case human remains are discovered while carrying out the authorised development.

4.89 Without this article, authorisation from the appropriate Minister would be required to remove remains. The Article sets out a process of notification of the discovery of remains and for their removal and reinterment or cremation. The removal of any remains is

required to be carried out in accordance with any directions which may be given by the Secretary of State.

- 4.90 Article 18 follows Model Provision 17 and was included in Norfolk Vanguard 2022 as article 17.

Part 5 – Powers of acquisition

- 4.91 The ability to include powers in a DCO to acquire land, or create, suspend, extinguish or interfere with interests in or rights over land (whether compulsorily or by agreement) is provided for under section 120(3) and (4) and paragraphs 1 and 2 of Schedule 5 to the 2008 Act. These paragraphs provide the justifications for the powers in this Part.

Article 24 – Compulsory acquisition of land

- 4.92 This article is based of article 28 of the model provisions and article 20 SLP 2020. This article authorises the acquisition of land which is required to carry out, or facilitate or is incidental to, the authorised development. The land to be acquired is listed in the book of reference. The power of acquisition is qualified by articles 26 (compulsory acquisition of rights and restrictive covenants) and 34 (temporary use of land for carrying out the authorised development).

Article 25 - Time limit for exercise of authority to acquire land compulsorily

- 4.93 This article reflects article 10 of the model provisions and grants the undertaker 5 years to issues notices to treat, or to execute a general vesting declaration to acquire the land that is subject to the power of compulsory purchase. The article also grants the undertaker 5 years to exercise powers of temporary possession of land.

Article 26 – Compulsory acquisition of rights and restrictive covenants

- 4.94 This article permits the undertaker to acquire such rights over land, or impose such restrictive covenants affecting the land as may be required for any purpose for which that land may be acquired under article 24 (compulsory acquisition of land). These rights can be acquired by creating new rights, or acquiring pre-existing rights.

- 4.95 Paragraph 2 provides for land described in Schedule 8, the undertaker's powers of compulsory acquisition are limited to the acquisition of such rights, and the imposition of such restrictive covenants, as set out in that Schedule. Paragraph 3 provides that where the undertaker only needs to acquire rights over land it is not obliged to acquire any greater interest in that land.

- 4.96 Paragraph (4) applies Schedule 9, which imposes modifications to the compulsory purchase and compensation provisions under general legislation. They do not affect the entitlement to compensation, but generally ensure that the compensation code applies to the additional categories of acquisition covered by the Order and the creation of new rights and the imposition of restrictive covenants in particular. This is a consequence of the extension of land acquisition powers to these categories (done to allow lesser land interests to be acquired).

- 4.97 The flexibility awarded by this article allows the undertaker to reduce the amount of freehold that that is acquired, where new, permanent rights can be relied on instead. The flexibility is also appropriate to allow for continued negotiations with owners of the Order land. The provision broadly follows the model provisions and is a provision that is usual in Transport and Works Act Orders. An example can be found in Article 20 Norfolk Vanguard.

- 4.98 Article 26 is based on article 21 of the Model Provisions. It differs from the Model Provisions in the following respects:

- (a) Paragraph (1) allows the undertaker to acquire existing rights and create new rights over any of the Order land. Although the undertaker has sought to identify

all of the plots which are to be subject to the acquisition or creation of rights and has set these out in Schedule 7, this provision ensures that the undertaker retains the flexibility to acquire or create rights over land where that land might otherwise have to be acquired outright.

- (b) Paragraph (2) is included to clarify that the land identified in Schedule 8 may only be subject to the acquisition or creation of rights or imposition of restrictive covenants, and may not be subject to outright acquisition.
- (c) Paragraph (3) refers to Schedule 2A of the Compulsory Purchase Act 1965, as modified by Schedule 8, rather than section 8 of the Compulsory Purchase Act 1965. The effect is to limit the possible exceptions to this article to cases where part only of a house, building, factory, park or garden belonging to a house is being acquired.
- (d) Paragraph (4) confirms that Schedule 9 has effect for the purpose of modifying compensation provisions to ensure that they apply to the compulsory acquisition or creation of rights, or imposition of restrictive covenants, under this article.

Article 27 – Statutory authority to override easements and other rights

- 4.99 This article confirms that the undertaker has the authority to carry out the authorised development and to do anything else authorised by the Order, and this authority permits the undertaker to interfere with any easement, liberty, privilege, right or advantage annexed to land and affecting other land, including any natural right to support or breach any restriction of land arising by virtue of contract.
- 4.100 Whilst not a model provision, this article has been used in Article 19 North Shropshire 2016, and Article 25 River Humber 2016.

Article 28 – Compulsory acquiring of land: minerals

- 4.101 This article incorporates Parts 2 and 3 of Schedule 2 (minerals) to the Acquisition of Land Act 1981 to any land acquired by the undertaker that may contain mines and minerals. The effect of this provision is that the undertaker is prevented from acquiring the rights to any mines and minerals underneath the acquired land, unless expressly purchased, and provides mine owners with the ability to work the mines and extract minerals, subject to restrictions. This article is based on the model provisions, and has been approved in Article 22 of SLP 2020.

Article 29 – Private rights

- 4.102 This article applies to all land subject to compulsory acquisition under article 24 (compulsory acquisition of land) and article 26 (compulsory acquisition of rights and restrictive covenants). It provides that where land is compulsorily acquired, existing private rights or restrictive covenants are suspended and unenforceable. In the case where any continuance of such private right would be inconsistent with the acquisition of the land, or creation of new rights of restrictive covenants, that pre-existing right shall be extinguished.
- 4.103 Paragraph (3) provides that rights over the Order land that is already owned by the undertaker are extinguished on commencement of any activity authorised by the Order which interferes with or breaches those rights.
- 4.104 Paragraph (4) provides that all private rights over land which the undertaker takes temporary possession of under the Order will be suspended and unenforceable for as long as the undertaker remains in lawful possession of the land.
- 4.105 Paragraphs (5) to (8) make provision for compensation and for circumstances where rights are preserved.

4.106 Article 29 is based on article 22 of the Model Provisions. It differs from the Model Provisions in the following respects:

- (a) It applies to all private rights, not just private rights of way. This is to reflect the broad nature of private rights that may exist over the Order land including easements.
- (b) Paragraph (2) is included to confirm that where land is subject to the acquisition or creation of rights or the imposition of restrictive covenants, any other rights in that land are extinguished if their continuance would be incompatible with the right or covenant being acquired or created by the undertaker.
- (c) Paragraph (3) (paragraph (2) of the Model Provision) is amended to refer to the Order land, rather than “the limits of land which may be acquired shown on the land plan”, and to clarify the circumstances in which other rights in land owned by the undertaker will be extinguished.
- (d) Paragraph (4) is included to clarify the position where the undertaker takes temporary possession of land.

4.107 This article has precedence in article 21 of Norfolk Vanguard 2022 and article 21 of Hornsea Three 2020.

Article 30 – Application of the 1981 Act

4.108 This article applies (with minor modifications to ensure consistency between the terms of the Order and the 1981 Act) the provisions of the Compulsory Purchase (Vesting Declarations) Act 1981 to compulsory acquisition under the Order so that the undertaker has the option to acquire land via the vesting declarations procedure.

4.109 Vesting declarations are one of two ways of acquiring land that is subject to compulsory purchase (the other being by means of a notice to treat). They allow several parcels to be acquired at once and therefore more efficiently than under the notice to treat procedure.

4.110 The modifications to the 1981 Act contained in this article can be summarised as follows:

- (a) Paragraph (3) modifies section 1(2) so that section 1 applies to the undertaker.
- (b) Paragraph (4) modifies section 5 to remove the reference to situations where the compulsory purchase order is subject to special parliamentary procedure.
- (c) Paragraph (5) omits section 5A, on the basis that the Order prescribes the time limit for compulsory acquisition in article 21.
- (d) Paragraph (6) modifies the statutory reference in section 5B(1), on the basis that the 2008 Act contains equivalent provisions that apply in respect of development consent orders. The crossreference to section 5A is also modified, to reflect that the time limit is set out in article 21.
- (e) Paragraph (7) modifies the statutory references in section 6(1)(b), on the basis that the 2008 Act contains equivalent provisions that apply in respect of development consent orders.
- (f) Paragraph (9) modifies paragraph 1(2) of Schedule A1 to change the reference to compulsory purchase orders excluding land that is 9 metres or more below the surface from the counter-notice procedure.
- (g) Paragraph (10) clarifies that references to the Compulsory Purchase Act 1965 in the 1981 Act are to be construed as references to the 1965 Act as applied by section 125 of the 2008 Act and as modified by article 29, on the basis that both section 125 and article 29 modify the provisions of the 1965 Act.

4.111 Article 30 is based on article 23 of the Model Provisions. Due to extensive changes to the relevant provisions of the 1981 Act since the Model Provisions came into force, the wording of this article departs significantly from the Model Provisions. The drafting of this article follows article 22 of Hornsea Three 2020.

Article 31 – Acquisition of subsoil or airspace only

4.112 Acquisition of subsoil or airspace only authorises the undertaker to acquire the subsoil in or airspace over any Order land without acquiring the whole of that land. In certain cases it may be necessary only to acquire a stratum of land below the surface and in the absence of this article the undertaker would be obliged to acquire the whole interest in the land.

4.113 This article also authorises the undertaker to acquire interests in or rights over airspace a certain height above ground. This article was included in the model provisions. An example can be found at Norfolk Vanguard 2022.

4.114 The article allows the undertaker the flexibility to minimise so far as is possible the extent of interests to be acquired, with consequently less impact on landowners. This is in the public interest.

Article 32 – Modification of Part 1 of the 1965 Act

4.115 The purpose of this article is to ensure consistency between the terms of the Order and the Compulsory Purchase Act 1965, as applied by section 125 of the 2008 Act. This article appears in many DCOs, an example of which is article 26 SLP 2020.

Article 33 – Rights under or over streets

4.116 The purpose of this article is to allow the undertaker to appropriate and use land above or below streets within the Order limits, without having to acquire the street or any right or easement in it. The exercise of this power, without acquisition, is prohibited in the circumstances set out in paragraph (3). Compensation is payable for any loss or damage caused to an owner or occupier of land affected by the power of appropriation where no acquisition has taken place.

4.117 The authorised development requires to cross streets and create new accesses onto existing streets in several places. This article allows those works to be undertaken without interfering with the ownership of land under and above streets which is often separately held from the highway authority interest in the street itself.

4.118 This article was included in the Model Provisions as article 2 and an example can be found as article 29 in SLP 2020.

Article 34 – Temporary use of land for carrying out the authorised development

4.119 The purpose of this article is to allow the land set out in Schedule 7 to be occupied temporarily while the works are carried out. This is land which is required during construction of the authorised development but which is not required permanently. Article 34 also allows for the temporary occupation of any of the land intended for permanent acquisition that has not yet been acquired.

4.120 The article is based on article 28 of the model provisions, with a number of changes:

(a) First, the ability to occupy land temporarily that is subject to powers of permanent acquisition but that has not yet been acquired (paragraph (1)(a)(iii)) has been added. This allows the undertaker to occupy land without having to acquire it immediately.

(b) Secondly, paragraph (1)(e) has been added so that permanent works specified in column (2) of Schedule 7 may be left on land that has been temporarily occupied, rather than having to acquire such land for this purpose. The rationale for this is

that it reduces the amount of land that is required to be subject to outright acquisition. The intended scope of 'mitigation works' is any permanent works necessary and appropriate to mitigate the impacts of the authorised development (e.g. landscaping or ecological mitigation works)

~~(b)~~(c) [Paragraphs \(f\), \(g\) and \(h\) have been added following the precedent in Hornsea Three 2020. These paragraphs allow for the carrying out of works under temporary possession powers before permanent rights are acquired. They therefore allow faster delivery and for the minimum level of permanent acquisition minimising the impact on landowners.](#)

- 4.121 The inclusion of this article is important to ensure that the authorised development can be carried out efficiently and expeditiously following the making of the Order. The undertaker is entitled to either occupy and use land pending its permanent acquisition, or to temporarily occupy and use land that is not to be permanently acquired, with provision made for the restoration of the land and the payment of compensation to the affected landowners and occupiers for any loss or damage arising. These powers are considered to be reasonable given the status of the authorised development as a nationally significant infrastructure project.
- 4.122 If the powers conferred by this article were not included then the undertaker would be forced to seek permanent rights over, or the permanent acquisition of, all of the land required for the authorised development, which would be disproportionate for those plots which have been identified as being suitable for temporary occupation and use.
- 4.123 Examples of this article's use can be found in Article 26 Norfolk Vanguard 2022, and Article 26 Hornsea Three 2020.

Article 35 – Temporary use of land for maintaining the authorised development

- 4.124 This article provides that the undertaker may take temporary possession of land within the Order limits, as required for the purpose of maintaining the authorised development.
- 4.125 Paragraph (1)(b) authorises the construction of such temporary works and buildings on the land as may be reasonably necessary for that purpose. Under paragraph (5) all temporary works must be removed before the undertaker gives up possession under this article and the land must be restored to the reasonable satisfaction of the owners.
- 4.126 This power does not apply in relation to houses, gardens or any other buildings for the time being occupied (paragraph (2)).
- 4.127 Paragraph (3) requires at least 28 days' notice of intended entry to be served on the owners and occupiers of the land in question.
- 4.128 Paragraphs (6) to (8) provide for compensation to be paid to owners and occupiers of land of which temporary possession is taken under this article.
- 4.129 This article was included in the model provisions as article 29, in Hornsea Three 2020 as article 27 and Norfolk Vanguard 2022 as article 27.

Article 36 - Statutory undertakers

- 4.130 This article allows the undertaker to extinguish rights of statutory undertakers and remove and reposition their apparatus. Reference is made to the Order land so that this power is not restricted to apparatus which has been specifically shown on the Land Plans and described in the Book of Reference. In practice it is impractical to show and describe all such apparatus and so a general power for the extinguishment of rights and the removal or relocation of apparatus belonging to statutory undertakers over or within any of the Order land is required.

- 4.131 As the land over which this power may be exercised is shown on the Land Plans, and the beneficiaries of such rights are described in the Book of Reference, the requirements of Regulations 5(2)(i)(iii) and 7(1)(c) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 are satisfied.
- 4.132 This article is based on article 31 of the Model Provisions. It differs from the model provisions in that the article is expressed to be subject to the protective provisions in Schedule 10.

Article 37 – Recovery of costs of new connections

- 4.133 This article provides that if any statutory undertaker's apparatus is removed and this halts a supply from that apparatus to owners or occupiers of premises such that they have to seek a connection to other apparatus, then their reasonable costs in obtaining a new supply can be claimed from the undertaker.
- 4.134 This article was included in the model provisions as article 33.

Part 6 – Miscellaneous and general

Article 38 – Application of landlord and tenant law

- 4.135 This article provides that any agreement for the transfer of the benefit of the Order overrides landlord and tenant law so far as it would prejudice the operation of any agreement for leasing the whole of the authorised development or the right to operate it.
- 4.136 This article follows article 35 of the model provisions

Article 39 – Felling or lopping trees and removal of hedgerows

- 4.137 This article allows any tree or shrub that is within or encroaching upon the authorised development to be felled or lopped, or have its roots cut back, if it is considered to obstruct the construction, operation or maintenance of the Scheme or endanger anyone using it. Compensation is payable for any loss or damage caused.
- 4.138 Further, this article also authorises the removal of any hedgerow as defined in the Hedgerow Regulations 1997. The scheme includes the removal of a number of hedgerows. This article is based on article 39 of the model provisions and recent orders.

Article 40 – Trees subject to Tree Preservation Orders

- 4.139 This article provides authority to fell or lop trees subject to tree preservation orders. There are no identified TPOs within the Order Limits, however this provision ensures that where any are made, the authorised development can still be carried out and the pipeline protected from encroachment. Similar provision has been made in precedent orders, including article 35 of Hornsea Three 2020.

Article 41 – Crown rights

- 4.140 Article 3 is not a model provision, but it reflects the terms of section 135 of the 2008 Act and is also used in many made orders, including the East Anglia Three Offshore Wind Farm Order 2017 and Hornsea Three 2020.

Article 42 – Protective provisions

- 4.141 This article gives effect to Schedule 10, which contains provisions protecting the interests of third parties. It was not included in the model provisions but is a standard article in development consent orders that include protective provisions

Article 43 – Operational land for the purposes of the 1990 Act

4.142 The effect of this article is that the land within the Order limits is to be treated as the operational land of a statutory undertaker for the purposes of the Town and Country Planning Act 1990. Although section 264 of the 1990 Act is entitled “cases in which land is to be treated as not being operational land”, subsections (3) and (4) set out cases in which land is to be treated as operational land.

4.143 This article was included in the model provisions as article 36. This article is necessary to ensure that development is correctly classified under the Town and Country Planning Act 1990 and benefits from the appropriate permitted development rights.

Article 44 – Certification of plans, etc.

4.144 This article provides for various application plans and documents listed to be certified by the Secretary of State as true copies of those documents following the making of the Order. This is based on article 41 of the model provisions.

Article 45 – Service of notices

4.145 This article governs the service of notices required to be given under the Order. In particular it allows service by email with the consent of the recipient (paragraph (1)(c)), and deals with the situation of service on an unknown landowner (paragraph (4)).

4.146 This article was not included in the model provisions but is a sensible addition that has been included in previous orders including Article 44 of Hornsea Three 2020.

Article 46 – No double recovery

4.147 This article provides that compensation is not payable both under this Order and other compensation regimes for the same loss or damage. In addition, the article provides that there is not to be double recovery under two or more different provisions of this Order.

4.148 This article was not provided for in the Model Provisions but has been included in granted orders, such as Article 40 of the Port of Tilbury (Expansion) Order 2019. This article simply reflects the established position that a claimant in a compulsory purchase matter shall be compensated for no more than and no less than their loss.

Article 47 – Requirements, appeals etc.

4.149 This article provides for an appeal process for the refusal or non-determination of any details under a requirement by the relevant planning authority. It also provides a time limit for a decision by the relevant planning authority on the submission of any details submitted pursuant to a requirement. The details of the appeal procedure are provided in Schedule 2. It is required to ensure that subsequent applications for approval are determined appropriately.

4.150 This provision has precedent in the Hinkley Point C (Nuclear Generating Station) Order 2013 and the West Burton C (Gas Fired Generating Station) Order 2020.

Article 48 – Arbitration

4.151 This article governs any disagreement about any provision of the Order. Unless the Upper Tribunal (Lands Chamber) has jurisdiction the matter is to be settled by arbitration. If the parties cannot agree on who the arbitrator should be then this will be decided by the Secretary of State.

4.152 Section 45(2) provides that no decision of the Secretary of State is subject to arbitration.

4.153 This article was included in the model provisions as article 42.

5 SCHEDULES

Schedule 1 – Authorised Development

- 5.1 Part 1 of Schedule 1 describes the authorised development, which is described in detail in Chapter 2 of the Environmental Statement. The ancillary works are described in Part 2.

Schedule 2 – Requirements

Part 1 – Requirements

- 5.2 The requirements in Schedule 2 are the equivalent of planning conditions. They apply to the carrying out and operation of the authorised development and reflect the processes and procedures usually employed by the undertaker when implementing a project such as this.
- 5.3 The requirements provide that the various details and plans to be approved must, where appropriate, reflect the measures included in the Environmental Statement. The requirements also provide that the approved details and plans must be implemented as approved, unless further amendments to them are approved.

Requirement 1 – Interpretation

- 5.4 This paragraph defines a number of terms which are only used in the requirements and are accordingly not defined in article 2.

Requirement 2 – Time limits

- 5.5 This requirement specifies that the time limit for commencing the authorised development as being 5 years from the date on which the Order comes into force. It is included in the model provisions, and can be found as requirement 2 in SLP 2020, requirement 3 River Humber 2016.

Requirement 3 – Stages of authorised development

- 5.6 This requirement provides for the production and submissions to the relevant planning authority of a staging plan for the authorised development which is relevant to that authority before development commences. It varies from the model provisions in so far as it only requires the submission of the relevant plan to the relevant authority rather than the agreement of the relevant authority.
- 5.7 Similar wording can be found in requirement 3 SLP 2020, requirement 3 River Humber 2016, requirement 15 Norfolk Vanguard 2022, and requirement 6 Hornsea Three 2020.

Requirement 4 – Scheme Design

- 5.8 This requirement is an adaption to the equivalent requirement in the model provisions. It provides for above ground works to be carried out in ~~general~~ accordance with the general arrangement plans This is so as to allow the necessary but proportionate degree of flexibility in the construction of the authorised development. Definitive designs are not possible to produce at this stage.
- 5.9 Similar wording can be found in requirement 4 SLP 2020, requirement 4 River Humber 2016, and requirement 5 North Shropshire 2020.

Requirement 5 – Construction environmental management plan

- 5.10 This requirement is a modification of requirement 17 of the model provisions. It provides that construction works shall be carried out in accordance with a construction environmental management plan, an outline of which is submitted with the application.

The construction environmental management plan implements many of the measures and commitments set out in the register of environmental actions and commitments (“REAC”).

- 5.11 Similar wording can be found in requirement 6 SLP 2020, requirement 20 Norfolk Vanguard 2022, and requirement 17 Hornsea Three 2020, requirement 9 North Shropshire 2016, and requirement 5 Richborough Connection Project 2017.

Requirement 6 – Construction Traffic

- 5.12 This requirement is not in the model provisions, however, similar wording can be found in requirement 7 SLP 2020, requirement 15 River Humber 2016, and requirement 6 Hornsea Three 2020.
- 5.13 The requirement provides that the proposed development must not commence until a construction traffic management plan (“CTMP”) has been submitted to and approved in writing by the relevant highway authority.

Requirement 7 – Highway Accesses

- 5.14 This requirement provides that construction of any new permanent or temporary means of access to a highway, or alteration, or use of an existing means of access to a highway, shall not commence until an access plan for that access has been submitted to and approved by the relevant highway authority.
- 5.15 This requirement is an adaption of requirement 10 of the model provisions and similar wording can be found in requirement 11 Hornsea Three 2020.

Requirement 8 – Surface water drainage.

- 5.16 This provides that, where surface water drainage strategies have been produced for the listed works, those works may not commence until details of the surface water drainage system for that work has been approved by the relevant planning authority.

Requirement 9 – Contaminated Land and Groundwater

- 5.17 This is a modification of requirement 15 of the model provisions. Similar drafting can be found at requirement 10 SLP 2020.
- 5.18 The requirement requires that the local planning authority is notified in the event that contamination is found at any time when carrying out the authorised development. An investigation and risk assessment must then be carried out. Where remediation is required to control or prevent the release or potential release of contamination as a result of the works, a detailed remediation scheme must be prepared and approved by the relevant planning authority and the remediation carried out in accordance with the scheme.

Requirement 10 – Archaeology

- 5.19 This is a modification of requirement 16 of the model provisions and ensures that the proposed development is constructed in accordance with the Outline Archaeological Written Scheme of Investigation. No stage of construction must commence until a written scheme of investigation for areas of archaeological interest within that stage has been submitted to and approved by the relevant planning authority. Any archaeological works carried out under the scheme must be carried out by a suitably qualified and registered person or body.

Requirement 11 – Landscape and ecological management plan

- 5.20 This is a modification of requirement 17 of the model provisions and can be found in other DCOs such as requirement 12 SLP 2020, and requirement 9 Richborough Connection Project 2017.

- 5.21 This requirement provides that no stage of the authorised development that includes landscape and ecological management measures, must commence until a LEMP, for that stage, in accordance with the outline LEMP, has been submitted to and approved by the relevant planning authority.

Requirement 12 – Ecological surveys

- 5.22 This requirement provides that no stage of the authorised development may be commenced until a final pre-construction survey has been carried out for that stage to establish whether there are any European protected species present, or likely to be affected by the works. Where such species are found, licences may be required for the works and will have to be obtained under separate statutory provisions.
- 5.23 Similar wording can be found in requirement 28 of Norfolk Vanguard 2022, and requirement 19 River Humber 2016

Requirement 13 – Construction hours

- 5.24 Requirement 15 is included in the model provisions, and the wording of this requirement can be found in other DCOs such as requirement 14 SLP 2020.
- 5.25 This requirement confirms the permissible hours during which construction activities may be undertaken. In common with other made DCOs, provision is made for undertaking specified activities outside of these standard construction hours.

Requirement 14 – Operational noise

- 5.26 This requirement secures the maximum operational noise levels assumed in the ES to reach the impact conclusions relied upon.

Requirement 15 – [Provision of as built details](#)

- [5.27](#) This requirement was added at the request of the local planning authorities in order to endure that they would receive details of the precise ‘as-built’ routing of the pipeline for their records.

[Requirement 16 - Restoration of land](#)

- ~~5.27~~[5.28](#) This requirement follows requirement 35 of the model provisions. Similar wording can be found in requirement 16 River Humber 2016, requirement 20 Hornsea Three 2020.

- ~~5.28~~[5.29](#) The requirement requires that any land used temporarily for construction must be reinstated to a condition fit for its former use within 12 months of the completion of the authorised development.

- ~~5.29~~[5.30](#) The model provisions require reinstatement of land to its “former condition”, however, like River Humber 2020 this Order provides for the reinstatement to a “condition fit for its former use”, which reflects that immaterial changes that do not affect continuance of former use do not need to be dealt with.

- ~~5.30~~[5.31](#) The requirement also allows for 12 months for reinstatement rather than 6 months, this is to allow “winterisation” to protect soil structure. This approach was also taken in River Humber 2020.

Requirement ~~17~~[16](#) – Post-construction environmental management plans

- ~~5.31~~[5.32](#) Requirement 16 provides that operational and decommissioning environmental management plans must be submitted for the post-construction phases.

Requirements ~~18~~[17](#) to ~~20~~[19](#) - Administrative

~~5.32~~5.33 Requirements ~~17, 18, 19 and 20~~ and ~~19~~ concern the administration of discharges of requirements, providing that these must be in writing (~~187~~), may be amended (~~198~~) and that any work commenced on those discharges before the order comes into force will be valid steps for compliance with the Order (~~2019~~).

Part 2 – Procedure for Discharge of Requirements

~~5.33~~5.34 This Part provides a clear procedure for the discharge of requirements. It sets out how approvals are to be given, treatment of amendments, the requirement to keep a register of requirements, clear time limits for decisions to be made and makes provision for circumstances where the discharging authority requires further information to be provided in relation to an application for the discharge of a requirement. The timeframes provided for reflect the status of the proposed development as an NSIP.

~~5.34~~5.35 Part 2 reflects the processes that have been established in a number of other DCOs including SLP 2020, River Humber 2016, Norfolk Vanguard 2022, Hornsea Three 2020, North Shropshire 2020.

Schedule 3 – Streets subject to street works

~~5.35~~5.36 This Schedule lists the streets subject to street works. Street works are required to install the pipeline in locations where trenched installation will be used and to form new accesses, create visibility splays and to improve existing visibility splays. Much of the work required for accesses will be undertaken in highway verges but occupation of some areas of carriageways may be required to create new accesses or provide safe working areas.

Schedule 4 – New means of access

~~5.36~~5.37 This Schedule lists the new private means of access which will be created as part of the authorised development. The details of new accesses from adopted highways will require to be approved by the relevant planning authority under requirement 7 before works on those accesses can commence.

Schedule 5 – Streets to be temporarily restricted

~~5.37~~5.38 This Schedule lists the streets which will be temporarily restricted during construction.

Schedule 6 – Public rights of way to be temporarily restricted

~~5.38~~5.39 This Schedule lists the public rights of way, such as footpaths and bridleways, to be temporarily restricted. Where a right of way is to be temporarily stopped up, a diversion will be provided within the Order Limits will be provided wherever practical.

Schedule 7 – Land of which only temporary possession may be taken

~~5.39~~5.40 This Schedule lists the plot of which the undertaker may only take temporary possession and cannot acquire rights or ownership of the land.

Schedule 8 – Land in which only new rights etc. may be acquired

~~5.40~~5.41 This Schedule lists the plots within which the undertaker may only acquire rights and cannot acquire ownership. The rights which the undertaker may acquire are set out in Column (2). Restrictive covenants are also to be imposed to protect the pipeline, to ensure that planting or habitat works carried out by the undertaker can be retained and maintained for the required period and to prevent future construction on land required for drainage.

Schedule 9 – Modification of Compensation and compulsory purchase enactments for creation of new rights

~~5.41~~5.42 This Schedule modifies existing compensation legislation including the Land Compensation Act 1973 and the Compulsory Purchase Act 1965 to provide for the acquisition of rights and imposition of restrictive covenants as well as acquisition of ownership of the land.

Schedule 10 – Protective Provisions

~~5.42~~5.43 This Schedule sets out a number of protections for various bodies to ensure that the powers sought in the Order are exercised appropriately. Those provisions are not yet agreed with the named parties and negotiation of those is ongoing.

Schedule 11 – Removal of hedgerows

~~5.43~~5.44 This schedule sets out the lengths of hedgerows which may be interfered with or removed under the Order. It is divided into ‘important’ hedgerows and other hedgerows.

Schedule 12 – Arbitration Rules

~~5.44~~5.45 This Schedule provides an arbitration process. It is considered that this approach will provide greater certainty to all parties involved in the process and is preferential to the approach adopted in the model provisions. This can be found in Hornsea Three 2020.