

The Drax Power (Generating Stations) Order

Land at, and in the vicinity of, Drax Power Station, near Selby, North Yorkshire

Explanatory Memorandum
(Submitted for Deadline 5)



The Planning Act 2008
The Infrastructure Planning (Applications: Prescribed Forms and Procedure)
Regulations 2009 - Regulation 5(2)(c)

Drax Power Limited

Drax Repower Project

Applicant: DRAX POWER LIMITED
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GLOSSARY AND ABBREVIATIONS

The Glossary and Abbreviations are contained in the Glossary document submitted at Deadline 3, 22 November 2018

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1. INTRODUCTION

Overview

- 1.1 This Explanatory Memorandum has been prepared on behalf of Drax Power Limited ("**Drax**" or the "**Applicant**"). It forms part of the application (the "**Application**") for a Development Consent Order (a "**DCO**"), that has been submitted to the Secretary of State (the "**SoS**") for Business, Energy and Industrial Strategy, under section 37 of The Planning Act 2008 (as amended) (the "**PA 2008**"), and which was accepted for Examination on 26 June 2018.
- 1.2 Drax is seeking development consent for the repowering of up to two existing coal-powered generating units (Units 5 and 6) at the Existing Drax Power Station Complex with new gas turbines that can operate in both combined cycle and open cycle modes. The term "repower" is used as existing infrastructure, such as the steam turbine and cooling towers, that are currently used for the coal fired units would be re-utilised for the new gas fired generating units/stations. The repowered units (which each constitute a new gas fired generating station) would have a new combined capacity of up to 3,600 MW in combined cycle mode (up to 1,800 MW each), replacing existing units with a combined capacity to generate up to 1,320 MW (660 MW each). The new gas turbine generating stations (or units) have been designated the terms "Unit X" and "Unit Y". Each of Unit X and Unit Y would have (subject to technology and commercial considerations) a battery energy storage facility. The battery energy storage facilities may be stored within a single structure. The total combined capacity of the two gas fired generating stations, Unit X and Unit Y, and two battery storage facilities (i.e. the total combined capacity of the Proposed Scheme) is therefore 3,800 MW (the "**Proposed Scheme**").
- 1.3 No maximum capacity is specified for the battery storage facilities to allow for future improvements in technology which may allow greater storage capacity to be provided within the same parameters that are secured by the Order. However, given the overarching restriction on the combined gross electrical output capacity for the Proposed Scheme of up to 3,800 megawatts, the total capacity for the battery storage facility for both Units X and Y would be 200MW with both Units X and Y constructed.
- 1.4 The Proposed Scheme, therefore, comprises the construction of up to four generating stations for the purpose of section 14(1) of the PA 2008, and therefore four Nationally Significant Infrastructure Projects, being up to two gas fired generating stations and up to two battery storage facilities, each with a capacity of more than 50 MW. A DCO is therefore required for the Proposed Scheme as it falls within the definition and thresholds for a "Nationally Significant Infrastructure Project" (a "**NSIP**") under sections 14 and 15(2) of the PA 2008. The DCO, if made by the SoS, would be known as the Drax Power (Generating Stations) Order 201* (the "**Order**"). A draft of the Order has been submitted with the Application and most recently revised at Deadline 3 (Examination Library Reference REP3-007).

- 1.5 This Explanatory Memorandum has been prepared to explain the purpose and effect of each article of, and the Schedules to, the Order, as required by Regulation 5(2)(c) of the APFP Regulations.

Drax

- 1.6 Drax Power Station is owned and managed by Drax Power Limited, which is part of the Drax Group Plc; one of the UK's largest energy producers. Drax Power Limited is the Applicant for the proposed Application, as referred to in this and all other application and consultation documentation.

The Site

- 1.7 The Site is approximately 71.41 ha and lies approximately 4 m Above Ordnance Datum (AOD).
- 1.8 The Site Boundary (depicted with a red line on the Site Location Plan submitted at Deadline 2, Examination Library Ref REP2-005) represents the maximum extent of all potential permanent and temporary works required as part of the Proposed Scheme. The Site (or the "Order limits") is shown on the Land Plans (Examination Library Reference REP2-006) and Works Plans (Examination Library Reference REP2-007).
- 1.9 The Site comprises the Power Station Site (situated within the Existing Drax Power Station Complex), the Carbon capture readiness reserve space and the Pipeline Area (including the Rusholme Lane Area). These areas have been divided into a number of development parcels shown on Figure 1.3 in Chapter 1 (Introduction) of the Environmental Statement (Examination Library Reference APP-069).
- 1.10 The current land uses at these development parcels are described in Table 3-1 of the Environmental Statement Chapter 3 (Site and Project Description) (Examination Library Reference APP-071).
- 1.11 The entire Site lies within the administrative boundaries of Selby District Council ("**SDC**") and North Yorkshire County Council ("**NYCC**").
- 1.12 Drax Power Station is a large power station comprising originally of six coal-fired units. It was originally built, owned and operated by the Central Electricity Generating Board and had a capacity of just under 2,000 MW when Phase 1 was completed in 1975. Its current capacity is 4,000 MW after the construction of Phase 2 in 1986.
- 1.13 Three of the original six coal-fired units were converted to biomass (Units 1-3) at the time of the Application and since August 2018, four units (Units 1-4) run on biomass with only two units (Units 5 and 6) running on coal. One or both of Units 5 and 6 will be repowered as part of the Proposed Scheme, this means the existing coal-fired units would be decommissioned and replaced with newly constructed gas-fired units utilising some of the existing infrastructure. The area within the Existing Drax Power Station Complex where development is

proposed is referred to as the Power Station Site and is approximately 46.01 ha.

- 1.14 Drax Power Station is surrounded by the villages of Drax, approximately 700 m to the south, Long Drax, approximately 900 m north-east, Hemingbrough, approximately 2 km north, and Camblesforth, approximately 1 km south-west. Larger towns in the vicinity of the Existing Drax Power Station Complex are Selby, approximately 5 km north-west, and Goole, approximately 7.5 km south-east.
- 1.15 Other land within the Power Station Site and the Carbon capture readiness reserve space includes open grassland, scrub and agricultural land. The Pipeline Area is mainly in agricultural use and includes land classified as Grade I 'Excellent' and Grade II 'Very Good' in the Agricultural Land Classification's (ALC) high level dataset. A full description of environmental features both within the Site and in the surrounding area is given within the Environmental Statement chapters dealing with specific environmental topics, and are also shown in Figures 3.1a and 3.1b of Chapter 3 of the Environmental Statement (Examination Library Reference APP-071).
- 1.16 A more detailed description of the Site is provided at Chapter 3 (Site and Project Description) of the Environmental Statement (Examination Library Reference APP-071).

The Proposed Scheme

- 1.17 The Proposed Scheme contains up to four generating stations (which are each NSIPs in their own right). The NSIPs are described in Work Numbers 1, 2, 3A and 3B. The below summaries all elements comprising the Proposed Scheme:
 - 1.17.1 **Work No. 1 - An electricity generating station (Unit X)** fuelled by natural gas and with a gross electrical output capacity of up to 1,800 megawatts including:-
 - (a) **Work No. 1A** – a gas generating unit: gas turbine(s) able to operate in both combined cycle and open cycle modes; turbine hall building; heat recovery steam generator(s) and building(s); flue emission stack(s) for heat recovery steam generator(s); bypass stack(s); transformers; gas turbine air inlet filter house; power control centre; feed water pump house building; water supply, pipelines and storage tanks; emergency generator; switchgear; turbine outage store buildings; 400 kilovolt electrical underground cables and telemetry and electrical protection auxiliary cabling connecting to Work No. 4A; and a new main fuel gas station;
 - (b) **Work No. 1B** – a new main pipe rack carrying main steam and condensate and auxiliary cabling and pipework; piling for

foundations; and modifications to the existing steam turbine, generating plant and turbine hall building;

- (c) **Work No. 1C** - a new underground gas pipeline across New Road connecting Work No. 1A to Work No. 5; and
- (d) **Work No. 1D** – connections for Work Nos. 1A, 1B and 1C to existing equipment and utilities; ground raising and preparation works; site lighting infrastructure; internal roadways, car parking, pedestrian network, cycle parking and hardstanding; drainage and waste management infrastructure; electricity (including a 132 kilovolt electricity cable across New Road), water, wastewater and telecommunications; and landscaping.

1.17.2 Work No. 2 – An electricity generating station (Unit Y) One electricity generating station (Unit Y) fuelled by natural gas and with a gross electrical output capacity of up to 1,800 megawatts including:-

- (a) **Work No. 2A** – a gas generating unit: gas turbine(s) able to operate in both combined cycle and open cycle modes; turbine hall building; heat recovery steam generator(s) and building(s); flue emission stack(s) for heat recovery steam generator(s); bypass stack(s); transformers; gas turbine air inlet filter house; power control centre; feed water pump house building; water supply, pipelines and storage tanks; emergency generator; switchgear; 400 kilovolt electrical underground cables and telemetry and electrical protection auxiliary cabling connecting to Work No. 4B; and a new main fuel gas station;
- (b) **Work No. 2B** – a new main pipe rack and extension to the pipe rack in Work No. 1B carrying main steam and condensate and auxiliary cabling and pipework; and modifications to the existing steam turbine, generating plant and turbine hall building;
- (c) **Work No. 2C** – a new underground gas pipeline across New Road connecting Work No. 2A to Work No. 5 or infrastructure to connect the underground gas pipeline constructed in Work No. 1C to Work No. 2A and Work No. 5; and
- (d) **Work No.2D** – connections for Work Nos. 2A, 2B and 2C to existing equipment and utilities; ground raising and preparation works; site lighting infrastructure; internal roadways, car parking, pedestrian network, cycle parking and hardstanding; drainage and waste management infrastructure; electricity, water, wastewater and telecommunications; and landscaping.

1.17.3 Work No. 3A – One battery storage facility (in connection with Unit X) - battery energy storage cells with converters; a structure protecting the battery energy storage cells; transformers; switch gear and ancillary

equipment; electrical underground cable connecting to Work No. 1A; ground raising and preparation; flood mitigation channel; lighting and landscaping;

- 1.17.4 **Work No. 3B – One battery storage facility (in connection with Unit Y)** - battery energy storage cells with converters; a structure protecting the battery energy storage cells or infrastructure to include the battery energy storage cells in the structure(s) within Work No.3A; transformers; switch gear and ancillary equipment; and electrical underground cable connecting to Work No. 2A.
- 1.17.5 **Work No. 4A – Gas insulated switchgear banking building in (connection with Unit X)** and a building containing control equipment.
- 1.17.6 **Work No 4B – Gas insulated switchgear banking building in (connection with Unit Y).**
- 1.17.7 **Work No. 5 – A natural gas receiving facility compound** including pipeline inspection gauge trap receiving equipment; isolation valves; inline valves; metering; heat exchangers; filtering, pressure regulation equipment; pipework; electricity supply kiosks and associated cabling; emergency generator; electrical pre-heaters and electrical compressors housed in a building; boiler house(s) with gas pre-heat boilers and stacks; control and instrumentation kiosk(s) and associated wiring; creation of a permanent access road from New Road; security infrastructure; a new underground gas pipeline; external cooling system; ground raising and ground preparation works and landscaping.
- 1.17.8 **Work No. 6 – Above ground installation** including:-
 - (a) **Work No. 6A** - above ground installation (also referred to as a minimum offtake connection compound) containing a minimum offtake connection comprising: remotely operable valves, control and instrumentation kiosk(s), pipework and electrical supply kiosk(s); security infrastructure; ground raising and preparation works; site drainage including new outfall to Dickon Field Drain, new culvert and waste management infrastructure; electricity and telecommunications connections and other services; underground gas pipeline connecting to Work No. 6B; creation of permanent accesses, one being from Rusholme Lane to the AGI, and the second being from the first access into the field to the south of Dickon Field Drain; creation of a new culvert on Dickon Field Drain; and landscaping;
 - (b) **Work No. 6B** - above ground installation containing a pipeline inspection gauge (“PIG”) facility, comprising: a PIG launching facility, emergency control valves, isolation valves, control and instrumental kiosk(s), pipework and electrical supply kiosk(s); security infrastructure; ground raising and preparation works;

site drainage and waste management infrastructure; electricity and telecommunications connections and other services; below ground sacrificial anode pit; and landscaping;

- (c) **Work No. 6C** – (in connection with Work No. 6A) a temporary construction laydown area; and
- (d) **Work No. 6D** – (in connection with Work No. 6B) a temporary construction laydown area and creation of up to two construction access routes from Rusholme Lane.

1.17.9 **Work No. 7 – A gas pipeline** including:-

- (a) **Work No. 7A** - an underground gas pipeline connection and telemetry cabling, approximately 3km in length and up to 600mm nominal diameter, connecting Work No. 5 to Work No. 6B; pipeline field marker posts and cathodic protection test/transformer rectifier unit(s); below ground drainage works; works required in order to protect existing utilities infrastructure; tree and hedge removal; landscaping; and
- (b) **Work No. 7B** – temporary construction laydown area(s).

1.17.10 **Work No. 8 – Electrical Connections:-**

- (a) **Work No. 8A** – in connection with Unit X, up to 400 kilovolt underground electrical connection between Work No. 4A and the existing 400 kilovolt National Grid substation busbars: electrical underground cables and telemetry and electrical protection auxiliary cabling; cable sealing ends; insulated switchgear and overhead busbars; trenching works; landscaping; site drainage; security and site lighting; and
- (b) **Work No. 8B** - in connection with Unit Y, up to 400 kilovolt underground electrical connection between Work No. 4B and the existing 400 kilovolt National Grid substation busbars of either:-
 - (i) electrical underground cables and telemetry and electrical protection auxiliary cabling; cable sealing ends; insulated switchgear and overhead busbars; trenching works; landscaping; and site drainage; OR
 - (ii) electrical underground cables, telemetry and electrical protection auxiliary cabling; a 400 kilovolt cable sealing end compound comprising: (1) cable sealing ends, (2) air insulated switchgear and overhead busbars, and (3) overhead conductor gantry, overhead conductors and other plant and structures required to manage the

transmission of electricity; trenching works; site drainage; landscaping and security and lighting.

1.17.11 Work No. 9 – Temporary construction laydown areas including:-

- (a) **Work No. 9A** - areas of hardstanding; car parking; pedestrian bridge including ducts for the carrying of electricity and other services; site and welfare offices and workshops; security infrastructure; site drainage and waste management infrastructure; electricity, water, waste water and telecommunications connections; and
- (b) **Work No. 9B** – areas of hardstanding; security infrastructure; up to two means of access; site drainage and waste management infrastructure; car parking; electricity, water, waste water and telecommunications connections.

1.17.12 Work No. 10 – Carbon capture readiness including:-

- (a) **Work No. 10A** - carbon capture readiness reserve space;
- (b) **Work No. 10B** - diversions for public rights of way 35.47/1/1 and 35.47/6/1; and
- (c) **Work No. 10C** - landscaping.

1.17.13 Work No. 11 – Retained and enhanced landscaping comprising soft landscaping including planting; landscape and biodiversity enhancement measures; and security fencing, gates, boundary treatment and other means of enclosure.

1.17.14 Work No. 12 – Decommissioning and demolition of sludge lagoons and construction of replacement sludge lagoons including:-

- (a) **Work No. 12A (in connection with Unit X)** – decommissioning and demolition of one existing sludge lagoon and reinstatement of one existing out of service sludge lagoon; and
- (b) **Work No. 12B (in connection with Unit Y)** - decommissioning and demolition of two existing sludge lagoons and construction of up to two new sludge lagoons.

1.17.15 Work No. 13 – Removal of existing 132 kilovolt overhead line and removal of two 132 kilovolt pylons and foundations.

1.17.16 Work No. 14 – Temporary passing place on Rusholme Lane.

- 1.18 The "Associated Development", for the purposes of section 115 of the PA 2008 comprises Work Nos. 4 to 14 of the authorised development, and further

associated development as set out in the final paragraph of Schedule 1 "Authorised Development" to the Order.

1.19 It is anticipated that subject to the DCO having been made by the SoS (and a final investment decision by Drax), construction work on the Proposed Scheme would commence in 2019 / early 2020. Unit X and Unit Y would be constructed in stages which are referred to as Stages 1 and 2. The overall construction programme, if both Unit X and Unit Y are constructed, is expected to last approximately 83 months (assuming a 12 month gap between the two construction stages) including commissioning of the second unit (i.e. Unit Y). Each construction stage would take approximately 34 months followed by commissioning. It is anticipated that the two construction periods would be separated by 12 months. The Gas Pipeline and the building to house the battery storage facilities (in connection with Units X and Y) would be constructed within the first half of this programme (Stage 1). The battery storage would be installed in two phases as each unit is repowered (that is, battery energy storage during Stage 1 in connection with Unit X, and battery energy storage during Stage 2 in connection with Unit Y). It is assumed that construction of Unit X would commence in 2019/2020 with OCGT capability by 2021/2022 and CCGT ready by 2022/2023. If both Unit X and Unit Y are built, the construction of Unit Y would likely commence in 2024 and be completed in 2027.

1.20 In order to construct Unit X and Unit Y and associated facilities on the Power Station Site, it is proposed to demolish, remove and relocate existing facilities at the Power Station Site. These works have been consented under the Town and Country Planning Act 1990 on 24 May 2018 (Application Reference 2018/0154/FULM).

1.21 A more detailed description of the Proposed Scheme is provided at Schedule 1 "Authorised Development" of the Order (Examination Library Reference REP3-007) and Chapter 3 (Site and Project Description) of the Environmental Statement (Examination Library Reference APP-071) (as amended by a non-material amendment application submitted at Deadline 2 and a non-material amendment application submitted at Deadline 3, as described in the cover letters for the respective Deadlines). The areas within which each of the main components of the Proposed Scheme are to be built is shown by the coloured and hatched areas on the Works Plans (Examination Library Reference REP2-007).

2. THE PURPOSE AND STRUCTURE OF THIS DOCUMENT

2.1 This Explanatory Memorandum has been prepared to explain the purpose and effect of each article of, and the Schedules to, the Order, as required by Regulation 5(2)(c) of the APFP Regulations.

2.2 It also seeks to identify and explain departures from the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 (the "**model provisions**"). Whilst the power for the SoS to designate, and the requirement to have regard

to, the model provisions have been removed by the Localism Act 2011, the Applicant considers it is still relevant to note and explain variations made in the Order compared to the model provisions. The Planning Inspectorate Advice Note 13 (Preparation of a draft order granting development consent and explanatory memorandum, April 2012) notes (at page 4) that the Planning Inspectorate finds it helpful to receive a 'track change' version of the draft development consent order, showing the departures from the model provisions. This explanatory memorandum therefore also notes variations from the model provisions. The 'track change' version of the Order compared to the model provisions can be found at **Appendix 1** to this document.

2.3 The Order includes a number of provisions to enable the construction, maintenance and operation of the Proposed Scheme. These are briefly described below and then considered in more detail in the following sections:

- 2.3.1 **Part 1: Article 1** sets out what the Order may be cited as and when it comes into force. **Article 2** sets out the meaning of various terms used in the Order;
- 2.3.2 **Part 2: Articles 3 to 5** provide development consent for the Proposed Scheme, and allow it to be constructed, maintained and operated. **Articles 6 and 7** set out who has the benefit of the powers of the Order and how those powers can be transferred. **Article 8** disappplies the Neighbourhood Planning Act 2017, section 23 of the Land Drainage Act 1991, byelaws made under that Act, section 24 of the Water Resources Act 1991, regulation 12 of the Environmental Permitting (England and Wales) Regulations 2016, and addresses inconsistencies between the Order and previous consents granted under the Planning and Electricity Acts in respect of the Power Station Site, which is located within the Existing Drax Power Station Complex;
- 2.3.3 **Part 3: Articles 9 to 15** provide for the undertaker (see paragraph 3.3 below for the definition of "undertaker" in the Order) to be able to carry out works to and within streets, to alter the layout of streets, to create or improve accesses, to temporarily stop up streets and public rights of way; and to permanently stop up and divert public rights of way;
- 2.3.4 **Part 4: Articles 16 to 18** set out three supplemental powers relating to discharge of water, authority to survey land and removal of human remains;
- 2.3.5 **Part 5: Articles 19 to 32** provide for the undertaker to be able to compulsorily acquire the Order Land and rights over/within it, and to be able to temporarily use parts of the Order Land for the construction or maintenance of the Proposed Scheme. The provisions also provide for the undertaker to suspend or extinguish certain private rights. The provisions provide for compensation to be payable to affected persons in respect of these powers, where that is not already secured

elsewhere. These articles also provide for powers in relation to equipment of statutory undertakers;

2.3.6 **Part 6: Articles 33 and 34** provide (respectively) powers in relation to trees which need to be removed or lopped and for hedgerows to be removed in relation to the Proposed Scheme and any protective works to buildings;

2.3.7 **Part 7: Articles 35 to 43** include various general provisions in relation to the Order:-

(a) **Article 35** provides protection for statutory undertakers through the protective provisions (set out in Schedule 12);

(b) **Articles 36 to 43** include provisions such as: application of statutes relating to leases; that the Order Land will be "operational land"; a defence to proceedings in respect of statutory nuisance; certification of documents relevant to the Order; notices served under the Order; procedures for approvals required under the Order; arbitration in case of disagreements under the Order; and guarantees in respect of the payment of compensation.

2.4 There are 14 Schedules to the Order, providing for:-

2.4.1 **Schedule 1** - the description of the Proposed Scheme;

2.4.2 **Schedule 2** - the requirements (a form of control akin to planning conditions) applying to the Proposed Scheme;

2.4.3 **Schedule 3 to 7** - matters in relation to streets, accesses and rights of way;

2.4.4 **Schedule 8** - land in which only rights may be acquired;

2.4.5 **Schedule 9** - amendments to statutes to ensure appropriate compensation is payable where new rights over land are acquired under the Order;

2.4.6 **Schedule 10** - land which may be used temporarily for the Proposed Scheme;

2.4.7 **Schedule 11** - the procedure for discharge;

2.4.8 **Schedule 12** - provisions protecting statutory undertakers and their apparatus;

2.4.9 **Schedule 13** – design parameters for the Proposed Scheme; and

2.4.10 **Schedule 14** – documents and plans to be certified.

3. PURPOSE OF THE ORDER

- 3.1 As the Proposed Scheme involves an onshore generating station with a capacity of over 50 MW, in England, it is a NSIP under sections 14(1)(a) and 15 of the PA 2008. The Applicant therefore requires development consent under the PA 2008 in order to construct, maintain and operate the Proposed Scheme. Development consent may only be granted by a DCO, following an application to the SoS (section 37 of the PA 2008).
- 3.2 Accordingly, the Applicant is making the Application to the SoS for a DCO for the construction, operation and maintenance of the Proposed Scheme in the District of Selby. The Proposed Scheme is referred to in the Order as "the authorised development".
- 3.3 The Order refers to the person authorised to exercise the powers in the Order as "the undertaker", and defines the undertaker as Drax Power Limited.
- 3.4 In addition to providing for the construction, operation and maintenance of the authorised development, the Order will, in accordance with section 120, section 122 and Schedule 5 of the PA 2008, authorise the acquisition of land and rights over land, and the extinguishment of, or interference with, interests in or rights over land.
- 3.5 The Book of Reference (Examination Library Reference REP2-017, a revised version of which is submitted at Deadline 3, Examination Library Reference REP3-011) sets out a description of the land and interests included in the Order which are also shown on the Land Plans (Examination Library Reference REP2-006). The Order provides for the areas which can be compulsorily acquired and what rights can be acquired and what other rights and interests will be affected. The Order and the Book of Reference should be read together with the Statement of Reasons (Examination Library Reference APP-022, a revised version of which is submitted at Deadline 3, Examination Library Reference REP3-010) which accompanies the Application and sets out the justification for the acquisition or interference with the Order Land.
- 3.6 Section 115(1) of the PA 2008 provides that development consent may be granted for "(a) development for which development consent is required, or (b) associated development". The SoS must be satisfied that all the elements included within the "authorised development" are either the NSIP or part of the NSIP or are associated development, in order to include them in the Order pursuant to section 115 of the PA 2008.
- 3.7 The Application is seeking consent for four generating stations, all of which are classed as a NSIP in their own right (satisfying section 15(1) and (2) of the PA 2008):
- 3.7.1 Unit X (Work No. 1 in Schedule 1 to the Order) is a generating station:
- (a) in England;

- (b) is to be located within the Existing Drax Power Station Complex, and is therefore an onshore generating station; and
- (c) with a capacity of up to 1,800 MW, would have a capacity of more than 50 MW.

3.7.2 Unit Y (Work No. 2 in Schedule 1 to the Order) is a generating station:

- (a) in England;
- (b) is to be located within the Existing Drax Power Station Complex, and is therefore an onshore generating station; and
- (c) with a capacity of up to 1,800 MW, would have a capacity of more than 50 MW.

3.7.3 Battery Storage Facility in connection with Unit X (Work No. 3A in Schedule 1 to the Order) is a generating station:

- (a) in England;
- (b) is to be located within the Existing Drax Power Station Complex, and is therefore an onshore generating station; and
- (c) whilst no output storage capacity is specified in the Order, the effect of the overarching restriction on the combined gross electrical output capacity for the Proposed Scheme of up to 3,800 megawatts, is that the total capacity for the battery storage facility for both Units X and Y is 200MW, and therefore more than 50 MW.

3.7.4 Battery Storage Facility in connection with Unit Y (Work No. 3B in Schedule 1 to the Order) is a generating station:

- (a) in England;
- (b) is to be located within the Existing Drax Power Station Complex, and is therefore an onshore generating station; and
- (c) whilst no output storage capacity is specified in the Order, the effect of the overarching restriction on the combined gross electrical output capacity for the Proposed Scheme of up to 3,800 megawatts, is that the total capacity for the battery storage facility for both Units X and Y is 200MW, and therefore more than 50 MW.

3.8 The four generating stations and the integral development comprised within Work Numbers 1, 2, 3A and 3B therefore constitute development for which development consent is required (as each are a NSIP, as set out above) under section 115(1)(a) of the PA 2008.

- 3.9 In accordance with Government commentary, Work Numbers 3A and 3B, being the two battery storage facilities (each with more than 50 MW output storage capacity), are generating stations under section 15(1) and (2) of the PA 2008. Government and Ofgem and the energy industry have directed that energy storage facilities should be categorised as a subset of a generating station given the process of electricity storage, which involves generating rather than storage. This is because in order to convert the stored potential energy into energy that can be output to the grid, the potential energy must be regenerated and it is this regeneration process that means the battery storage facility is a generating station. The Government confirmed this opinion in its Call for Evidence titled “A smart, flexible energy system” published by the Department for Business, Energy and Industrial Strategy and Ofgem (November 2016), which states at paragraph 22 that “*BEIS, the Scottish Government and the Welsh Government agree that a storage facility is a form of electricity generating station.*” This opinion was repeated in the response to the Call for Evidence published by the Government and Ofgem (a paper titled “Upgrading our energy system” (July 2017)) and from Ofgem in its paper “Clarifying the regulatory framework for electricity storage: licencing” (September 2017).
- 3.10 The Order also includes other development which is Associated Development (i.e. not an integral part of the NSIP itself) which is included at Work Nos. 4 to 14 (inclusive) of Schedule 1 to the Order.
- 3.11 Drax has considered Work Nos. 4 to 14 (the Associated Development) against the policy and criteria in DCLG “Guidance on associated development applications for major infrastructure projects” (April 2013). It is clear that all of these numbered works come within the guidance and are clearly capable of being granted development consent by the SoS pursuant to section 115.
- 3.12 In particular, Work Nos. 4 to 14 are all:-
- 3.12.1 directly associated with the four NSIPs, as they are all required for the construction, operation or maintenance of the generating stations, or to mitigate their impacts (paragraph 5(i) of the Guidance);
 - 3.12.2 subordinate to the four NSIPs - none of them are an aim in themselves (paragraph 5(ii));
 - 3.12.3 proportionate to the nature and scale of the four NSIPs (paragraph 5(iv)); and
 - 3.12.4 of a nature which is typically brought forward alongside a gas-fired generating station and a battery energy storage facility (paragraph 6).
- 3.13 Annex A and Annex B of the Guidance list “*examples of general types of associated development*” and “*examples of associated development specific to individual types of major infrastructure projects*”. The following are of relevance to Work Nos. 4 to 14 of the Proposed Scheme:-

- 3.13.1 "Formation of new or improved vehicular or pedestrian access" (Work Nos. 5, 6, 10 and 12);
 - 3.13.2 "Alteration or construction of roads, footpaths" (Work Nos. 5, 6, 10 and 12);
 - 3.13.3 "Highway / junction improvements" (highways access points in various Work Nos 6, 7, 9A and 14)
 - 3.13.4 "Parking spaces for workers and users of the principal development" (Work No. 9);
 - 3.13.5 "Temporary haul roads... and lay down areas" (relevant to Work Nos. 6, 7, 9 and 14);
 - 3.13.6 "Electricity networks", "Water/wastewater networks", "Fuel and pipe-line networks" and "Telecommunications networks" (Work Nos. 5, 6, 7 and 8);
 - 3.13.7 "Development undertaken for the purpose of addressing impacts" and "Hard and soft landscaping" (Work No. 11 specifically in relation to landscaping and relevant parts of a number of Work Nos. including 5, 6, 7, 8, 10 and 14);
 - 3.13.8 "Working sites, site offices and laydown areas" (Work Nos. 6, 7 and 9); and
 - 3.13.9 "Overhead / underground lines", "Substations", "Gas pipelines and pressure reduction stations" (Work Nos. 4, 5, 6, 7, 8 and 13).
- 3.14 As the Order seeks to apply and modify statutory provisions, including those relating to the compulsory acquisition of land, the Order has been drafted as a statutory instrument, in accordance with sections 117 and 120 of the PA 2008.

4. **PROVISIONS OF THE ORDER**

- 4.1 The Order consists of 43 operative provisions, each referred to as articles and 14 Schedules. The articles are considered below in numerical order (split between the "Parts" of the Order), and Schedules are considered along with the article which introduces them or to which they relate.

Part 1 (Preliminary) and Part 2 (Principal Powers)

- 4.2 Articles 1 (*Citation and commencement*) provides for the way in which the Order should be cited and when it takes effect.
- 4.3 Article 2 (*Interpretation*) provides for the interpretation of the rest of the Order, including the Schedules. Where appropriate, some Schedules also contain provisions setting out what terms mean in that particular Schedule. Article 2 makes alterations to the model provisions to accommodate departures from

such model provisions elsewhere in the Order, and to add required definitions, including:-

- 4.3.1 definitions of documents submitted as part of the Application and which are referred to in the Order (such as the Environmental Statement and various plans) have been added. These documents are more fully identified in Table 17 of Schedule 14 to the Order;
- 4.3.2 the definition of "apparatus" has the same meaning as in Part 3 of the New Roads and Street Works Act 1991. However, for the purposes of the Order this has been expanded to include electricity cables, telecommunications equipment, aerial markers, cathodic protection test posts, field boundary markers, pipelines, transformer rectification kiosks and electricity cabinets. This is required to ensure that the definition of apparatus is sufficiently broad to encompass the nature of street works which Drax needs to carry out. Similar wording has precedent in the Yorkshire and Humber (Carbon Capture and Storage Cross Country Pipeline) Order. Whilst this application was refused development consent by the SoS (in relation to grounds of the need and case for the proposed development) this approach was considered acceptable by the Examining Authority in its report of recommendation (as per the recommended form of draft development consent order, at Appendix A of that report);
- 4.3.3 the definition of "authorised development" has the same meaning as in section 32 of the PA 2008;
- 4.3.4 the definition of "commence" excludes "permitted preliminary works", to make it clear what works can be carried out without "commencing" the authorised development. The works identified in the "permitted preliminary works" are considered appropriate as the nature of these works (i.e. non-intrusive, above ground works or actions) means they are not expected to give rise to environmental effects requiring mitigation. Where it has been considered that it would not be appropriate to exclude an element of the permitted preliminary works from 'commencement', this element has been carved out of the requirement - for example, requirement 17 in Schedule 2 requires the Construction Environmental Management Plan to be approved prior to commencement of the authorised development, including the permitted preliminary works comprising site clearance only, as it was considered that such a plan should be in place before site clearance, so this has been expressly excluded from being permitted preliminary works in that instance;
- 4.3.5 a definition of "limits of deviation" has been added and will operate by reference to the Works Plans (Examination Library Reference REP2-007). These are the areas within which the authorised development can be constructed, see further below in relation to article 3;

- 4.3.6 a definition of "maintain" has been added to make clear what activities are authorised under article 4 (see below) during the operation of the authorised development, and in particular that it does not permit the undertaker to undertake such maintenance activities if they will give rise to any materially new or different environmental effects to those identified in the Environmental Statement (Examination Library Reference APP-069 – APP-137, with some revisions to various appendices being submitted during the Examination);
- 4.3.7 the definition of "street works" has been amended to refer to the works listed in the street works article (article 9(1)) so as to ensure consistency between the powers in the article and the definition itself; and
- 4.3.8 the "undertaker" is defined as Drax Power Limited, who has the benefit of the provisions of the Order, subject to the provisions of articles 6 and 7 (see below).
- 4.4 Sub-paragraph (2) has been included to reflect that "rights over land" (including new rights which are created or acquired) include any trusts, incidents, including restrictive covenants. Sub-paragraph (2) also makes it clear that references to the creation or acquisition of new rights include the imposition of restrictive covenants.
- 4.5 Sub-paragraphs (3) to (7) of article 2 have been added to provide clarity (respectively) that all distances, directions and lengths are approximate; that references to numbered works are to the works as described in Schedule 1 and shown on the Works Plans (Examination Library Reference REP2-007); as to how the word "includes" is to be construed; all areas described in the Book of Reference (Examination Library Reference REP2-017, a revised version of which is submitted at Deadline 3, Examination Library Reference REP3-011) are approximate; and that any statutory body includes that body's successor in title.
- 4.6 Article 3 (*Development consent etc granted by the Order*) grants development consent for the authorised development. Schedule 1 describes the authorised development in detail, split into "work numbers", each of which represents different sections or parts of the authorised development. This split of the authorised development between different work numbers enables the Order to refer to different parts of the authorised development by citing the relevant work number. The split also enables the Order and Works Plans (Examination Library Reference REP2-007) to delineate the area within which each "work" can be constructed, maintained and operated (see Article 3(2)). The areas within which each work can be constructed are therefore shown on the Works Plans.
- 4.7 Sub-paragraph (2) requires that the works authorised by the Order are situated in the areas and within the limits of deviation shown on the Works Plans (Examination Library Reference REP2-007). This is in order to provide certainty

as to what has been consented by the Order, in respect of which land areas. Article 3, Schedules 1, 2 and 13 operate together to provide the parameters within which the undertaker must construct (etc.) the authorised development. This parameter approach reflects a standard approach used in made orders, such as the Progress Power (Gas Fired Power Station) Order 2015, and is appropriate in the current Order as it serves to define the authorised development whilst preserving a sensible amount of flexibility in the implementation of the authorised development. The Environmental Statement (Examination Library Reference APP-069 – APP-137, with some revisions to various appendices being submitted during the Examination) has assessed the authorised development within the maximum envelope provide by the limits of deviation and Schedule 13.

- 4.8 Article 4 (*Maintenance of authorised development*) provides for the maintenance of the authorised development at any time. Article 4 reflects the terms of the model provisions, but text has been added to make clear that maintenance must be in accordance with the provisions of the Order. Article 4(2) restricts maintenance to the Order limits in order to provide a defined parameter within which this power can be exercised. A definition of "maintain" has been included, as referred to above, so that it is clear what the term involves. The Environmental Statement (Examination Library Reference APP-069 – APP-137, with some revisions to various appendices being submitted during the Examination) has assessed maintenance as defined in the Order.
- 4.9 Article 5 (*Operation of authorised development*) permits the operation and use of the generating stations comprised in the authorised development and is included under section 140 of the PA 2008. Article 5(2) specifically preserves the need for Drax to obtain any other operational consent that may be needed for the generating stations, in addition to the Order.
- 4.10 Article 6(1) (*Benefit of Order*) overrides section 156(1) of the PA 2008 (which is permitted by section 156(2)) and provides that the benefit of the Order is for the undertaker, rather than anyone with an interest in the land. Given the nature of the authorised development and the fact that powers of compulsory acquisition are sought, it would be impracticable and inappropriate for the Order to be "open" as to who may implement it, as might occur without this provision. The undertaker is defined in Article 2 as Drax Power Limited, as promoter of the authorised development, and anyone to whom the benefit of the Order is given in Article 6 (see below) or anyone to whom the benefit is transferred under Article 7. Overriding section 156(1) is common in DCOs that have been made, including the Hinkley Point C (Nuclear Generating Station) Order 2013, North Killingholme (Generating Station) Order 2013 and Thorpe Marsh Gas Pipeline Order 2016.
- 4.11 Article 6(2) provides, without prejudice to Article 6(1), that for numbered work 6A the benefit of the Order is for the undertaker and National Grid Gas and for numbered work 8 the benefit of the Order is for the undertaker and National Grid Electricity Transmission (as the respective National Grid company may be best placed to carry out all or part of those works). This approach has

precedent in orders such as the Progress Power (Gas Fired Power Station) Order 2015.

- 4.12 Article 7 (*Consent to transfer benefit of the Order*) makes provision for the transfer of the benefit of the Order. The consent of the SoS is needed before the undertaker can transfer or lease except where the transferee or lessee is: (i) the holder of an electricity generating licence; (ii) the holder of a gas licence; (iii) a highway authority responsible for the highways within the Order limits; or (iv) where the compensation provisions for the acquisition of rights or interests in land or for effects on land have been discharged or are no longer relevant. Article 7(2) has been amended from the model provisions so that it refers to 'transfer, or grant', which is considered to be more accurate than 'agreement'.
- 4.13 The justification for these provisions is that in such cases, the transferee or lessee will either be of a similar regulatory standing to Drax so as to protect the provision for compensation for rights or interests in land that are compulsorily acquired pursuant to the Order, or there are no outstanding actual or potential compulsory purchase claims. Article 7(5) provides that where the consent of the Secretary of State is not needed, the undertaker must still notify the Secretary of State in writing prior to the transfer or grant of the benefit of the provisions of the Order. Articles 7(6) to (8) provide further detail on the notification that is to be given. This is based on the notification procedure contained in Article 7 of the Wrexham Gas Fired Generating Station Order 2017.
- 4.14 Article 8 (*Application and modification of statutory provisions*) disapplies the temporary possession provisions in the Neighbourhood Planning Act 2017. The reasoning behind this is that the provisions relating to temporary possession in the Neighbourhood Planning Act 2017 have not yet come into force and that regulations required to provide more detail on the operation of the regime have not yet been made (or even consulted on). Drax is of the view that it is not currently possible to understand or reflect accurately the temporary possession provisions as intended by Government in respect of DCOs. As such, it is considered appropriate to apply the 'tried and tested' temporary possession regime which has been included in numerous DCOs and Orders made under the Transport and Works Act 1992 to date. This approach has precedent in the Silvertown Tunnel Order 2018, the Eggborough Gas Fired Generating Station Order 2018, and the A19/A184 Testo's Junction Alteration Development Consent Order 2018.
- 4.15 Article 8(2) seeks to provide clarity (in particular for the relevant planning authority) in terms of the operative consents for the Existing Drax Power Station Complex. The Drax Power Station was started to be built in 1967, and as a result it has a complex planning history over many years with consents and planning obligations under the various Electricity Acts and Town and Country Planning Acts. This provision has therefore been included in the Order in order to address the overlap of the various consents and planning obligations, and to provide clarity (to the extent there is inconsistency) in terms of enforcement and which consent has effect. In essence, the Order would take precedence over the Order limits to the extent there is any inconsistency between the previous

approvals and the approvals contained in the Order. This provision has been discussed with SDC and NYCC, who were agreeable to this approach. This is broadly comparable to the approach taken in relation to inconsistency with local legislation in the National Grid (Hinkley Point C Connection Project) Order 2016.

- 4.16 Article 8(3) provides for the disapplication of consents ordinarily required from the Environmental Agency under the Water Resources Act 1991 and the Environmental Permitting (England and Wales) Regulations 2016, and from the lead local flood authority in respect of the Land Drainage Act 1991.
- 4.17 Specifically, these are the requirements for consents in respect of a 'flood risk activity' under the Environmental Permitting (England and Wales) Regulations 2016, and for abstractions, and 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 Proposed Scheme can proceed, the Order disapplies the requirement for a separate statutory consent to be obtained from the Environment Agency or lead local flood authority in relation to these activities.
- 4.18 In accordance with section 150 of PA 2008, the consent of the Environment Agency and of the lead local flood authority (as "relevant bodies" for the purposes of section 150 of the PA 2008) to the inclusion of these provisions in the Order will be required. Accordingly, Drax has obtained the consent of Selby Area Internal Drainage Board (as the lead local flood authority) to the disapplication of provisions (as recorded in the Statement of Common Ground submitted at Deadline 3, Examination Library Reference REP3-018), and the consent of the Environment Agency is being sought by Drax.

Part 3 (Streets)

- 4.19 Articles 9 (*Street works*) and 10 (*Power to alter layout, etc., of streets*) allow the undertaker to alter the layout of a street in order to construct the new accesses authorised under Article 11 or to carry out street works in accordance with the statutory rights under the New Roads and Street Works Act 1991 and the Highways Act 1980. Schedule 3 sets out the streets that are subject to street works, and the nature of those works. Schedule 4 sets out the alterations to streets to allow for the creation of new accesses (either temporary or permanent). For clarity, Article 10 has been included to provide for the right to alter the layout of a street. Article 9 is a model provision intended to permit the carrying out of street works for the purposes of the authorised development, however, it has been modified to permit the construction of a pedestrian bridge over the highway for the purposes of construction of the authorised development.
- 4.20 Article 11 (*Construction and maintenance of new or altered means of access*) provides that new or altered means of access are to be constructed to a particular standard and maintained at the expense of the undertaker for a year. Any part of the new or altered means of access which are proposed to be public

highway (as set out on the Access and Rights of Way (ARoW) Plan(s) (Examination Library Reference REP2-010) and described in Part 1 of Schedule 5) will then be maintained by the highway authority. Those parts of the new or altered means of access which are not intended to be public highway (such as private roads or accesses which the undertaker is altering or creating and as also set out in the ARoW Plan(s) (Examination Library Reference REP2-010) and Part 2 of Schedule 5) will then be maintained by the street authority. Paragraphs (4) and (5) mirror the defence in section 58 of the Highways Act 1980 where the undertaker is subject to an action for damages and has taken such care as was reasonably required in the circumstances to secure that the street was not dangerous to traffic. This Article (and the incorporation of the defences in particular) is similar to Article 19 in the Hinkley Point C (Nuclear Generating Station) Order 2013.

- 4.21 Article 12 (*Temporary stopping up of streets and public rights of way*) provides for the temporary stopping up, prohibition of the use, restriction of the use, alteration or diversion, of streets and public rights of way for the purposes of carrying out the authorised development. The Article largely follows the approach in the model provision in that it applies generally, and also specifically to certain streets and public rights of way (set out in Schedule 6 to the Order). There are consultation requirements before this power can be exercised and compensation is provided for in respect of the loss or suspension of any private rights of way. Article 12(6) confers a power on the undertaker, where the use of a street has been temporarily stopped up under the power in Article 12, to use such a street as a temporary working site. Similar wording has been used in other made Orders, including Article 11 of the Wrexham Gas Fired Generating Station Order 2017, Article 12 of the Meaford Gas Fired Generating Station Order 2016, Article 12 of Progress Power (Gas Fired Power Station) Order 2015 and Article 11 of the Hirwaun Generating Station Order 2015. The Article also gives effect to any prohibition, restriction or other provision made by the undertaker as if it was a traffic regulation order made by the traffic authority in whose area the road is situated. The Article is not in the general model provisions but there is a precedent for similar provisions in the Wrexham Gas Fired Generating Station Order 2017 (Article 14), which referred in its Explanatory Memorandum to its use in other made orders (including Article 37 of the Network Rail (Hitchin (Cambridge Junction)) Order 2011 and Article 38 of the Network Rail (Norton Bridge Area Improvements) Order 2014). It is considered necessary to ensure that the authorised development can be constructed without unnecessary delay.
- 4.22 Article 13 (*Permanent stopping up of public rights of way*) is an amended model provision which provides for the permanent stopping up of the rights of way specified in Schedule 7. This stopping up can only take place if either the substitute right of way (also specified in Schedule 7) has been provided in accordance with the details approved under requirement 9 of Schedule 2 or a temporary diversion is in place until the substitute right of way can be opened. Similar wording has been used in Article 24 of the A14 Cambridge to Huntingdon Improvement Scheme Development Consent Order 2016. The Article also sets out that no public right of way can be permanently stopped up

unless it is necessary for the undertaker to take such action to prepare the carbon capture readiness reserve space (Work No. 10).

- 4.23 Article 14 (*Access to works*) is a model provision which permits the undertaker to form new or to improve existing means of access in the locations specified in Parts 1 and 2 of Schedule 4. For clarity, temporary and permanent means of access are dealt with separately. Other means of access or works can also be provided in other locations reasonably required for the authorised development with the approval of the relevant planning authority, in consultation with the highway authority.
- 4.24 Article 15 (*Agreements with street authorities*) is a model provision which authorises street authorities and the undertaker to enter into agreements relating to the construction of a street or the carrying out of works in the street, and the alteration and diversion of the street. In addition to the model provisions, it provides for such agreements to deal with the strengthening, improvement or repair of any streets. Such a provision was included in the National Grid (King's Lynn B Power Station Connection) Order 2013 and the Progress Power (Gas Fired Power Station) Order 2015. It also provides for the construction and maintenance of any bridge and tunnel (including a footbridge over a street).

Part 4 (Supplemental Powers)

- 4.25 Article 16 (*Discharge of water*) is a model provision which enables the undertaker to discharge water into any watercourse, public sewer or drain in connection with the construction and maintenance of the authorised development with the approval of the owner of the watercourse, public sewer or drain and subject to certain other conditions. The reference from the model provisions to section 85 of the Water Resources Act 1991 has been deleted as this section has now been repealed - this has been replaced with a reference to the Environmental Permitting (England and Wales) Regulations 2016 instead.
- 4.26 Article 17 (*Authority to survey and investigate the land*) is a model provision which allows the undertaker to survey and investigate land, including bringing equipment onto the land and making trial holes. The power is subject to a number of conditions including a requirement for 14 days' notice to be given and is subject to the payment of compensation. The power extends to land "which may be affected by the authorised development" as surveys may need to be undertaken on such land to monitor the impacts of the authorised development (for example ecological monitoring). The Article applies section 13 of the Compulsory Purchase Act 1965 (refusal to give possession to acquiring authority) thereby providing an enforcement mechanism (by way of a warrant) where entry onto land under the Article is refused. This is considered necessary so that there is no delay in the implementation of the authorised development.
- 4.27 Article 18 (*Removal of human remains*) is a model provision which provides for the removal of human remains from the Order land and for their reburial in such burial ground or cemetery in which burials may legally take place as the

undertaker thinks suitable for the purpose or for their treatment according to the wishes of any personal representatives or relatives who come forward following the giving of the necessary notices. This Article has been included as Drax has not been able to rule out the presence of any human remains within the Order land given the archaeological history of the area and is considered necessary so that there is no delay in the implementation of the authorised development.

Part 5 (Powers of Acquisition)

- 4.28 Article 19 (*Compulsory acquisition of land*) provides for the compulsory acquisition of such land as is required for the authorised development (or to facilitate the authorised development or is incidental to the authorised development). Article 19 makes consequential provision for the extinguishment of rights in the land in order to ensure that they cannot impact on implementation or use of the authorised development. The Article broadly follows the model provision, although reference to compensation for the extinguishment or suspension of a private right of way has been deleted as this is dealt with in Article 23 (private rights). A similar approach was taken in the Wrexham Gas Fired Generating Station Order 2017.
- 4.29 Article 19(3) makes it clear that the powers in this Article are subject to the powers and restrictions in Article 22 (compulsory acquisition of rights), Article 25 (acquisition of subsoil only), Article 28 (temporary use of land for carrying out the authorised development) and Article 30 (statutory undertakers). This ensures that, where relevant, the undertaker can acquire only new rights or can only take temporary possession of land, and cannot acquire the freehold interest in that land.
- 4.30 Article 20 (*Statutory authority to override easements and other rights*) provides that by virtue of section 158 of the PA 2008 in carrying out or using the development authorised by the Order and doing anything else authorised by the Order, the undertaker may 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 as to use of land arising by virtue of contract. It also provides that by virtue of section 152 of the PA 2008, compensation may be payable under section 10 of the Compulsory Purchase Act 1965 for any such interference or breach. This is not a model provision, but is added to clarify the position with regard to rights burdening land required for the authorised development. It has precedent, for example, in the Rookery South (Resource Recovery Facility) Order 2011 and Wrexham Gas Fired Generating Station Order 2017. The reference to restrictions as to use of land arising in contracts was included in the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014.
- 4.31 Article 21 (*Time limit for exercise of authority to acquire land compulsorily*) is a model provision which imposes a time limit of 5 years for the exercise of powers of compulsory acquisition. The date of the making of the Order has been used to align with the date from which the undertaker may exercise any powers of compulsory purchase that may be contained within the Order. Drax considers

that 5 years is an appropriate time limit as it is consistent with the time limit for commencing the authorised development set out in requirement 2 of Schedule 2 to the Order.

- 4.32 Article 22 (*Compulsory acquisition of rights etc.*) is based on a model provision and entitles the undertaker to acquire rights over land which may be compulsorily acquired, including rights already in existence, or to create new rights or impose restrictions. The word "existing" has been deleted from the model provision wording in paragraph (3) in order to ensure that the undertaker is able to seek a lesser interference with land where this is appropriate (whether in the context of new or existing rights) as the authorised development is implemented. The article introduces Schedule 9, which amends existing compensation legislation in the case of a compulsory acquisition under the Order of a right by the creation of a new right or the imposition of a restriction. Schedule 9 does not affect the entitlement to compensation, but generally ensures that the compensation code applies to the compulsory acquisition by the creation of new rights and the imposition of restrictive covenants. Wording has been included at paragraph (7) to make clear that legislation governing the compensation for the compulsory purchase of land is to apply in relation to the creation of new rights and the imposition of restrictions. The article also provides for the transfer of the power to acquire new rights to a statutory undertaker with the consent of the Secretary of State. This is to allow for the creation of easements in favour of statutory undertakers in respect of their apparatus which would not otherwise be possible as the undertaker does not own the dominant tenement.
- 4.33 Article 23 (*Private rights*) is based on a model provision and has the effect of extinguishing private rights and restrictions over land where: (1) land is subject to compulsory acquisition; (2) where the private right is inconsistent with a right being compulsorily acquired; or (3) land is owned by the undertaker. The Article also suspends private rights for as long as the undertaker is in temporary possession of land under the Order. The article departs from the model provision in that it relates to all rights over land, not just rights of way, to ensure that any other rights that may exist cannot prevent the implementation or operation of the authorised development. The Article follows the approach in Wrexham Gas Fired Generating Station Order 2017. Paragraph (4) limits the scope of the suspension of existing rights where temporary possession of land is taken pursuant to the Order
- 4.34 Article 24 (*Application of the Compulsory Purchase (Vesting Declarations) Act 1981*) is a model provision that applies the vesting procedures in the Compulsory Purchase (Vesting Declarations) Act 1981 to the exercise of powers of compulsory acquisition pursuant to the Order and is a model provision. It gives the undertaker the option to acquire land via the process set out under the 1981 Act, rather than the notice to treat procedure. This article has been updated to incorporate and reflect the changes brought about by the Housing and Planning Act 2016. These modifications have precedent in Schedule 14 to the High Speed Rail (London – West Midlands) Act 2017A and the Wrexham Gas Fired Generating Station Order 2017.

- 4.35 Article 25 (*Acquisition of subsoil only*) permits the undertaker to acquire only the subsoil of land which is to be compulsorily acquired, or the subsoil of rights over land which may be created, and gives the undertaker the ability to minimise the extent of interests acquired from owners. This article is appropriate in the context of cables or pipes to be laid underground as part of the authorised development, where acquisition of the "entire" freehold may not be required. This is a model provision.
- 4.36 Article 26 (*Modification of Part 1 of the Compulsory Purchase Act 1965*) modifies the provisions of Part 1 of the Compulsory Purchase Act 1965 as applied to the Order by section 125 of the PA 2008. This provision reflects recent changes introduced by the Housing and Planning Act 2016. Paragraphs (1) to (3) amend the provisions of the Compulsory Purchase Act 1965 so they are consistent with the terms of the Order and paragraph (5) makes it clear that the notice periods introduced by the Housing and Planning Act 2016 do not apply to the temporary possession or use of land under articles 27, 29 or 34 of this Order. These modifications have broad precedent in Schedule 14 to the High Speed Rail (London - West Midlands) Act 2017 and the Wrexham Gas Fired Generating Station Order 2017.
- 4.37 Article 27 (*Rights under or over streets*) is adapted from a model provision which allows the undertaker to enter on and appropriate interests within streets where required for the purpose of the authorised development without being required to acquire that land. Provision is made for the payment of compensation in certain circumstances (with slight refinements to the wording of the model provisions). This refined wording has precedent in the Progress Power (Gas Fired Power Station) Order 2015.
- 4.38 Article 28 (*Temporary use of land for carrying out the authorised development*) allows two categories of land to be temporarily used for the carrying out of the authorised development. The first is a limit, providing that the land specified in Schedule 10 may only be temporarily occupied (and therefore that no interest may be compulsorily acquired in it), and the second is a permissive category, relating to any area within the Order land. There is a limit on the length of time that the undertaker can use land in this way, which in the case of land that may only be used temporarily (shown coloured yellow on the Land Plans (Examination Library Reference REP2-006)) is the end of the period of one year beginning with the date of Work No. 1A full commissioning (as notified by the undertaker pursuant to the Order). The article also requires the undertaker to give 14 days' notice and to restore the land to a reasonable standard following the temporary works.
- 4.39 A similar provision is made in Article 29 (*Temporary use of land for maintaining the authorised development*) for the temporary use of land for maintenance of the authorised development during the "maintenance period". There is again a limit on the length of time that the undertaker can use land in this way, provisions requiring the giving of 28 days' notice and restoration of the land following the temporary possession. The maintenance period has been adapted from the model provision to apply to the period 5 years beginning with

the date of Work No. 1A full commissioning as opposed to the date on which the project is opened for use as this is more appropriate for this type of development. Similar wording has been used in other made Orders for gas fired generating stations, including the Hirwaun Generating Station Order 2015, the Progress Power (Gas Fired Power Station) Order 2015 and the Wrexham Gas Fired Generating Station Order 2017. However, in order to be able to carry out the landscaping commitments set out in the landscape and biodiversity strategy, the maintenance period has been extended to the period in the strategy approved pursuant to requirement 8. A similar provision was included in the North Wales Wind Farm Connection Order 2016.

- 4.40 Articles 28 and 29 are broadly based on the model provisions and provide for the payment of compensation for that temporary use of the land.
- 4.41 Article 30 (*Statutory undertakers*) provides for the acquisition of land belonging to statutory undertakers within the Order land. This includes a power to move the apparatus of those statutory undertakers and to extinguish their rights. The model provision has been amended so as to allow for the suspension of rights of a statutory undertaker (for example where land is being temporarily used under the terms of the Order) rather than just extinguishment. This article is subject to the protective provisions (see article 35 below) included at Schedule 12 of the Order. This power is required over the whole of the Order land and similar wording has been used in made Orders for gas fired generating stations, including the Wrexham Gas Fired Generating Station Order 2017.
- 4.42 Article 31 (*Apparatus and rights of statutory undertakers in streets*) makes provision in respect of the apparatus and rights of statutory undertakers in streets which are temporarily altered or diverted or where use is temporarily prohibited or restricted under articles 9, 10, 11 or 12 including provision as to the relocation of apparatus. It is a model provision amended to reflect the Order which does not authorise any permanent stopping-up of streets. Paragraph (2) onwards has been deleted to avoid any duplication with the protective provisions contained in Schedule 12 of the Order.
- 4.43 Article 32 (*Recovery of costs of new connections*) provides that persons who have to create a new connection following the exercise of powers under article 31 may recover the costs of new connections from the undertaker. It is a model provision, with the part of the model provision that referred to the permanent stopping up of streets deleted as this is not relevant in the context of the authorised development.

Part 6 (Operations)

- 4.44 Article 33 (*Felling or lopping of trees and removal of hedgerows*) provides that the undertaker may fell or lop or cut back the roots of any tree or shrub near any part of the authorised development to prevent it: obstructing or interfering with the construction, maintenance or operation of the authorised development; constituting a danger for persons using the authorised development; obstructing or interfering with the passage of construction vehicles. It also sets out that the

undertaker may not fell or lop a tree or remove hedgerows under this Article within the extent of the publically maintainable highway without the prior consent of the highway authority. Compensation is provided for if loss or damage is caused. It is a model provision.

- 4.45 Article 34 (*Protective work to buildings*) is a model provision which allows the undertaker to carry out protective works to buildings within the Order limits, subject to a number of conditions including the service of 14 days' notice (except in the case of emergency) and the payment of compensation. The model provision has been updated to refer to the period following, in respect of stage 1 of the Proposed Scheme, the completion of that stage, and similarly with respect to stage 2, the completion of that stage, as the phrase in the model provision (when it is "open for use"), is not appropriate.

Part 7 (Miscellaneous and General)

- 4.46 Article 35 (*Protective provisions*) provides for Schedule 12, which protects the interests of certain statutory undertakers, to have effect.
- 4.47 Article 36 (*Application of landlord and tenant law*) is a model provision which would override 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 the same or any agreement entered into by the undertaker for the construction, maintenance, use or operation of the authorised development. This provision is required to ensure that there is no impediment to the construction, use or maintenance of the authorised development.
- 4.48 Article 37 (*Operational land for purposes of the 1990 Act*) is a model provision which has the effect of ensuring that the land on which the authorised development is constructed will be "operational land" under the Town and Country Planning Act 1990 by the effect of section 264(3) of that Act. A similar provision has been included in other made Orders for gas fired generating stations, including the Hirwaun Generating Station Order 2015, the Progress Power (Gas Fired Power Station) Order 2015 and the Wrexham Gas Fired Generating Station Order 2017.
- 4.49 Article 38 (*Defence to proceedings in respect of statutory nuisance*) provides that no one is able to bring statutory nuisance proceedings under the Environmental Protection Act 1990 in respect of fumes or gases; dust, steam, smell or other effluvia; accumulation or deposit; artificial light; or noise, if the such nuisance is created in the course of carrying out construction or maintenance of the authorised development and for which notice has been given under section 60 (with respect to noise) or consent obtained under section 61 of the Control of Pollution Act 1974 or which cannot be reasonably avoided as a consequence of the authorised development. Article 38 is a model provision.
- 4.50 Article 39 (*Certification of plans etc*) is a model provision which provides for the submission of the various documents referred to in the Order (such as the Book

of Reference, plans and Environmental Statement) to the SoS so that they can be certified as being true copies. The Article refers to Schedule 14, where all such documents and plans are listed, along with the appropriate document and revision numbers.

- 4.51 Article 40 (*Service of notices*) deals with the service of notices pursuant to the Order. These provisions are based on those appearing in the Transport and Works (Model Provisions for Railways and Tramways) Order 2006.
- 4.52 Article 41 (*Procedure in relation to certain approvals etc*) provides procedures in relation to consents and approvals required pursuant to the Order. Article 41(1) and (2) apply to all consents or approvals sought from any authority or body named in any provisions of the Order (such as those that may be sought from a street authority pursuant to Articles 10(4) or 12(4)(b)), approval by the relevant planning authority to form other access points (Article 14(c)), approval of the owner of a drain to discharge water (Article 16(3)) or the beneficiary of any of the protective provisions contained in Schedule 12). Article 41(2) introduces Schedule 11 which contains a separate, detailed procedure pursuant to which all such consents or approvals sought from any authority or body named in the provisions of the Order will be handled.
- 4.53 Article 42 (*Arbitration*) is a general arbitration provision which provides that differences under the Order should be settled by arbitration unless another means of resolving a dispute is provided for in the Order. It is a model provision.
- 4.54 Article 43 (*Guarantees in respect of payment of compensation*) restricts the undertaker from exercising the powers conferred under articles 19, 22, 23, 27, 28, 29 or 30 until it has either put in place a guarantee or other security approved by the SoS in respect of the liabilities of the undertaker to pay compensation under the Order. The guarantee or alternative form of security is not required to be in place for more than 15 years from the date on which the relevant power is exercised.

5. **SCHEDULES**

- 5.1 Schedule 1 describes the authorised development in detail, split into "work numbers", each of which represents different elements of the authorised development. This split of the authorised development between different work numbers enables the Order to refer to different parts of the authorised development by citing the relevant work number. The split also enables the Order and Works Plans (Examination Library Reference REP2-007) to delineate the area within which each "work" can be constructed, maintained and operated (see article 3(2)). The areas within which each work can be constructed are therefore shown on the Works Plans.
- 5.2 The works set out in Schedule 1 to the Order are briefly summarised as follows-

- 5.2.1 Work No. 1 – comprising Work No. 1A, the generating station "Unit X"; Work No. 1B pipe rack, foundations and alterations to existing infrastructure; Work No. 1C underground gas pipeline connecting Work No. 1A to Work No. 5; Work No. 1D connection works between Work Nos 1A, 1B and 1C and associated infrastructure including (but not exhaustive of) lighting and drainage;
- 5.2.2 Work No. 2 – comprising Work No. 2A, the generating station "Unit Y"; Work No. 2B pipe rack and alterations to existing infrastructure; Work No. 2C underground gas pipeline connecting Work No. 2A to Work No. 5 or infrastructure to connect into the underground gas pipeline constructed in Work No. 1C; Work No. 2D connection works between Work Nos 2A, 2B and 2C and associated infrastructure including (but not exhaustive of) lighting and drainage;
- 5.2.3 Work No. 3 – up to two battery storage facilities (one in connection with Unit X (Work No. 3A), and the other in connection with Unit Y (Work No. 3B));
- 5.2.4 Work No. 4 – up to two new gas insulated switchgear banking buildings (one in connection with Unit X (Work No. 4A), and the other in connection with Unit Y (Work No. 4B));
- 5.2.5 Work No. 5 – a natural gas receiving facility compound;
- 5.2.6 Work No. 6 – above ground gas installation comprising Work No. 6A (the minimum offtake connection), Work No.6B (the pipeline inspection gauge facility) and Work Nos. 6C and 6D (construction laydown areas and access routes);
- 5.2.7 Work No. 7 – a gas pipeline and associated construction laydown area;
- 5.2.8 Work No. 8 – electrical connections, split into Work No. 8A (the electrical connection for Unit X) and Work No. 8B (the electrical connection for Unit Y);
- 5.2.9 Work No. 9 – temporary construction laydown areas including temporary pedestrian bridge;
- 5.2.10 Work No. 10 – carbon capture readiness and associated public rights of way diversions;
- 5.2.11 Work No. 11 – retained and enhanced landscaping;
- 5.2.12 Work No. 12 – decommissioning and demolition of sludge lagoons and construction of replacement sludge lagoons;
- 5.2.13 Work No. 13 – removal of overhead line;

5.2.14 Work No. 14 – temporary passing place on Rusholme Lane for construction traffic; and

5.2.15 further associated development in connection with the numbered works such as drainage systems, services and utilities connections, landscaping, security measures including means of enclosure, lighting, site clearance, temporary construction laydown and contractor facilities, and tunnelling, boring and drilling works.

Work No. 1 to Work No.3 (inclusive)

5.3 The generating station (Unit X) is Work No. 1. Work No. 1 is drafted so as to impose an overall output capacity cap on the generating station as a whole, whilst granting the undertaker flexibility to procure, construct and operate the most economic and efficient generating station, taking into account advances in technology and the resulting effects on the configuration of the plant. The same approach has been taken for the generating station in Work No. 2.

5.4 A different approach is taken for the battery storage facilities (Work No. 3). Work No. 3 is drafted without a restriction on overall output capacity, however, the effect of the overarching restriction on the combined gross electrical output capacity for the Proposed Scheme of up to 3,800 megawatts at the beginning of Schedule 1, is that the total capacity for the battery storage facility for both Units X and Y would be 200MW with both Units X and Y constructed. This approach allows for future improvements in technology which may allow greater storage capacity to be provided within the same parameters that are secured by the Order.

5.5 The following sections outline how the drafting contained in Schedules 1, 2 and 13 of the draft Order work together to achieve this aim, whilst ensuring that the effects assessed in the Environmental Statement (Examination Library Reference APP-069 – APP-137, with some revisions to various appendices being submitted during the Examination) are not exceeded.

Generating Capacity

5.6 The overall gross output capacity of the generating station in Work No. 1 is up to 1,800 megawatts (MW). This ensures that the component parts of Work No. 1 which constitute generating capacity cannot cumulatively exceed 1,800 MW of gross output capacity. Similarly, the overall gross output capacity of Work No. 2 is 1,800 MW.

5.7 The overall combined gross electrical output capacity is up to 3,800 MW. That capacity is constituted by Work No. 1 (1,800 MW) and Work No. 2 (1,800 MW), with 200 MW of capacity remaining. The overarching output capacity of 3,800 MW therefore restricts the total capacity of Work Nos. 3A and 3B to 200 MW without a separate restriction being necessary.

5.8 The final generating capacity of the authorised development will be determined based on a number of factors such as overall UK energy requirements.

Technology and Parameters

- 5.9 Work Nos. 1 and 2 are drafted so as to be non-specific as to technology and configuration of the plant.
- 5.10 The mechanics of the drafting in Schedules 1, 2 and 13 ensure that the undertaker does not exceed the basis of the assessment in the Environmental Statement. This is achieved through a number of mechanisms in the Order which together ensure this:
- 5.10.1 Article 3 and Schedule 1 (Work Nos. 1, 2 and 3) provide the power to build the generating stations. Pursuant to Article 3(2), each numbered work must be situated within the area delineated on the Works Plans (Examination Library Reference REP2-007) – thus, for example, generating station, "Unit X", can only be built within the area for Work No. 1A. Given these overarching constraints, there is certainty as where each element can be built;
- 5.10.2 The relevant parameters secured via requirement 6 and Schedule 13 set maximums for relevant elements of the authorised development, including all those which are relied on for the assessment of effects in the Environmental Statement. These parameters are based on application of the Rochdale Envelope principle, such that maximum building dimensions have been presented and assessed in the Environmental Statement, recognising that the final building massings may differ from (but will never be materially larger than) these maxima depending on the technology provider selected;
- 5.10.3 In terms of detailed design, requirement 7 of Schedule 2 provides that the undertaker must obtain the approval of the relevant planning authority to the siting, layout, scale and external appearance of new permanent buildings and structures contained within Work Nos. 1, 2, 3A, 3B, 4A, 4B, 5 and 6, prior to commencing these works.
- 5.11 The combined effect of and relationship between these provisions ensures that whichever option is selected, the authorised development will not give rise to environmental effects beyond those which have been assessed.

Schedules 2 - 14

- 5.12 Schedule 2 (*Requirements*) sets out the requirements which apply to the carrying out and operation (including maintenance) of the authorised development under the Order. They broadly follow those set out in the model provisions, where relevant, and where they have been amended this has been informed by discussions with the relevant planning authority or statutory consultee. The requirements closely relate to the mitigation set out in the Environmental Statement (Examination Library Reference APP-069 – APP-137, with some revisions to various appendices being submitted during the Examination) and the Environmental Statement Commitments Register

(Examination Library Reference REP2-024) and a number of them specifically refer to the Environmental Statement and other application documents (in particular, 'outline' strategies or plans) in order to ensure that the mitigation or other measures outlined in those documents are secured.

5.13 The requirements operate by reference to different stages in the lifetime of the authorised development (or parts of it). In effect, the undertaker may not proceed to these stages until it has met its obligations under the relevant requirements. The stages, which are effectively defined through the terms in Article 2 (see above) are as follows:

5.13.1 "**commencement**" for the purposes of the requirements means beginning to carry out a material operation, other than permitted preliminary works, of the authorised development (or a part of it).

5.13.2 "**commissioning**" means the process of assuring that all systems and components of the authorised development are tested and are operable in accordance with the undertaker's design objectives, specifications and operational requirements;

5.13.3 "**date of Work No. 1A full commissioning**" means the date on which the commissioning of Work No. 1A (Unit X) is completed, as notified by the undertaker to the relevant planning authority;

5.13.4 "**date of Work No. 2A full commissioning**" means the date on which the commissioning of Work No. 2A (Unit Y) is completed, as notified by the undertaker to the relevant planning authority;

5.13.5 "**permitted preliminary works**" are those which can take place before "commencement", and therefore before the relevant requirement needs to be discharged or complied with (as relevant);

5.13.6 "**stage 1**" means numbered works 1, 3A, 4A, 5, 6, 7, 8A, 9, 11 (in the case of 9 and 11, only in so far as applicable to numbered work 1), 12A, 13 and 14, and "**stage 2**" means 2, 3B, 4B, 8B, 9, 11 (in the case of 9 and 11, only in so far as applicable to numbered work 2), 12B. These stages accord with the two construction stages for Unit X (stage 1) and Unit Y (stage 2) that have been assessed in the Environmental Statement, and these defined stages are therefore used in relation to some of the environmental mitigation secured by the requirements.

5.14 Some of the requirements are drafted with a view to distinguishing between the different specific work numbers, or more generally different parts of the authorised development. This staged approach follows that agreed by the planning authority in relation to the proposed Knottingley Power Plant Order 2015, and permits an appropriately flexible approach to the discharge of requirements by the undertaker which allows it to (potentially) discharge a requirement in respect of a part of the authorised development and construct that element, whilst continuing to submit details to discharge the requirement in

relation to other parts. This provides an appropriate balance between development not starting until details are approved, and allowing other parts of the authorised development (where details are already approved) to be constructed.

- 5.15 Many of the requirements provide for a document (such as details, a method statement, a plan, a programme or scheme) specifying how the undertaker will construct, operate or maintain the authorised development to be submitted for approval to the relevant planning authority, SDC. The model provisions have been adapted throughout to provide that it is for the planning authority to approve the relevant document.
- 5.16 A further departure from the model provisions is in relation to the duty to consult with a third party/parties about a document submitted to the planning authority for approval. Where consultation is required under the Order it is, in each case, the planning authority's duty to carry it out before approving a document submitted to it (rather than, as in some of the model provisions, the undertaker's duty to carry it out before submitting the document for approval). Where it is considered that it would be particularly relevant for the planning authority to consult a third party, that third party has been named within the relevant requirement. For example, this has been done in response to comments received from NYCC that it be consulted in respect of the discharge of certain requirements such as those relating to highways and transportation matters, given that it is highway authority for the area. The general approach has been used in other DCOs as made, including the Hinkley Point C (Nuclear Generating Station) Order 2013.

Requirements

- 5.17 *Requirement 2: Commencement of the authorised development* - This requirement is based upon the model provisions and requires that the authorised development must only be commenced within 5 years of the date of the Order coming into force.
- 5.18 *Requirement 3: Phasing of the authorised development* – This is not a model provision. It restricts the authorised development commencing until the phasing for construction of works 1, 2 and 3 (that is, the NSIPs) have been submitted to and approved by the relevant planning authority. Such scheme is to be in accordance with the phasing in chapter 3 of the environmental statement (site and project description) and should include details of timescales for the reinstatement or restoration of the temporary construction laydown areas comprised in numbered works 6C, 6D, 7B and 9, in line with the outline landscape and biodiversity strategy. Such strategy is to be implemented as approved.
- 5.19 *Requirement 4: Notice of start of commissioning and notice of date of full commissioning* – This is not a model provision. It requires the undertaker to give notice to the planning authority of the intended start of commissioning of each of Work No. 1A (Unit X) and Work No. 2A (Unit Y) and the intended date

of full commissioning of each of those numbered works. This requirement assists SDC in monitoring the requirements.

- 5.20 *Requirement 5: Requirement for written approval* - This is a model provision, however the reference to "Commissioner" has been replaced with "relevant planning authority".
- 5.21 *Requirement 6: Approved details and amendments to them* – This is based on a model provision and allows the relevant planning authority to approve amendments to certified documents, the parameters in Schedule 13 of the Order, and other details, schemes or plans already approved. This is to allow flexibility, however this flexibility is given strict parameters in that it only applies to the extent the subject matter of the approval is unlikely to result in materially new or different effects to those assessed in the Environmental Statement (Examination Library Reference APP-069 – APP-137, with some revisions to various appendices being submitted during the Examination). A similar Requirement appeared in the Progress Power (Gas Fired Power Station) Order 2015.
- 5.22 *Requirement 7: Detailed design approval* - This is based on a model provision. It requires the specific design details of work numbers 1, 2, 3A, 3B, 4A, 4B, 5 and 6, to be submitted to and approved by the planning authority before commencement of that work number, and for the authorised development to be constructed in accordance with those approved details. This requirement relates to these work numbers only as they are the parts of the authorised development including elements whose visual appearance has been assessed as being important in terms of the authorised development's visual impact (see Chapter 10 (Landscape and Visual Amenity) of the Environmental Statement (Examination Library Reference APP-078)). This requirement also secures that the pedestrian bridge (part of Work No. 9A and which will be constructed to ensure the safety of construction workers accessing the Power Station Site) be constructed in accordance with the certified plans, and that the authorised development be carried out in accordance with the parameters set out in Schedule 13 (and against which the Proposed Scheme has been assessed in the ES).
- 5.23 *Requirement 8: Provision of landscape and biodiversity mitigation* - This is based on a landscaping model provision. However, the requirement has been modified to include provision for ecological mitigation. It requires the undertaker to submit a landscaping and biodiversity strategy for each of stage 1 and stage 2, prior to commencing the work numbers comprised within each of those stages. The plan must include details of all proposed hard and soft landscaping works and ecological mitigation measures (as applicable to that work number), and be in accordance with the Outline Landscape and Biodiversity Strategy submitted with the Application (Examination Library Reference REP2-026) and chapter 9 (Biodiversity) of the ES (Examination Library Reference APP-077). The plan is to be implemented and maintained as approved during the construction and operation of the authorised development.

- 5.24 Requirement 9: Public rights of way diversions - This is based on a model provision. It requires that before any part of Work Number 7 of the authorised development (the Gas Pipeline) is commenced, a public rights of way management plan for any sections of public rights of way shown to be temporarily closed on the ARoW plans (Examination Library Reference REP2-010) for the Gas Pipeline must be submitted to and approved by the relevant planning authority. The plan must be in accordance with the Outline Public Rights of Way Management Plan (Examination Library Reference REP2-032). It also provides that the public rights of way to be permanently stopped up in accordance with Article 13 (in the event the Carbon capture readiness reserve space is required for carbon capture and storage plant) cannot be stopped up until the materials for the form and layout of that numbered work have been submitted to and approved by the relevant planning authority, SDC, in consultation with the highway authority.
- 5.25 *Requirement 10: External lighting during construction and operation* - This is based upon a model provision and requires the undertaker to submit details of all external lighting to be installed during construction to the relevant planning authority for approval before any part of the numbered works comprising stage 1 or stage 2 commences. It also requires the undertaker to submit details of all permanent external lighting to be installed during operation of stage 1 and stage 2 to the relevant planning authority for approval before Work Number 1A full commissioning and Work Number 2A full commissioning respectively. The temporary construction lighting and the permanent operational lighting are to be implemented as approved.
- 5.26 *Requirement 11: Highway accesses and passing place during construction* - This is a modified model provision. It provides that no part of Work Numbers 5, 6, 7 and 9B of the authorised development (save for permitted preliminary works) may commence until details of any new or modified permanent or temporary means of access to the public highway to be used by vehicular traffic and the means of reinstating any such temporary means of access after construction has, for that work number been submitted to and approved by the planning authority. The requirement relates to the numbered works only, as this is where temporary construction accesses and permanent operational accesses will be provided. The requirement has also been modified so that the same restrictions apply to the temporary passing place to be constructed on Rusholme Lane as Work No. 14.
- 5.27 *Requirement 12: Means of enclosure* - This is based on a model provision. It requires that no part of Work Numbers 5, 6A, 6B, 7, 8B (in relation to the 400 kilovolt cable sealing end compound) and 9 of the authorised development (save for permitted preliminary works) may commence until details of a programme for the removal of all temporary means of enclosure have for that numbered work been submitted to and approved by the planning authority. This provision also requires that, prior to full commissioning of Work No. 1A (Unit X), details of the permanent means of enclosure must be approved and completed for Work Nos. 5, 6A and 6B (being parts of the authorised development where new fencing is required and which are part of stage 1 of the Proposed Scheme,

alongside Unit X). Similarly, prior to full commissioning of Work No. 2A (Unit Y), details of permanent means of enclosure must be approved and completed for Work No. 8B (in relation to the 400 kilovolt cable sealing end compound), being the part of stage 2 of the Proposed Scheme that requires new permanent fencing (noting that Work No. 8B provides two options for the electrical connection, and permanent fencing would only be required with respect to one of those options). This requirement does not relate to parts of the authorised development which are within the Existing Drax Power Station Complex which are already enclosed.

- 5.28 *Requirement 13: Surface water drainage* - This is based on a model provision. It provides that no part of Work Numbers 1, 2, 3A, 5 and 6 of the authorised development (save for permitted preliminary works) may commence until a surface water drainage scheme for that work number has been submitted to and approved by the planning authority (in consultation with the lead local flood authority, the relevant internal drainage board and the Environment Agency). The schemes must be in accordance with the Outline Surface Water Drainage Strategy, submitted with the Application as part of the Flood Risk Assessment (Examination Library Reference REP2-027) and the relevant work numbers must be constructed in accordance with the approved details and maintained during construction and operation.
- 5.29 *Requirement 14: Flood risk mitigation* – This is not a model provision, however, it was requested by the Environment Agency in order to ensure that the authorised development is carried out in accordance with the flood risk assessment. It also provides that no part of Work Number 3A can commence until the flood mitigation channel comprised in that numbered work has been completed.
- 5.30 *Requirement 15: Ground conditions* – This is not a model provision and was included at the request of the Environment Agency. The provision is necessary to ensure that no works comprising stage 1 or stage 2 must commence for that stage (including permitted preliminary works comprising demolition of existing structures, environmental surveys, geotechnical surveys and other investigations for the purpose of assessing ground conditions only) until a written strategy for the identification and remediation of risks associated with the contamination of Order limits associated with that numbered work has been submitted to and approved by the relevant planning authority. The requirement sets out at sub-paragraph (3) what information this strategy must contain. Sub-paragraphs (4) and (5) require that prior to the date of Work No. 1A and Work No. 2A full commissioning, a report must be submitted to and approved by the relevant planning authority, providing the data to demonstrate the remediation measures and strategy (approved as part of the overarching written strategy) have been undertaken and are effective, and identifying long term monitoring requirements. This Requirement also sets out the process for dealing with contamination not previously identified.
- 5.31 *Requirement 16: Archaeology* - This is a modified model provision. It provides that no part of Work Numbers 5, 6, 7, 9B and 14 of the authorised development

(including permitted preliminary works comprising intrusive archaeological surveys only) may commence until a written scheme of investigation for that work number has been submitted to and approved by the relevant planning authority after consultation with NYCC. The scheme submitted and approved must be in accordance with the principles set out in Chapter 8 (Cultural heritage) of the Environmental Statement (Examination Library Reference APP-076). In particular, the scheme must include details of a strip, map and record excavation for Work No. 6, and archaeological monitoring for Work Nos. 5, 7, 9B and 14. The requirement applies to these work numbers only, in accordance with the findings of the Environmental Statement. Furthermore, any archaeological investigations must be carried out in accordance with the approved scheme and by a suitably qualified person or organisation approved by the planning authority.

- 5.32 *Requirement 17: Construction environmental management plan* - This is a modified version of the model provision on "Code of Construction Practice". It requires a Construction and Environmental Management Plan, in accordance with the Outline Construction Environment Management Plan (Examination Library Reference REP2-025), to be submitted to and approved by the relevant planning authority before commencement of the authorised development (including permitted preliminary works comprising site clearance only). All construction works must be in accordance with the approved Construction and Environmental Management Plan.
- 5.33 *Requirement 18: Construction traffic management plan* - This is a modified model provision. It requires a Construction Traffic Management Plan, in accordance with the Outline Construction Traffic Management Plan (Examination Library Reference REP2-022), to be submitted to and approved by the planning authority, following consultation with Highways England and NYCC as highway authority, before commencement of the authorised development (save for Work Nos. 11, 13 and 14). It also requires notices to be erected and maintained throughout the construction period at every entrance to and exit from the construction site, indicating the approved routes for traffic entering and leaving the site. This requirement does not relate to numbered works 11 (retained and enhanced landscaping), 13 (removal of overhead 132 kilovolt line) and 14 (temporary passing place on Rusholme Lane) as those works are not considered to generate sufficient construction related traffic to warrant a management plan.
- 5.34 *Requirement 19: Construction worker travel plan* - This is not a model provision. It requires a Construction Worker Travel Plan, in accordance with the Outline Construction Worker Travel Plan (Examination Library Reference REP2-021), to be submitted to the relevant planning authority after consultation with NYCC as highway authority, before commencement of the authorised development (save for Work Nos. 11, 13 and 14). This requirement does not relate to numbered works 11 (retained and enhanced landscaping), 13 (removal of overhead 132 kilovolt line) and 14 (temporary passing place on Rusholme Lane) as those works are not considered to generate sufficient construction worker trips to warrant a travel plan.

- 5.35 *Requirement 20: Construction hours* - This is a modified model provision. It specifies the hours in the day within which all construction work associated with the authorised development must be carried out. The restrictions do not apply to work that is approved in advance by the relevant planning authority, is within existing or new buildings, or is associated with an emergency. The requirement also permits a 1 hour start up and shut down period at the beginning and the end of the day in relation to the specified construction hours. Following discussions with SDC, the start up and shut down periods would only occur on the construction laydown area that corresponds with Work No. 9 on the Works Plans (adjacent to the Existing Drax Power Station Complex), rather than the laydown areas along the Pipeline Area.
- 5.36 *Requirement 21: Control of noise - operation* - This requires that noise emitted from the top of the stacks at source in respect of Work No. 1A (Unit X) and Work No. 2A (Unit Y) does not exceed a specified sound power level. Prior to the full commissioning of each of Work Nos. 1A and 2A a written scheme for the monitoring of noise from the stacks is required to be submitted and approved, and then implemented.
- 5.37 *Requirement 22: Carbon capture readiness reserve space* - This is not a model provision. It requires that from commencement of the authorised development until such time as the authorised development is decommissioned, the undertaker must not dispose of its interest in the carbon capture readiness space, or do anything which may diminish the undertaker's ability (within two years of such action or occurrence) to prepare the carbon capture readiness space for the installation of carbon capture equipment, if deemed necessary to do so.
- 5.38 *Requirement 23: Carbon capture readiness monitoring report* - This requires that on or before three months from notification by the undertaker of the date of Work No. 1A being fully commissioning, and subsequently thereafter at set periods stated in the requirement, the undertaker must submit a report to the SoS providing evidence that the undertaker has complied with Requirement 22 (carbon capture readiness reserve space), and whether the undertaker considers the retrofit of carbon capture technology is feasible providing reasons for that conclusion.
- 5.39 *Requirement 24: Air Safety* – This is not a model provision. It has been discussed with SDC and requires confirmation to be given to the relevant planning authority that information required by the Defence Geographic Centre of the Ministry of Defence has been so provided, so that the Defence Geographic Centre can chart the site for aviation safety purposes has been provided.
- 5.40 *Requirement 25: Local liaison committee* - This is not a model provision. It has been included to ensure local residents and organisations are involved in matters relating to the authorised development. It requires that a local liaison committee for these purposes is set up prior to commencement of the

authorised development. This Requirement sets out who is required to be involved with the committee and how the committee must operate.

- 5.41 *Requirement 26: Decommissioning environmental management plan* - This is not a model provision. It requires the undertaker to submit a Decommissioning Environmental Management Plan, to the relevant planning authority within 12 months of it deciding to decommission the authorised development. The relevant planning authority must approve the scheme before any decommissioning works are carried out and the scheme must be implemented as approved.
- 5.42 *Requirement 27: Decommissioning traffic management plan* - This is not a model provision. It requires the undertaker to submit a Decommissioning Traffic Management Plan, to the relevant planning authority within 12 months of it deciding to decommission the authorised development. The relevant planning authority, after consultation with Highways England and the local highway authority, must approve the scheme before any decommissioning works are carried out and the scheme must be implemented as approved.
- 5.43 Schedule 3 (*Streets subject to street works*) sets out the streets that would be subject to street works (including reference to the relevant Access and Rights of Way plan, the location and the specific street). The Schedule relates to Article 9 (Street works).
- 5.44 Schedule 4 (*Streets subject to permanent and temporary alteration of layout*) sets out the streets to be permanently altered (Part 1) or temporarily altered (Part 2), by reference to the Access and Rights of Way plans. The Schedule relates to Article 10 (Power to alter layout, etc., of streets).
- 5.45 Schedule 5 (*Access*) sets out (with reference to the Access and Rights of Way plans) those parts of accesses that are to be maintained at public expense or by the street authority (Parts 1 and 2 respectively) and those works to restore temporary accesses that are to be maintained by the street authority (Part 3) which are referred to in Article 11 of the Order (Construction and maintenance of new or altered means of access).
- 5.46 Schedule 6 (*Streets and public rights of way to be temporarily stopped up*) sets out the streets that will be subject to temporary stopping up (Part 1) and the public rights of way that will be subject to temporary stopping up (Part 2) (including reference to the relevant Access and Rights of Way plan, the location and the extent of the temporary stopping up). The Schedule relates to Article 12 (Temporary stopping up of streets and Public Rights of Way).
- 5.47 Schedule 7 (*Public rights of way to be permanently stopped up*) sets out the public rights of way that will be subject to permanent stopping up by reference to the Access and Rights of Way plans. This schedule also includes details (by reference to the Access and Rights of Way plans) of the replacement public right of way for each public right of way permanently stopped up. The Schedule relates to Article 13 (Permanent stopping up of Public Rights of Way).

- 5.48 Schedule 8 (*Land in which only new rights etc may be acquired*) specifies both the areas of land in which only new rights may be acquired by the undertaker and the nature of the rights that may be acquired. The plot numbers in column 1 of that table correlate with the relevant plot numbers shaded blue on the Land Plans (Examination Library Reference REP2-006), and the nature of the rights in column 2 is explained by reference to the relevant work numbers and the corresponding Works Plans (Examination Library Reference REP2-007). The Schedule relates to Article 22 (Compulsory acquisition of rights etc.).
- 5.49 Schedule 9 (*Modification of compensation and compulsory purchase enactments for creation of new rights*) modifies existing compensation legislation including the Land Compensation Act 1973 and the Compulsory Purchase Act 1965. It is commonly included in DCOs as made, including the Hinkley Point C (Nuclear Generating Station) Order 2013 and the National Grid (King's Lynn B Power Station Connection) Order 2013. This has been updated to reflect any necessary changes arising as a result of the Housing and Planning Act 2016. The Schedule relates to Article 22 (Compulsory acquisition of rights etc.).
- 5.50 Schedule 10 (*Land of which temporary possession may be taken*) sets out the land of which only temporary possession may be taken, pursuant to Article 28. This land is shown yellow on the Land Plans (Examination Library Reference REP2-006), and the purpose for the temporary possession is described by reference to the relevant work numbers and corresponding Works Plans (Examination Library Reference REP2-007).
- 5.51 Schedule 11 (*Procedure for discharge*) provides a bespoke procedure for dealing with an application made to the relevant authority for any consent, agreement or approval required or contemplated by the provisions of the Order. It sets out time periods within which decisions must be made and provides for deemed approval of the applications in certain circumstances. Paragraph 4 makes provision for fees to be paid where an application is made to the relevant planning authority with respect to discharge of a requirement. The Schedule makes provision for appeals to be made in the event of a refusal of an application or if the relevant authority requires further information to be provided in relation to that application. Schedules similar to Schedule 11 have been used in various orders and can be seen in a similar form in the Hinkley Point C (Nuclear Generating Station) Order 2013, as amended, and the National Grid (King's Lynn B Power Station Connection) Order 2013. The bespoke process is required in order to ensure that applications under the Order are dealt with efficiently so that the authorised development is not held up. Deemed consent of applications is required for the same reason and ensures that the nationally-needed authorised development will not be held up by the discharge of requirements. This schedule has been discussed with the relevant local planning authority, SDC. The Schedule relates to Article 41 (Procedure in relation to certain approvals etc.).
- 5.52 Schedule 12 (*Protective provisions*) sets out protective provisions for the benefit of statutory undertakers whose equipment may be affected by the authorised

development. Protective provisions are also included for the protection of the Environment Agency in relation to drainage work. The undertaker has engaged with relevant statutory undertakers and the Environment Agency and will continue to do so with a view to agreeing the protective provisions for inclusion in the Order (or where appropriate to agreeing terms for such provisions outside the Order itself). The Schedule relates to Article 35 (Protective provisions).

- 5.53 Schedule 13 (*Design Parameters*) sets out the relevant parameters for the temporary pedestrian bridge during construction (Part 1), Unit X (Part 2), and Unit Y (Part 3), in accordance with requirement 7 of Schedule 2 to the Order. See the explanation provided for Schedule 1 above as to how this schedule operates alongside the relevant articles and schedules.
- 5.54 Schedule 14 (*Documents and Plans to be certified*) sets out the documents and plans pursuant to Article 39 that must be certified as true copies by the SoS.

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Comparison of the Order with the Model Provisions

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~~Article 2~~

STATUTORY INSTRUMENTS

201* No.

INFRASTRUCTURE PLANNING

The Drax Power (Generating Stations) Order 201*

Made - - - - [***] 201*

Coming into force - - [***] 201*

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<u>SCHEDULE 14</u>	<u>— DOCUMENTS AND PLANS TO BE CERTIFIED</u>

An application under section 37 of the Planning Act 2008(a) (“the 2008 Act”) has been made to the Secretary of State for an order granting development consent.

The application has been examined by the Examining Authority appointed by the Secretary of State pursuant to Chapter 3 of Part 6 of the 2008 Act and carried out in accordance with Chapter 4 of Part 6 of the 2008 Act and the Infrastructure Planning (Examination Procedure) Rules 2010(b). The Examining Authority has submitted a report and recommendation to the Secretary of State under section 83 of the 2008 Act.

The Secretary of State has considered the report and recommendation of the Examining Authority, has taken into account the environmental information in accordance with regulation 4 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017(c) and has had regard to the documents and matters referred to in section 104(2) of the 2008 Act.

The Secretary of State, having decided the application, has determined to make an order giving effect to the proposals comprised in the application on terms that in the opinion of the Secretary of State are not materially different from those proposed in the application.

In accordance with section 127 of the 2008 Act, the Secretary of State has applied the relevant tests and is satisfied that they have been met.

Accordingly, the Secretary of State, in exercise of the powers in sections 114, 115, 120, 122 and 123 of the 2008 Act, makes the following Order—

(a) 2008 c.29. Parts 1 to 7 were amended by Chapter 6 of Part 6 of the Localism Act 2011 (c.20). Part 7 amended by S.I. 2017/16.
(b) S.I. 2010/103, amended by S.I. 2012/635.
(c) S.I. 2017/572 amended by S.I. 2018/695, S.I. 2018/834, S.I. 2018/942.

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Drax Power (Generating Stations) Order 201* and comes into force on [***] 201*

Interpretation

1

~~2.(1)~~ —(1) In this ~~Order~~ Order—

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

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

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

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

“the 2009 Regulations” means the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(h);

“access and rights of way plans” means the plans of that name identified in Table 17 of Schedule 14 (documents and plans to be certified) and which is certified by the Secretary of State as the access and rights of way plans for the purposes of this Order;

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

“AOD” means above ordnance datum;

“apparatus” has the same meaning 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, transformer rectifier kiosks; electricity cables; telecommunications equipment and electricity cabinets;

“application guide” means the document of that name identified in Table 17 of Schedule 14 (documents and plans to be certified) and which is certified by the Secretary of State as the application guide for the purposes of this Order;

~~“ancillary works” means the ancillary works described in Part 2 of Schedule A (authorised project) [and any other works authorised by the Order] and which are not “authorised development”~~
“authorised development” means the development and associated development described in Schedule 1 (authorised development) to this Order which is development within the meaning of section 32 of the 2008 Act;

(a) 1961 c.33.

(b) 1965 c.56.

(c) 1980 c.66.

(d) 1981 c.66.

(e) 1990 c.8.

(f) 1991 c.22.

(g) 2008 c.29.

(h) S.I. 2009/2264, amended by S.I. 2010/439, S.I. 2010/602, S.I. 2012/635, S.I. 2012/2654, S.I. 2012/2732, S.I. 2013/522, S.I. 2013/755 and S.I. 2017/572.

~~"authorised development" means the development and associated development described in Part 1 of Schedule A (authorised project) [and any other development authorised by this Order], which is development within the meaning of section 32 of the 2008 Act;~~

~~"the authorised project" means the authorised development and the ancillary works authorised by this Order;~~

"the book of reference" means the ~~book of reference~~ document of that name identified in Table 17 of Schedule 14 (documents and plans to be certified) and which is certified by the ~~decision-maker~~ 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;

"carbon capture readiness reserve space" means the area comprised in Work No. 10 shown on the works plans;

"carriageway" has the same meaning as in the 1980 Act;

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

~~"the decision-maker" has the same meaning as in section 103 of the 2008 Act;~~

~~"highway" and "highway authority" have the same meaning as in the 1980 Act;~~

~~"the land plan" means the plan certified as the land plan by the decision-maker for the purposes of this Order;~~

~~"Order land" means the land shown on the land plan which is within the limits of land to be acquired and described in the book of reference;~~

~~"the Order limits" means the limits shown on the works plan within which the authorised project may be carried out;~~

~~"owner", in relation to land, has the same meaning as in section 7 of the Acquisition of Land Act 1981;~~

~~"relevant planning authority" means—~~

~~(i)—the district planning authority for the area in which the land to which the provisions of this Order apply is situated unless the provisions relate to the construction or alteration of a hazardous waste facility, in which case it means the county planning authority;~~

~~(ii)—a National Park Authority;~~

~~(iii)—the Broads Authority; and~~

~~(iv)—the Greater London Authority if the land to which the provisions of this Order or requirements apply is situated in Greater London;~~

~~"rights plan" means the plan certified as the rights plan by the decision-maker~~ "the CHP statement" means the document of that name identified in Table 17 of Schedule 14 (documents and plans to be certified) and which is certified by the Secretary of State as the CHP statement for the purposes of this Order;

"commence" means the carrying out of a material operation, as defined in section 155 of the 2008 Act (which explains when development begins), comprised in or carried out for the purposes of the authorised development other than the carrying out of the permitted preliminary works (except where stated to the contrary) and the words "commencement" and "commenced" and cognate expressions are to be construed accordingly;

"commissioning" means the process of assuring that all systems and components of each of numbered works 1A and 2A (which are installed or installation is near to completion) are tested to verify that they function and are operable in accordance with the design objectives, specifications and operational requirements of the undertaker and "commission" and other cognate expressions, in relation to numbered works 1A and 2A, are to be construed accordingly;

~~"the sections" means the sections shown on the plan certified as the section drawings plan by the decision maker~~ "commitments register" means the document of that name identified in Table 17 of Schedule 14 (documents and plans to be certified) and which is certified by the Secretary of State as the commitments register for the purposes of this Order;

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

"date of Work No. 1A full commissioning" means the date on which the commissioning of numbered work 1A is completed as notified as such by the undertaker to the relevant planning authority pursuant to requirement 4(2) of Schedule 2 to this Order;

"date of Work No. 2A full commissioning" means the date on which the commissioning of numbered work 2A is completed as notified as such by the undertaker to the relevant planning authority pursuant to requirement 4(3) of Schedule 2 to this Order;

"Drax Power Limited" means Drax Power Limited (Company No. 04883589) whose registered office is at Drax Power Station, Selby, North Yorkshire YO8 8PH;

“Electricity Acts” means the Electric Lighting Act 1909(a), the Electricity (Supply) Act 1919(b), and the Electricity Act 1989(c);

“electronic transmission” means a communication transmitted—

(a) by means of an electronic communications network; or

(b) by other means but while in electronic form;

“the environmental statement” means the document of that name identified in Table 17 of Schedule 14 (documents and plans to be certified) and which is certified by the Secretary of State as the environmental statement for the purposes of this Order;

“the flood risk assessment” means the document of that name identified in Table 17 of Schedule 14 (documents and plans to be certified) and which is certified by the Secretary of State as the flood risk assessment for the purposes of this Order;

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

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

“the land plans” means the plans of that name identified in Table 17 of Schedule 14 (documents and plans to be certified) and which are certified by the Secretary of State as the land plans for the purposes of this Order;

“limits of deviation” means the limits of deviation shown for each work number on the works plans;

“maintain” includes inspect, repair, adjust, alter, remove, refurbish, reconstruct, replace and improve any part of, but not replace the whole of, the authorised development, but only insofar as such activities are unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement and “maintenance” and “maintaining” are to be construed accordingly;

“NGET” means National Grid Electricity Transmission plc (Company Registration Number 02366977) whose registered office is at 1 to 3 Strand, London, WE2N 5EH;

“NGG” means National Grid Gas plc (Company Registration Number 02006000) whose registered office is at 1 to 3 Strand, London WC2N 5EH;

“this Order” means the Drax Power (Generating Stations) Order 201*;

“Order land” means the land delineated and marked as such on the land plans;

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

“the outline construction environmental management plan” means the document of that name identified in Table 17 of Schedule 14 (documents and plans to be certified) and which is certified by the Secretary of State as the outline construction environmental management plan for the purposes of this Order;

“the outline construction traffic management plan” means the document of that name identified in Table 17 of Schedule 14 (documents and plans to be certified) and which is certified by the Secretary of State as the outline construction traffic management plan for the purposes of this Order;

(a) 1909 c.34 as repealed by the Electricity Act 1989.

(b) 1919 c.100 as repealed by the Electricity Act 1989.

(c) 1989 c.29. Part 1 has been amended by S.I. 2017/493 and Section 6(1) has been amended by section 30 of the Utilities Act 2000 (c.27) and sections 136 and 197 of, and part 1 of Schedule 23 to, the Energy Act 2004 (c.20). Section 7A(10D) and Section 56FB(2) have both been amended by the Smart Meters Act 2018. Section 64 has been amended by article 24(c) of the Competition Act 1998 (Competition Commission) Transitional, Consequential and Supplemental Provisions Order 1999 (S.I. 1999/506), section 108 of, paragraphs 24 and 38 of part 2 of Schedule 6 to, and Schedule 8 to the Utilities Act 2000 (c.27), sections 44, 89, 102, 143, 147, 180 and 197 of, paragraphs 3 and 15 of Schedule 19 to, and Part 1 of Schedule 23 to, the Energy Act 2000 (c.20), section 79 of, and paragraph 5 of Schedule 8 to, the Climate Change Act 2008 (c.27), section 72 of, and paragraph 5 of Schedule 8 to, the Energy Act 2011 (c.16), regulation 48 of the Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), articles 2 and 13 of the Electricity and Gas (Smart Meters Licensable Activity) Order 2012 (S.I. 2012/2400), section 26 of, and paragraphs 30 and 43 of part 1 of Schedule 6 to, the Enterprise and Regulatory Reform Act 2013 (c.24), and regulation 5 of the Electricity and Gas (Internal Markets) Regulations (S.I. 2014/3332).

“the outline construction worker travel plan” means the document of that name identified in Table 17 of Schedule 14 (documents and plans to be certified) and which is certified by the Secretary of State as the outline construction worker travel plan for the purposes of this Order;

“the outline landscape and biodiversity strategy” means the document of that name identified in Table 17 of Schedule 14 (documents and plans to be certified) and which is certified by the Secretary of State as the outline landscape and biodiversity strategy for the purposes of this Order;

“the outline public right of way management plan” means the document of that name identified in Table 17 of Schedule 14 (documents and plans to be certified) and which is certified by the Secretary of State as the outline public right of way management plan for the purposes of this Order;

“the outline surface water drainage strategy” means the outline surface water drainage strategy in section 6.0 of the flood risk assessment;

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

“pedestrian bridge plan” means the plan for the pedestrian bridge in numbered work 9A and identified as the pedestrian bridge plan in Table 17 of Schedule 14 (documents and plans to be certified) and which is certified by the Secretary of State as the pedestrian bridge plan for the purposes of this Order;

“permitted preliminary works” means (1) environmental surveys, geotechnical surveys, intrusive archaeological surveys and other investigations for the purpose of assessing ground conditions, demolition of buildings and removal of plant and machinery; (2) above ground site preparation for temporary facilities for the use of contractors; (3) the provision of temporary means of enclosure and site security for construction; (4) the temporary display of site notices or advertisements; and (5) site clearance (including vegetation removal, demolition of existing buildings and structures);

“Planning Acts” means the Town and Country Planning Act 1947(b), the Town and Country Planning Act 1962(c), the Town and Country Planning Act 1971(d), and the 1990 Act;

“plot” means the plots listed in the book of reference and as shown on the land plans;

“relevant planning authority” means the district planning authority for the area in which the land to which the provisions of this Order apply is situated;

“requirements” means those matters set out in Schedule 2 to this Order and “requirement” means any one of the requirements;

“stage 1” means numbered works 1, 3A, 4A, 5, 6, 7, 8A, 9 (only in so far as applicable to numbered work 1), 11 (only in so far as applicable to numbered work 1), 12A, 13 and 14;

“stage 2” means numbered works 2, 3B, 4B, 8B, 9 (only in so far as applicable to numbered work 2), 11 (only in so far as applicable to numbered work 2), 12B;

“statutory undertaker” means any person falling within section 127(8), ~~128(5) or 129(2) of the 2008 Act~~ of the 2008 Act and includes a public communications provider defined by section 151(1) of the Communications Act 2003(e);

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

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

(a) 1981 c.67.

(b) 1947 c.51 as repealed by the Town and Country Planning Act 1962 and Planning (Consequential Provisions) Act 1990 (c.11).

(c) 1962 c.38 as repealed by the Town and Country Planning Act 1971 and Planning (Consequential Provisions) Act 1990 (c.11).

(d) 1971 c.78 as repealed by the Planning (Consequential Provisions) Act 1990 (c.11).

(e) 2003 c.21 as amended by the Digital Economy Act 2017 (c.30).

~~"tree preservation order" has the meaning given in section 198 of the 1990 Act;~~

"street works" means the works listed in article 9(1);

"the tribunal" means the Lands Chamber of the Upper Tribunal;

"undertaker" means [Drax Power Limited](#) or the person who has the benefit of this Order in accordance with ~~section 156 of the 2008 Act~~[articles 6 and 7](#);

"watercourse" includes all rivers, streams, [creeks](#), ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain; and

"the works ~~plan~~" means ~~the plan certified as the works plan by the decision-maker plans~~ means the plans of that name identified in Table 17 of Schedule 14 (documents and plans to be certified) and which are certified by the Secretary of State as the works plans for the purposes of this Order.

(2) ~~(2)~~—References in this Order to rights over land include references to rights to do or to place and maintain—anything in, on or under land or in the air-space above its surface ~~and to any trusts or incidents (including restrictive covenants) to which the land is subject and references in this Order to the creation or acquisition of new rights include the imposition of restrictive covenants which interfere with the interests or rights of another and are for the benefit of land which is acquired under this Order or over which rights are created and acquired under this Order or is otherwise comprised in this Order.~~

(3) ~~(3)~~—All distances, directions and lengths referred to in this Order are approximate and distances between [lines and/or points](#) on a [numbered](#) work comprised in the authorised ~~project~~ ~~shall development and shown on the works plans and access rights of way plans are to~~ be taken to be measured along that work.

~~[NOTE: In the case of off-shore development, which is outside the area of any planning authority, it will be necessary to identify another appropriate body as the relevant planning authority.]~~

(4) References in this Order to numbered works are references to the works comprising the authorised development as numbered in Schedule 1 (authorised development) to this Order and shown on the works plans and a reference in this Order to a work designated by a number, or by a combination of letters and numbers (for example, "Work No. 1A" or "numbered work 1A"), is a reference to the work so designated in Schedule 1 (authorised development) to this Order and a reference to "Work No. 1" or "numbered work 1" means numbered works 1A to 1D inclusive.

(5) The expression "includes" is to be construed without limitation.

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

(7) References to any statutory body include that body's successor bodies as from time to time have jurisdiction over the authorised development.

PART 2

PRINCIPAL POWERS

Development consent etc. granted by the Order

2

~~3.—(1)~~ Subject to the provisions of this Order and to the requirements ~~in the Schedule (requirements) attached to this Order~~, the undertaker is granted ~~—(a)—~~ development consent for the authorised development ~~;~~ ~~and (b)—consent for the ancillary works,~~ to be carried out within the Order limits.

(2) Each numbered work may only be situated within the corresponding numbered area shown on the works plans and within the limits of deviation.

Maintenance of authorised ~~project~~ development

3

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

(2) This article only authorises the carrying out of maintenance works within the Order limits.

Operation of authorised development

5.—(1) The undertaker is authorised to use and operate the generating stations comprised in ~~the authorised development.~~

(2) This article does not relieve the undertaker of any requirement to obtain any permit or licence or any obligation under any legislation that may be required to authorise the operation of a generating station.

Benefit of the Order

4

6.—(1) Subject to paragraph (2) and article ~~5-7~~ (consent to transfer the benefit of the Order), the provisions of ~~articles [] and [] [specify relevant articles]~~ shall this Order have effect solely for the benefit of ~~[specify person, body or class of person]; the undertaker.~~

(2) Paragraph (1) does not apply to—

(a) Work No. 6A in relation to which this Order has effect for the benefit of the undertaker and NGG; and

(b) Work No 8 in relation to which this Order has effect for the benefit of the undertaker and NGET.

[NOTE: This article is required where provisions of the Order are specific to a named undertaker or class of undertaker (see section 156(2) of the 2008 Act).]

Consent to transfer benefit of ~~Order~~ the Order

7.—(1) Subject to paragraph (4), the undertaker may—

5

~~(1) The undertaker may, with the consent of the [specify person or body]—~~

~~(a) (a) —~~ transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order (including any of the numbered works) and such related statutory rights as may be agreed in writing between the undertaker and the transferee; or

~~(b) (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 (including any of the numbered works) and such related statutory rights as may be so agreed.

(2) (2) — Where ~~an agreement a~~ transfer or grant has been made in accordance with paragraph (1) references in this Order to the undertaker, except in paragraph (3), ~~shall~~ include references to the transferee or the lessee.

(3) (3) — The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) ~~shall be 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.

(4) The consent of the Secretary of State is required for the exercise of the powers of paragraph (1) except where—

(a) the transferee or lessee is—

(i) the holder of a licence under section 6 of the Electricity Act 1989;

- (ii) in relation only to a transfer or lease of Work No. 6 or Work No. 7 the holder of a licence under section 7 of the Gas Act 1986(a); or
- (iii) in relation to a transfer or lease of any works within a highway a highway authority responsible for the highways within the Order land; or
- (b) the time limits for all claims for compensation in respect of the acquisition of land or effects upon land under this Order have elapsed and—
 - (i) no such claims have been made;
 - (ii) any such claims that have been made have all been compromised or withdrawn;
 - (iii) compensation has been paid in final settlement of all such claims;
 - (iv) payment of compensation into court in lieu of settlement of all such claims has taken place; or
 - (v) it has been determined by a tribunal or court of competent jurisdiction in respect of all claims that no compensation is payable.
- (5) Where the consent of the Secretary of State is not required under paragraph (4), the undertaker must notify the Secretary of State in writing before transferring or granting a benefit referred to in paragraph (1).
- (6) The notification referred to in paragraph (5) must state—
 - (a) the name and contact details of the person to whom the benefit of the powers will be transferred or granted;
 - (b) subject to paragraph (7), the date on which the transfer will take effect;
 - (c) the powers to be transferred or granted;
 - (d) pursuant to paragraph (3), the restrictions, liabilities and obligations that will apply to the person exercising the powers transferred or granted; and
 - (e) where relevant, a plan showing the works or areas to which the transfer or grant relates.
- (7) The date specified under paragraph (6)(b) must not be earlier than the expiry of five working days from the date of the receipt of the notice.
- (8) The notice given under paragraph (6) must be signed by the undertaker and the person to whom the benefit of the powers will be transferred or granted as specified in that notice.

Application and modification of ~~legislative provisions~~ statutory provisions

8.—(1) The provisions of the Neighbourhood Planning Act 2017(b) insofar as they relate to temporary possession of land under articles 28 (temporary use of land for carrying out the authorised development) and 29 (temporary use of land for maintaining the authorised development) of this Order do not apply in relation to the construction of any work or the carrying out of any operation required for the purpose of, or in connection with, the construction, operation or maintenance of any part of the authorised development.

(2) As from the date on which the authorised development (including the permitted preliminary works) is commenced any approval, grant, permission, authorisation or agreement made under the Planning Acts or Electricity Acts prior to that date is hereby excluded and does not apply but only insofar as such approval, grant, permission, authorisation or agreement relates to the Order limits and is inconsistent with the authorised development and anything approved under the requirements.

(3) The following provisions do not apply in relation to the construction of any work or the carrying out of any operation required for the purpose of, or in connection with, the construction or maintenance of the authorised development—

-
- (a) 1986 c.44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c.45), and was further amended by section 76 of the Utilities Act 2000 (c.27) and Part 1 of Schedule 23 to the Energy Act 2004 (c.20). There are other amendments to the section that are not relevant to this Order.
 - (b) 2017 c.20.

- (a) [section 23 \(prohibition of obstructions, etc. in watercourses\) of the Land Drainage Act 1991\(a\)](#);
- (b) [the provisions of any byelaws made under section 66 \(powers to make byelaws\) of the Land Drainage Act 1991](#);
- (c) [section 24 \(restrictions on abstraction\) of the Water Resources Act 1991\(b\)](#); and
- (d) [regulation 12 \(requirement for environmental permit\) of the Environmental Permitting \(England and Wales\) Regulations 2016\(c\) in respect of a flood risk activity only](#).

PART 3

STREETS

6

~~(1) Subject to the modifications set out in paragraph (2) the following provisions of the [insert short title of the relevant Act] shall be incorporated in this Order—~~

~~(a) section[s] X [specify relevant section(s)].~~

~~(2) The modifications are: [insert relevant modifications].~~

~~(3) In construing the [insert short title of the relevant Act] as incorporated the following expressions shall have the following meanings: [insert relevant expressions and definitions]~~

Defence to proceedings in respect of statutory nuisance

7

~~(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990 ((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 shall 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 project and that the nuisance is attributable to the carrying out of the authorised project 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; or~~

~~(ii) is a consequence of the construction or maintenance of the authorised project 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 project and that the nuisance is attributable to the use of the authorised project which is being used in accordance with a scheme of monitoring and attenuation of noise agreed with the Commission as described in requirement 25; or~~

~~(ii) is a consequence of the use of the authorised project and that it cannot reasonably be avoided.~~

(a) [1991 c.59 as amended by the Flood and Water Management Act 2010 \(c.29\) and words substituted by S.I.2009/1307.](#)
 (b) [1991 c.57 as amended by S.I. 2009/3104.](#)
 (c) [S.I. 2016/1154.](#)

~~(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), shall 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 project.~~

Street works

8

~~9.(1) —~~ (1) The undertaker may, for the purposes of the authorised project development, enter on so much of any of the streets specified in Schedule B-3 (streets subject to street works) as is within the Order limits and may —

- (a) (a) — break up or open the street, or any sewer, drain or tunnel under it;
- (b) (b) — drill, tunnel or bore under the street;
- (c) (c) — place and keep apparatus in the street;
- (d) (d) — maintain apparatus in the street or, change its position, and/or remove it;
- (e) construct a bridge over the street; and
- (f) (e) — execute any works required for or incidental to any works referred to in sub-paragraphs (a), (b), (c), (d) and (e).

(2) (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 and section 176 (restrictions on construction of bridges over highways) of the 1980 Act.

(3) (3) — The Where the undertaker is not the street authority, the provisions of sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1).

(4) (4) — In this article "apparatus, "bridge" has the same meaning as in Part 3 section 176(8) of the 1991-1980 Act.

[NOTE: This article should not be used for the purposes of authorising street works that affect a trunk road (as defined in the 1980 Act); no trunk roads should be specified in Schedule B (streets subject to street works). For any street works affecting a trunk road the undertaker should make an application for a licence under section 50 of the 1991 Act.]

Stopping up Power to alter layout, etc., of streets

9

~~(1) — Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised project, stop up each of the streets specified in columns (1) and (2) of Parts 1 and 2 of Schedule C (streets to be stopped up) to the extent specified, by reference to the letters and numbers shown on the works plan, in column (3) of those Parts of that Schedule.~~

~~(2) — No street specified in columns (1) and (2) of Part 1 of Schedule C (being a street to be stopped up for which a substitute is to be provided) shall be wholly or partly stopped up under this article unless —~~

- ~~(a) — the new street to be substituted for it, which is specified in column (4) of that Part of that Schedule, has been completed to the reasonable satisfaction of the street authority and is open for use; or~~
- ~~(b) — a temporary alternative route for the passage of such traffic as could have used the street to be stopped up is first provided and subsequently maintained by the undertaker, to the reasonable satisfaction of the street authority, between the commencement and termination points for the stopping up of the street until the completion and opening of the new street in accordance with sub-paragraph (a).~~

~~(3) — No street specified in columns (1) and (2) of Part 2 of Schedule C (being a street to be stopped up for which no substitute is to be provided) shall be wholly or partly stopped up under this article unless the condition specified in paragraph (4) is satisfied in relation to all the land which abuts on either side of the street to be stopped up.~~

~~(4) — The condition referred to in paragraph (3) is that—~~

~~(a) — the undertaker is in possession of the land; or~~

~~(b) — there is no right of access to the land from the street concerned; or~~

~~(c) — there is reasonably convenient access to the land otherwise than from the street concerned; or~~

~~(d) — the owners and occupiers of the land have agreed to the stopping up.~~

~~(5) — Where a street has been stopped up under this article—~~

10.—(1) The undertaker may for the purposes of the authorised development alter the layout of or carry out any works in the street in the case of permanent works as specified in column (2) of Part 1 of Schedule 4 (streets subject to permanent alteration of layout) in the manner specified in relation to that street in column (3) and in the case of temporary works as specified in column (2) of Part 2 of Schedule 4 (streets subject to temporary alteration of layout) in the manner specified in relation to that street in column (3).

(2) Without prejudice to the specific powers conferred by paragraph (1) but subject to paragraphs (3) and (4), the undertaker may, for the purposes of constructing, operating or maintaining the authorised development, alter the layout of any street and, without limitation on the scope of this paragraph, the undertaker may—

(a) alter the level or increase the width of any kerb, footway, cycle track or verge; and

(b) make and maintain passing place(s).

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

(4) The powers conferred by paragraph (2) may not be exercised without the consent of the street authority.

(5) Paragraphs (3) and (4) do not apply where the undertaker is the street authority for a street in which the works are being carried out.

Construction and maintenance of new or altered means of access

11.—(1) Those parts of each means of access specified in Part 1 of Schedule 5 (those parts of the access to be maintained at the public expense) to be constructed under this Order must be completed to the reasonable satisfaction of the highway authority and, unless otherwise agreed by the highway authority, must be maintained by and at the expense of the undertaker for a period of 12 months from completion and from the expiry of that period by and at the expense of the highway authority.

(2) Those parts of each means of access specified in Part 2 of Schedule 5 (those parts of the access to be maintained by the street authority) to be constructed under this Order and which are not intended to be a public highway must be completed to the reasonable satisfaction of the street authority and must be maintained by and at the expense of the undertaker for a period of 12 months from completion and from the expiry of that period by and at the expense of the street authority.

(3) Those restoration works carried out pursuant to article 10(3) (power to alter layout, etc., of streets) identified in Part 3 of Schedule 5 (those works to restore the temporary accesses which will be maintained by the street authority) which are not intended to be a public highway must be completed to the reasonable satisfaction of the street authority and must be maintained by and at the expense of the street authority.

(4) 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 is 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.

(5) For the purposes of a defence under paragraph (4), a court must in particular have regard to the following matters—

- (a) the character of the street including 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; and
- (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 that the undertaker had arranged for a competent person to carry out or supervise the maintenance of that part of the street to which the action relates unless it is also proved that the undertaker had given that person proper instructions with regard to the maintenance of the street and that those instructions had been carried out.

(6) 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.

~~(a)—all Temporary stopping up of streets and public rights of way ~~over or along the street~~ so stopped up shall be extinguished; and~~

~~(b)—the undertaker may appropriate and use for the purposes of the authorised project so much of the site of the street as is bounded on both sides by land owned by the undertaker.~~

~~(6)—Any person who suffers loss by the suspension or extinguishment of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.~~

~~(7)—This article is subject to article 32 (apparatus etc of statutory undertakers).~~

Public rights of way

10

~~(1)—With effect from the [date of publication of this Order] [the date of certification by the local highway authority that the agreed alternative right of way has been created to the standard defined in the implementation plan], [the section of] the public right of way (being a [insert one of: footpath/bridleway/byway open to all traffic/restricted byway]) shown marked in [red] between the points [A] and [B] on the rights plan is extinguished.~~

~~(2)—With effect from [that same date] [insert later date] an alternative section of [insert description of right of way of that same type] as marked in [green] between the points [C] and [D] on the rights plan is created.~~

~~(3)—In this article—~~

~~"implementation plan" means the written plan agreed between the undertaker and the local highway authority for creation of the agreed alternative right of way to the defined standard; and~~

~~"local highway authority" has the same meaning as in section 329(1) of the 1980 Act.~~

Temporary stopping up of streets

11

~~12.~~~~(1)~~ ~~—~~~~(1)~~ The undertaker, during and for the purposes of carrying out and maintaining the authorised ~~project~~development, may temporarily stop up, prohibit the use of, restrict the use of, alter or divert any street or public right of way and may for any reasonable ~~time~~time—

~~(a)~~ ~~(a)~~ ~~—~~ divert the traffic or a class of traffic from the street or public right of way; and

~~(b)~~ ~~(b)~~ ~~—~~ subject to paragraph (2), prevent all persons from passing along the street or public right of way.

~~(2)~~ ~~(2)~~ ~~—~~ The undertaker ~~shall~~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, prohibition, restriction, alteration or diversion of a street or public right of way under this article if there would otherwise be no such access.

~~(3)~~ ~~(3)~~ ~~—~~ Without prejudice to the generality of paragraph (1), the undertaker may temporarily stop up, prohibit the use of, restrict the use of, alter or divert the streets specified in ~~columns (1) and column~~ (2) of the table in Part 1 of Schedule D ~~(streets 6 (streets to be temporarily stopped up etc.) to the extent specified in column (3) of the table in Part 1 of Schedule 6 and the public rights of way specified in column (2) of the table in Part 2 of Schedule 6 (public rights of way to be temporarily stopped up) to the extent specified~~, ~~by reference to the letters and numbers shown on the works plan,~~ in column (33) of that the table in Part 2 of Schedule 6.

~~(4)~~ ~~(4)~~ ~~—~~ The undertaker ~~shall~~must not temporarily stop up, prohibit the use of, restrict the use of, alter or ~~divert~~divert—

~~(a)~~ ~~(a)~~ ~~—~~ any street or public right of way specified ~~as mentioned~~ in paragraph (3) without first consulting the street authority; and

~~(b)~~ ~~(b)~~ ~~—~~ any other street or public right of way without the consent of the street authority ~~which, and the street authority~~ may attach reasonable conditions to any such consent.

~~(5)~~ ~~(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.

~~(6)~~ ~~Without prejudice to the scope of paragraph (1), the undertaker may use any street or public right of way which has been temporarily stopped up under the powers conferred by this article and within the Order limits as a temporary working site.~~

~~(7)~~ ~~Without prejudice to the requirements of paragraph (4), the undertaker must not exercise the powers in paragraphs (1) and (3) unless it has—~~

~~(a)~~ given not less than 4 weeks' notice in writing of its intention to do so 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 in the case of sub-paragraph (a).

~~(8)~~ Any prohibition, restriction or other provision made by the undertaker under paragraph (1) or (3) of this article has effect as if duly made by the traffic authority in whose area the road is situated as a traffic regulation order under the 1984 Act, and the instrument by which it is effected

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

(9) In this article—

- (a) subject to sub-paragraph (b) expressions used in this article and in the 1984 Act have the same meaning; and
- (b) a “road” means a road that is a public highway maintained by and at the expense of the traffic authority.

Permanent stopping up of public rights of way

13.—(1) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised development, stop up each of the public rights of way specified in column (2) of Schedule 7 (public rights of way to be permanently 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) of that Schedule.

(2) No public right of way specified in columns (2) and (3) of Schedule 7 (public rights of way to be permanently stopped up) is to be wholly or partly stopped up under this article unless—

- (a) it is necessary for the undertaker to take such action in order to prepare the carbon capture readiness reserve space for the installation and operation of carbon capture equipment, should it be deemed necessary to do so; and
- (b) the new public right of way to be substituted for it, which is specified in column (4) of that table in Schedule 7, has been completed in accordance with the details approved under requirement 9 and is open for use; or
- (c) a temporary alternative route for the public as could have used the public right of way to be stopped up is first provided and subsequently maintained by the undertaker, to the reasonable satisfaction of the street authority, between the commencement and termination points for the stopping up of the public right of way until the completion and opening of the new public right of way in accordance with sub-paragraph (b).

(3) Where a public right of way has been stopped up under this article—

- (a) all rights of way over or along the public right of way so stopped up shall be extinguished; and
- (b) the undertaker may appropriate and use for the purposes of the authorised development so much of the site of the public right of way as is bounded on both sides by land owned by the undertaker.

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

Access to works

12

14.—(1) The undertaker may, for the purposes of the authorised ~~project~~ development—

- (a) ~~(a)~~ —form and lay out the permanent means of access, or improve existing means of access, in the ~~location~~ locations specified in ~~columns (1) and (2) of Schedule E Part 1 of Schedule 4 (access to works); and~~ streets subject to permanent alteration of layout);
- (b) form and lay out the temporary means of access in the location specified in Part 2 of Schedule 4 (streets subject to temporary alteration of layout); and
- (c) ~~(b)~~ —with the approval of the relevant planning authority after consultation with the highway authority, form and lay out such other means of access or improve existing

(a) 2004 c.18.

means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised ~~project~~development.

Agreements with street authorities

~~13~~

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

(a) ~~(a)~~ —the construction of any new street including any structure carrying the street over or under a ~~an insert description of any part of the authorised development authorised by this Order;~~

(b) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;

(c) ~~(b)~~ —the construction and maintenance of the structure of any bridge or tunnel carrying a street ~~over or under a insert description of development;~~ (including any footbridge over a street);

(d) ~~(c)~~ —any stopping up, prohibition, restriction, alteration or diversion of a street authorised by this Order;~~or~~

(e) ~~(d)~~ —the carrying out undertaking in the street of any of the works referred to in article 8(1) ~~(street works)~~ 11(1) (construction and maintenance of new or altered means of access); and/or

(f) the adoption by a street authority which is the highway authority of works—

(i) undertaken on a street which is existing publicly maintainable highway; and/or

(ii) which the undertaker and highway authority agree are to be adopted as publicly maintainable highway.

(2) ~~(2)~~ —Such an If such an agreement provides that the street authority must undertake works on behalf of the undertaker the agreement may, without prejudice to the generality of paragraph ~~(1)~~ —

(a) ~~(a)~~ —make provision for the street authority to carry out any function under this Order which relates to the street in question;

(b) ~~(b)~~ —include an agreement between the undertaker and street authority specifying specify a reasonable time for the completion of the works; and

(c) ~~(c)~~ —contain such terms as to payment and otherwise as the parties consider appropriate.

PART 4

SUPPLEMENTAL POWERS

Discharge of water

~~14~~

16. ~~(1)~~ —(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 ~~project~~development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

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

~~(3) (3)~~—The undertaker ~~shall 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 ~~shall must~~ not be unreasonably withheld.

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

~~(a) (a)~~—in accordance with plans approved by the person to whom the sewer or drain belongs, but ~~such~~ approval ~~shall must~~ not be unreasonably withheld; and

~~(b) (b)~~—where that person has been given the opportunity to supervise the making of the opening.

~~(5) —The undertaker shall 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.~~

~~(5) (6)~~—~~The undertaker shall~~ 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.

~~(6) (7)~~—This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters ~~is prohibited by section 85(1), (2) or (3) of the Water Resources Act 1991 (offences of polluting water); requires a licence pursuant to the Environmental Permitting (England and Wales) Regulations 2016.~~

~~(7) In this article—~~

~~(8) —In this article—~~

~~(a) (a)~~—“public sewer or drain” means a sewer or drain which belongs to the Homes and Communities Agency, the Environment 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 or an urban development corporation; and

~~(b) (b)~~—other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991 have the same meaning as in that Act.

Protective work to buildings

15

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

~~(2) —Protective works may be carried out—~~

~~(a) —at any time before or during the carrying out in the vicinity of the building of any part of the authorised project; or~~

~~(b) —after the completion of that part of the authorised project in the vicinity of the building at any time up to the end of the period of 5 years beginning with the day on which that part of the authorised project is first opened for use.~~

~~(a)~~ 1991 c.56. Section 106 was amended by sections 35(1), 35(8) and 43(2) of, and Schedule 2 to, the Competition and Service (Utilities) Act 1992 (c.43), sections 32(2) and 99 of the Water Act 2003 (c.37) and paragraph 16(1) of Schedule 3 to the Flood and Water Management Act 2010 (c.29).

~~(b)~~ 1964 c.40. Paragraph 9B was inserted into Schedule 2 by the Transport and Works Act 1992 (c.42), section 63(1) and Schedule 3, paragraph 9(1) and (5). There are other amendments to the 1964 Act which are not relevant to this Order.

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

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

~~(a) — enter the building and any land within its curtilage; and~~

~~(b) — where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building but outside its curtilage, enter the adjacent land (but not any building erected on it).~~

~~(5) — Before exercising—~~

~~(a) — a right under paragraph (1) to carry out protective works to a building;~~

~~(b) — a right under paragraph (3) to enter a building and land within its curtilage;~~

~~(c) — a right under paragraph (4)(a) to enter a building and land within its curtilage; or~~

~~(d) — a right under paragraph (4)(b) to enter land,~~

~~the undertaker shall, except in the case of emergency, serve on the owners and occupiers of the building or land not less than 14 days' notice of its intention to exercise that right and, in a case falling within sub-paragraph (a) or (c), specifying the protective works proposed to be carried out.~~

~~(6) — Where a notice is served under paragraph (5)(a), ((c) or (d)), the owner or occupier of the building or land concerned may, by serving a counter notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 42 (arbitration).~~

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

~~(8) — Where—~~

~~(a) — protective works are carried out under this article to a building; and~~

~~(b) — within the period of 5 years beginning with the day on which the part of the authorised project carried out in the vicinity of the building is first opened for use it appears that the protective works are inadequate to protect the building against damage caused by the carrying out or use of that part of the authorised project;~~

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

~~(9) — Nothing in this article shall relieve the undertaker from any liability to pay compensation under section 10(2) of the 1965 Act (compensation for injurious affection).~~

~~(10) — Any compensation payable under paragraph (7) or (8) shall be determined, in case of dispute, under Part 1 of the 1961 Act (determination of questions of disputed compensation).~~

~~(11) — In this article "protective works" in relation to a building means—~~

~~(a) — underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the carrying out, maintenance or use of the authorised project; and~~

~~(b) — any works the purpose of which is to remedy any damage which has been caused to the building by the carrying out, maintenance or use of the authorised project.~~

Authority to survey and investigate the land

17.~~(1)~~ ~~—(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 ~~project and development or upon which entry is required in order to carry out monitoring or surveys in respect of the authorised development and—~~

~~(a)~~ ~~(a)~~—survey or investigate the land;

~~(b)~~ ~~(b)~~—without prejudice to the generality of sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;

~~(c)~~ ~~(c)~~—without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and

~~(d)~~ ~~(d)~~—place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.

~~(2)~~ ~~(2)~~—No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least ~~14~~ fourteen days' notice has been served on every owner and occupier of the land.

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

~~(a)~~ ~~(a)~~—~~shall~~must, if so required entering the land, produce written evidence of their authority to do so; and

~~(b)~~ ~~(b)~~—may take with them such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

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

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

~~(b)~~ ~~(b)~~—in a private street without the consent of the street authority;

~~but such consent shall not be unreasonably withheld.~~

~~(5)~~ ~~(5)~~—The undertaker ~~shall~~ 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.

~~(6)~~ Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the entry onto, or possession of, land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

Removal of human remains

~~17~~

18.~~(1)~~ ~~—(1)~~ In this article “the specified land” means ~~insert description of the~~ Order land~~—~~.

~~(2)~~ ~~(2)~~—Before the undertaker carries out any development or works which will or may disturb any human remains in the specified land it ~~shall~~ 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)~~ ~~(3)~~—Before any such remains are removed from the specified land the undertaker ~~shall~~ must give notice of the intended removal, describing the specified land and stating the general effect of the following provisions of this article, ~~by~~ by—

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

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

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

(5) ~~(5)~~—At any time within ~~56~~ fifty-six 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) ~~(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~~ be

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

(b) ~~(b)~~—removed to, and cremated in, any crematorium, and that person ~~shall~~ 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) ~~(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 ~~shall~~ is to be determined on the application of either party in a summary manner by the county court, and the court may make an order specifying who ~~shall~~ is to remove the remains and as to the payment of the costs of the application.

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

~~(9) If—~~

(9) If—

(a) ~~(a)~~—within the period of ~~56~~ fifty-six 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) ~~(b)~~—such notice is given and no application is made under paragraph (7) within ~~56~~ fifty-six 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~~ fifty-six days; or

(c) ~~(c)~~—within ~~56~~ fifty-six 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) ~~(d)~~—it is determined that the remains to which any such notice relates cannot be identified;

subject to paragraph ~~(11)~~ the undertaker ~~shall~~ 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 ~~shall~~ must be re-interred in individual containers which ~~shall~~ must be identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

(10) ~~(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 ~~shall~~ must comply with any reasonable request that person may make in relation to the removal and re-interment or cremation of the remains.

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

(a) ~~(a)~~—a certificate of re-interment or cremation ~~shall~~ 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) ~~(b)~~—a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (9) ~~shall~~ must be sent by the undertaker to ~~{insert relevant local authority}~~ the address mentioned in paragraph (4).

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

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

~~(14) (14)~~—Section 25 of the Burial Act 1857—~~(a)~~ (bodies not to be removed from burial grounds, save under faculty, without licence of Secretary of State) ~~shall~~ is not to apply to a removal carried out in accordance with this article.

PART 5

POWERS OF ACQUISITION

Compulsory acquisition of land

18

~~19.(1)~~—(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised ~~project~~ development or to facilitate it, or is incidental ~~, to it~~ or is required as replacement land to it and may use any land so acquired for the purposes authorised by this Order or for any other purposes in connection with or ancillary to the authorised development.

~~(2) (2)~~—As from the date on which a compulsory acquisition notice ~~under section 134(3) 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, that land or that part of it which is vested (as the case may be) ~~shall be~~ is discharged from all rights, trusts and incidents to which it was previously subject.

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

~~(3) (4)~~—This article is subject to article 22 (compulsory acquisition of rights), article 25 (acquisition of ~~land limited to subsoil lying more than 9 metres beneath surface) and only~~), article 28 (temporary use of land for carrying out the authorised ~~project~~ development) and article 30 (statutory undertakers).

Statutory authority to override easements and other rights

~~Compulsory acquisition of land—incorporation of the mineral code~~

19

~~[Part(s)] 2 [and 3] of Schedule 2 to the Acquisition of Land Act 1981(minerals) [is/are] incorporated in this Order subject to the modifications that—~~

- ~~(a) —paragraph 8(3) is not incorporated;~~
- ~~(b) —for "the acquiring authority" substitute "the undertaker";~~
- ~~(c) —[insert additional modifications].~~

20.—(1) The carrying out or use of the authorised development and the doing of anything else authorised by this Order is authorised for the purpose specified in section 158(2) of the 2008 Act (nuisance: statutory authority), 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 use of land arising by virtue of contract.

(2) The undertaker must pay compensation to any person whose land is injuriously affected by—

(a) 1857 c.81. Section 25 Substituted by Church of England (Miscellaneous Provisions) Measure 2014 No. 1 s.2. There are other amendments to this Act which are not relevant to this Order.

(a) an interference with an interest or right to which this article applies; or

(b) a breach of a restriction as to use of land arising by virtue of contract,

authorised by virtue of this Order and the operation of section 158 of the 2008 Act.

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

(4) Subsection (2) of section 10 of the 1965 Act applies to paragraph (2) by virtue of section 152(5) of the 2008 Act (compensation in case where no right to claim in nuisance).

(5) Any rule or principle applied to the construction of section 10 of the 1965 Act must be applied to the construction of paragraph (2) (with any necessary modifications).

Time limit for exercise of authority to acquire land compulsorily

20

~~21. (1)~~ (1) After the end of the period of ~~15 years~~ 1 beginning on the day on which this Order is ~~made~~ made

(a) ~~(a)~~ no notice to treat ~~shall~~ is to be served under Part 1 of the 1965 Act; and

(b) ~~(b)~~ no declaration ~~shall~~ is to be executed under section 4 of the ~~Compulsory Purchase 1981 Act~~ (Vesting Declarations) Act 1981 as applied by article ~~23-24~~ (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

(2) ~~(2)~~ The authority conferred by article 28 (temporary use of land for carrying out the authorised ~~project~~ development) ~~shall cease~~ ceases at the end of the period referred to in paragraph (1), save that nothing in this paragraph ~~shall~~ is to prevent 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.

Compulsory acquisition of rights etc

22. (1) Subject to paragraph (2), the undertaker may acquire compulsorily such rights over the Order land as may be required for any purpose for which that land may be acquired under article 19 (compulsory acquisition of land) by creating new rights as well as by acquiring rights already in existence.

21

(2) ~~(1)~~ ~~The~~ In the case of the Order land specified in column (1) of the table in Schedule 8 (land in which only new rights etc. may be acquired) the undertaker may acquire compulsorily the existing rights over land and create and acquire compulsorily the new rights ~~described in the book of reference and shown on the~~ insert name ~~plan~~ as are specified in column 2 of the table in that Schedule.

~~(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 shall be 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) ~~(3)~~ ~~Subject to section 8 of the 1965 Act, as substituted by article 26 (acquisition of part of certain properties)~~ Subject to section 8 of the 1965 Act (other provisions as to divided land), schedule 2A (counter-notice requiring purchase of land not in notice to treat) (as substituted by paragraph 5(8) of Schedule 9 (modification of compensation and compulsory purchase enactments for creation of new rights)) and section 12 of the 1981 Act (divided land), where the undertaker creates or acquires an existing a right over land under paragraph (1) or (2), the undertaker shall not be required to acquire a greater interest in that land. is not required to acquire a greater interest in that land.

(4) Schedule 9 (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.

(5) In any case where the acquisition of new rights under paragraph (1) or (2) is required for the purposes of diverting, replacing or protecting the apparatus of a statutory undertaker, the undertaker may, with the consent of the Secretary of State, transfer the power to create and acquire such rights to the statutory undertaker in question.

(6) The exercise by a statutory undertaker of any power in accordance with a transfer under paragraph (5) is subject to the same restrictions, liabilities and obligations as would apply under this Order if that power were exercised by the undertaker.

(7) Subject to the modifications set out in Schedule 9 (modification of compensation and compulsory purchase enactments for creation of new rights) the enactments for the time being in force with respect to compensation for the compulsory purchase of land are to apply in the case of a compulsory acquisition under this Order in respect of a right by the creation of a new right as they apply to the compulsory purchase of land and interests in land.

Private rights

~~(4) — Any person who suffers loss as a result of the extinguishment or suspension of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.~~

Private rights of way

22

~~23.(1) —~~ (1) Subject to the provisions of this article, all private rights ~~of way and restrictions~~ over land subject to compulsory acquisition under this Order ~~shall be extinguished~~ are extinguished—

- (a) ~~(a)~~ — as from the date of acquisition of the land ~~, or of the right, or of the benefit of the restrictive covenant~~ by the undertaker, whether compulsorily or by agreement; ~~or~~
- (b) ~~(b)~~ — on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act (power of entry); ~~or~~
- (c) ~~on commencement of any activity authorised by the Order which interferes with or breaches those rights~~

whichever is the ~~earlier~~ earliest.

(2) ~~(2)~~ — Subject to the provisions of this article, all private rights ~~of way over land owned by the undertaker which, being within the limits of land which may be acquired shown on the land plan, is required for the purposes of this Order shall be extinguished on the appropriation of the land by the undertaker for any of those purposes~~ and restrictions over land subject to the compulsory acquisition of rights under this Order are suspended and unenforceable or, where so notified by the undertaker, extinguished in so far as in either case their continuance would be inconsistent with the exercise of the right—

- (a) ~~as from the date of acquisition of the right 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 (power of entry) in pursuance of the right,~~

whichever is the earliest.

(3) ~~(3)~~ — Subject to the provisions of this article, all private rights ~~of way and restrictions over land owned by the undertaker within the Order land are extinguished on commencement of any activity authorised by this Order which interferes with or breaches such rights.~~

(4) Subject to the provisions of this article, all private rights or restrictions over land of which the undertaker takes temporary possession under this Order ~~shall be~~ are suspended and unenforceable for as long as the undertaker remains in lawful possession of the land and so far as their continuance would be inconsistent with the exercise of the temporary possession of that land.

~~(5)~~ ~~(4)~~—Any person who suffers loss by the extinguishment or suspension of any private right ~~of way or restriction~~ under this ~~article shall be~~ Order is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

~~(6)~~ ~~(5)~~—This article does not apply in relation to any right ~~of way or apparatus~~ to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article ~~31~~ 30 (statutory undertakers) applies.

~~(7)~~ ~~(6)~~—Paragraphs (1) to ~~(4)~~ shall have effect subject ~~to~~ to

~~(a)~~ ~~(a)~~—any notice given by the undertaker ~~before~~ before

~~(i)~~ ~~(i)~~—the completion of the acquisition of the land ~~, or the acquisition of rights over land or the creation of rights over land;~~

~~(ii)~~ ~~(ii)~~—the undertaker's appropriation of it;

~~(iii)~~ ~~(iii)~~—the undertaker's entry onto it ~~, or;~~ or

~~(iv)~~ ~~(iv)~~—the undertaker's taking temporary possession of it;

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

~~(b)~~ ~~(b)~~—any agreement made at any time between the undertaker and the person in or to whom the right ~~of way or restriction~~ in question is vested or belongs.

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

~~(a)~~ ~~(a)~~—is made with a person in or to whom the right ~~of way~~ is vested or belongs; and

~~(b)~~ ~~(b)~~—is expressed to have effect also for the benefit of those deriving title from or under that person,

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

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

~~23~~

~~24~~ ~~(1)~~—~~The Compulsory Purchase (Vesting Declarations) Act 1981 shall apply—~~ (1) The 1981 Act applies as if this Order were a compulsory purchase order.

~~(2)~~ ~~(2)~~—~~The Compulsory Purchase (Vesting Declarations) Act 1981, as so applied, shall have~~ The 1981 Act, as applied by paragraph (1), has effect with the following modifications.

~~(3)~~—~~In section 3 (preliminary notices), for subsection (1) there shall be 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 shall include the particulars specified in subsection (3) in a notice which is—~~

~~(3)~~ In section 1 (application of act) for subsection (2) there is substituted—

"(2) This section applies to any Minister, any local or other public authority or any other body or person authorised to acquire land by means of a compulsory purchase order."

~~(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~~

~~(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 shall be substituted "(1)" and after "given" there shall be inserted "and published".~~

~~(5)~~—~~In that section, for subsections (5) and (6) there shall be 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."~~
- (4) ~~(6)~~ In section 5 In section 5(2) (earliest date for execution of declaration)–, omit the words from “, and this subsection” to the end.
- (5) Omit section 5A (time limit for general vesting declaration).
- (a) ~~in subsection (1), after "publication" there shall be inserted "in a local newspaper circulating in the area in which the land is situated"; and~~
- (b) ~~subsection (2) shall be omitted.~~
- (6) In section 5B (extension of time limit during challenge)–
- (a) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in Section 5A” substitute “section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent), the five year period mentioned in article 21 (time limit for exercise of authority to acquire land compulsorily) of the Drax Power (Generating Stations) Order 201*”
- (7) In section 6 (notices after execution of declaration) for subsection (1)(b) there is substituted–
- “(1b) on every other person who has given information to the acquiring authority with respect to any of that land further to the invitation published and served under section 134 (notice of authorisation of compulsory acquisition) of the Planning Act 2008.”
- (8) ~~(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)” shall be omitted.
- (9) In Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration), for paragraph 1(2) substitute–
- “But see article 25(3) (acquisition of subsoil only) of the Drax Power (Generating Stations) Order 201* which excludes the acquisition of subsoil only from this Schedule.”
- (10) ~~(8)~~ References to the 1965 Act in the ~~Compulsory Purchase (Vesting Declarations) Act 1981~~ shall be construed as references to ~~that the 1965~~ Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act as modified by article 26 (modification of Part 1 of the Compulsory Purchase Act 1965) to the compulsory acquisition of land under this Order.

Acquisition of subsoil only

~~24~~

25. ~~(1)~~ —(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in paragraph (1) of article ~~18-19~~ (compulsory acquisition of land) and paragraph (1) of article 22 (compulsory acquisition of rights etc) as may be required for any purpose for which that land or rights over land may be created or acquired under that provision instead of acquiring the whole of the land.

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

(3) The following do not apply in connection with the exercise of the power under paragraph (1) in relation to subsoil only–

- (a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act;
- (b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and

(c) section 153 (4A) (blighted land: proposed acquisition of part interest; material detriment test) of the 1990 Act.

~~(4) (3) — Paragraph (2) shall not prevent article 26 (acquisition of part of certain properties) from applying. Paragraphs (2) and (3) are to be disregarded~~ where the undertaker acquires a cellar, vault, arch, or other construction forming part of a house, building or manufactory.

Acquisition of land limited to subsoil lying more than 9 metres beneath surface

25

(1) — This article applies to the land specified in Schedule F (land of which only subsoil more than 9 metres beneath surface may be acquired).

(2) — In the case of land to which this article applies, the undertaker may only acquire compulsorily under article 18 (compulsory acquisition of land) so much of, or such rights in, the subsoil of the land as may be required for the purposes of the authorised project.

(3) — Where the undertaker acquires any part of, or rights in, the subsoil of the land to which this article applies, the undertaker shall not be required to acquire a greater interest in the land or an interest in any other part of it.

(4) — References in this article to the subsoil of land are references to the subsoil lying more than 9 metres beneath the level of the surface of the land; and for this purpose "level of the surface of the land" means—

(a) — in the case of any land on which a building is erected, the level of the surface of the ground adjoining the building;

(b) — in the case of a watercourse or other water area, the level of the surface of the ground nearest to it which is at all times above water level; or

(c) — in any other case, ground surface level.

Acquisition of part of certain properties

26

(1) — This article shall apply 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 shall be 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 shall be required to sell only the land subject to the notice to treat shall, 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 shall be required to 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 shall be deemed to be a notice to treat for that part.~~

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

~~(a) — the land subject to the notice to treat cannot be taken without material detriment to the remainder of the land subject to the counter notice; but~~

~~(b) — the material detriment is confined to a part of the land subject to the counter notice;~~

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

~~(9) — Where, by reason of a determination by the tribunal under this article, a notice to treat is deemed to be a notice to treat for less land or more land than that specified in the notice, the undertaker may, within the period of 6 weeks beginning with the day on which the determination is made, withdraw the notice to treat; and, in that event, shall 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 shall 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.~~

Modification of Part 1 of the Compulsory Purchase Act 1965

26.—(1) Part 1 of the 1965 Act, as applied to this Order by section 125 (application of compulsory acquisition provisions) of the 2008 Act, is modified as follows.

(2) In section 4A(1) (extension of time limit during challenge)—

(a) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 4” substitute “section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent), the five year period mentioned in article 21 (time limit for exercise of authority to acquire land compulsorily) of the Drax Power (Generating Stations) Order 201*”.

(3) In section 11A (powers of entry: further notices of entry)—

(a) in subsection (1)(a) after “land” insert “under that provision”; and

(b) in subsection (2) after “land” insert “under that provision”.

(4) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for “section 4 of this Act” substitute “article 21 (time limit for exercise of authority to acquire land compulsorily) of the Drax Power (Generating Stations) Order 201*”.

(5) In Schedule 2A (counter-notice requiring purchase of land not in notice to treat)—

(a) for paragraphs 1(2) and 14(2) substitute—

“(2) But see article 25(3) (acquisition of subsoil only) of the Drax Power (Generating Stations) Order 201*, which excludes the acquisition of subsoil only from this Schedule”

(b) after paragraph 29 insert—

“PART 4

INTERPRETATION

30. In this Schedule, references to entering on and taking possession of land do not include doing so under article 28 (temporary use of land for carrying out the authorised development) or article 29 (temporary use of land for maintaining the authorised development) or article 34 (protective works to buildings) of the Drax Power (Generating Stations) Order 201*.”

Rights under or over streets

27

27.(1) —(1) The undertaker may enter ~~on~~ upon 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 authorised ~~project~~ development and may use the subsoil or air-space for those purposes or any other purpose ancillary to the authorised ~~project~~ development.

(2) (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) (3) —Paragraph (2) ~~shall is~~ not to apply in relation ~~to to~~ —

(a) (a) —any subway or underground building; or

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

(4) (4) —Subject to paragraph (5), any person who is an owner or occupier of land ~~appropriated under in respect of which the power of appropriation conferred by~~ paragraph (1) is exercised without the undertaker acquiring any part of that person’s interest in the land, and who suffers loss ~~as a result by the exercise of that power, shall is to~~ be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

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

Temporary use of land for carrying out the authorised ~~project~~ development

28

28.(1) —(1) The undertaker may, in connection with the carrying out of the authorised ~~project~~ development—

(a) (a) —enter on and take temporary possession of—

- (i) so much of the land specified in ~~columns~~ column (1) ~~and (2) of of the table in~~ Schedule ~~G-10~~ (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (32) of ~~that Schedule relating to the part of the authorised project specified in column (4) of the table in~~ that Schedule; ~~and~~
- (ii) any other Order land in respect of which no notice of entry has been served under section 11 of the 1965 Act (powers of entry) and no declaration has been made under section 4 of the 1981 Act (execution of declaration);
- (b) ~~(b)~~—remove any buildings, fences, debris and vegetation from that land; ~~and~~
- (c) ~~(e)~~—construct temporary works (including the provision of means of access) and buildings on that land; ~~and~~
- (d) construct any works specified in relation to that land in column (2) of the table in Schedule 10 (land of which temporary possession may be taken), or any mitigation works.
- (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) ~~(2)~~—~~Not less than 14~~ Not less than fourteen days before entering on and taking temporary possession of land under this article the undertaker ~~shall~~ must serve notice of the intended entry on the owners and occupiers of the land.
- (4) ~~(3)~~—The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article—
- (a) ~~article in the case of land specified in paragraph (1)(a)(i) after the end of the period of one year beginning with the date of completion of the part of the authorised project specified in relation to that land in column (4) of Schedule G.~~ Work No. 1A full commissioning; or
- (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 Work No. 1A full commissioning unless the undertaker has, before the end of that period, served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act or has otherwise acquired the land subject to temporary possession.
- (5) ~~(4)~~—~~Before~~ Unless the undertaker has served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act or has otherwise acquired the land subject to temporary possession, the undertaker must, before giving up possession of land of which temporary possession has been taken under this article, ~~the undertaker shall~~ remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker ~~shall~~ is not to be required to replace a building or debris removed under this article.
- (6) ~~(5)~~—The undertaker ~~shall~~ 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.
- (7) ~~(6)~~—Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, ~~shall~~ is to be determined under Part 1 of the 1961 Act.
- (8) ~~(7)~~—Nothing in this article ~~shall affect~~ affects any liability to pay compensation under section ~~10(2) of the 1965 Act (further provisions as to compensation for injurious affection)~~ 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the carrying out of the authorised ~~project~~ development, other than loss or damage for which compensation is payable under paragraph (5).
- (9) ~~(8)~~—The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1) ~~(a)(i)~~.
- (10) Nothing in this article precludes the undertaker from—

(a) ~~(a)~~ ~~—creating and~~ acquiring new rights over any part of ~~that land the Order land identified in Schedule 8 (land in which only new rights etc. may be acquired)~~ under article ~~21-22~~ (compulsory acquisition of rights ~~etc.~~); or

(b) ~~(b)~~ ~~—acquiring any right in the subsoil of any~~ part of the ~~subsoil (or rights in the subsoil) of that Order land~~ under article ~~24-25~~ (acquisition of subsoil only) or ~~in accordance with article 25-27 (acquisition of land limited to subsoil lying more than 9 metres beneath surface rights under or over streets)~~.

~~(11)~~ (9) ~~—Where the undertaker takes possession of land under this article, the undertaker shall~~ ~~is not to~~ be required to acquire the land or any interest in it.

~~(12)~~ (10) ~~—Section 13 of the 1965 Act (refusal to give possession to acquiring authority) shall~~ ~~apply 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).

~~(13)~~ Nothing in this article prevents the taking of temporary possession more than once in relation to any land specified in Schedule 10 (land of which temporary possession may be taken).

Temporary use of land for maintaining the authorised project development

29

~~29.(1)~~ ~~—(1)~~ Subject to paragraph 29(2), at any time during the maintenance period relating to any part of the authorised project development, ~~the undertaker may—may—~~

(a) ~~(a)~~ ~~—enter on and take temporary possession of any land within the Order limits land~~ if such possession is reasonably required for the purpose of maintaining the authorised project development; ~~and~~

(b) ~~enter on any land within the Order land for the purpose of gaining such access as is reasonably required for the purpose of maintaining the authorised development; and~~

(c) ~~(b)~~ ~~—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)~~ (2) ~~—Paragraph (1) shall does~~ not authorise the undertaker to take temporary possession ~~of—~~

(a) ~~(a)~~ ~~—any house or garden belonging to a house; or~~

(b) ~~(b)~~ ~~—any building (other than a house) if it is for the time being occupied.~~

~~(3)~~ (3) ~~—Not less than 28 twenty-eight~~ days before entering on and taking temporary possession of land under this article the undertaker ~~shall must~~ serve notice of the intended entry on the owners and occupiers of the land.

~~(4)~~ (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 project development for which possession of the land was taken.~~

~~(5)~~ (5) ~~—Before giving up possession of land of which temporary possession has been taken under this article, the undertaker shall must~~ remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

~~(6)~~ (6) ~~—The undertaker shall 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)~~ (7) ~~—Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, shall is to~~ be determined under Part 1 of the 1961 Act.

~~(8)~~ (8) ~~—Nothing in this article shall affect affects~~ any liability to pay compensation under section ~~10(2) of the 1965 Act (further provisions as to compensation for injurious affection)~~ ~~152 of the 2008 Act (compensation in case where no right to claim in nuisance)~~ or under any other enactment in respect of loss or damage arising from the maintenance of the authorised project development, other than loss or damage for which compensation is payable under paragraph (6).

~~(9)~~ (9) —Where the undertaker takes possession of land under this article, the undertaker ~~shall~~ is not to be required to acquire the land or any interest in it.

~~(10)~~ (10) —Section 13 of the 1965 Act (refusal to give possession to acquiring authority) ~~shall~~ apply 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)~~ (11) —In this article “the maintenance period” ~~in relation to any part of the authorised project,~~ means the period of 5 years beginning with the date ~~on which that part of the authorised project is first opened for use,~~ of Work No. 1A full commissioning except where the authorised development is landscaping where “the maintenance period” means such period as set out in the landscape and biodiversity strategy which is approved by the relevant planning authority pursuant to requirement 8 beginning with the date on which that part of the landscaping is completed.

Special category land

30

~~(1) —The special category land shall not vest in the undertaker until the undertaker has acquired the replacement land and [insert name of relevant body] has certified that a scheme for the provision of the replacement land as [common/open space/fuel or field garden allotment] has been implemented to its satisfaction.~~

~~(2) —On the requirements of paragraph (1) being satisfied, the replacement land shall vest in [insert name of relevant body] subject to the same rights, trusts and incidents as attached to the special category land; and the special category land shall be discharged from all rights, trusts and incidents to which it was previously subject.~~

~~(3) —In this article—~~

~~“the special category land” means the land identified as forming part of a common, open space, or fuel or field garden allotment in the book of reference and on the plan entitled “Special Category Land Plan” attached to the land plan, which may be acquired compulsorily under this Order and for which replacement land is to be provided; and~~

~~“the replacement land” means the land identified in the book of reference and on the plan entitled “Replacement Land Plan” attached to the land plan.~~

Statutory undertakers

30.

31

~~The~~ Subject to the provisions of Schedule 12 (protective provisions), the undertaker ~~may—may—~~

~~(a)~~ (a) —acquire compulsorily the land belonging to statutory undertakers ~~shown on the land plan within the limits of the land to be acquired and described in the book of reference~~ Order land;

~~(b)~~ (b) —extinguish or suspend the rights of or restrictions for the benefit of, and remove or reposition the apparatus belonging to statutory undertakers ~~shown on the [insert name] plan and described in the book of reference~~ on, under or within the Order land; and

~~(c)~~ (c) —create and acquire compulsorily the new rights over land belonging to statutory undertakers ~~shown on the [insert name] plan and described in the book of reference~~ within the Order land.

Apparatus and rights of statutory undertakers in ~~stopped-up~~ streets

32

~~31.(1) — (1) Where a street is stopped up altered or diverted or its use is temporarily prohibited or restricted under article 9 (street works), article 10 (power to alter layout, etc. of streets), article 11 (construction and maintenance of new or altered means of access) or article 12 (temporary stopping up of streets), and public rights of way) any statutory utility undertaker whose apparatus is under, in, on, along or across the street shall is to have the same powers and rights in respect of that apparatus, subject to the provisions of this article~~Schedule 12 (protective provisions), as if this Order had not been made.

~~(2) — Where a street is stopped up under article 9, any statutory utility whose apparatus is under, in, on, over, along or across the street may, and if reasonably requested to do so by the undertaker shall —~~

~~(a) — remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the utility may reasonably determine and have power to place it; or~~

~~(b) — provide other apparatus in substitution for the existing apparatus and place it in such position as described in sub-paragraph (a).~~

~~(3) — Subject to the following provisions of this article, the undertaker shall pay to any statutory utility an amount equal to the cost reasonably incurred by the utility in or in connection with —~~

~~(a) — the execution of the relocation works required in consequence of the stopping up of the street; and~~

~~(b) — the doing of any other work or thing rendered necessary by the execution of the relocation works.~~

~~(4) — If in the course of the execution of relocation works under paragraph (2) —~~

~~(a) — apparatus of a better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus; 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,~~

~~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 to be necessary, then, if it involves cost in the execution of the relocation works 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 paragraph, would be payable to the statutory utility by virtue of paragraph (3) shall be reduced by the amount of that excess.~~

~~(5) — For the purposes of paragraph (4) —~~

~~(a) — an extension of apparatus to a length greater than the length of existing apparatus shall 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 cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole shall be treated as if it also had been agreed or had been so determined.~~

~~(6) — An amount which, apart from this paragraph, would be payable to a statutory utility in respect of works by virtue of paragraph (3) (and having regard, where relevant, to paragraph (4)) shall, 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 utility 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.~~

~~(7) — Paragraphs (3) to (6) shall not apply where the authorised project constitutes major highway works, major bridge works or major transport works for the purposes of Part 3 of the 1991 Act, but instead —~~

~~(a) — the allowable costs of the relocation works shall be determined in accordance with section 85 of that Act (sharing of cost of necessary measures) and any regulations for the time being having effect under that section; and~~

~~(b) — the allowable costs shall be borne by the undertaker and the statutory utility in such proportions as may be prescribed by any such regulations.~~

~~(8) — In this article —~~

~~"apparatus" has the same meaning as in Part 3 of the 1991 Act;~~

~~"relocation works" means work executed, or apparatus provided, under paragraph (2); and~~

~~"statutory utility" means a statutory undertaker for the purposes of the 1980 Act or a public communications provider as defined in section 151(1) of the Communications Act 2003.~~

Recovery of costs of new connections

33

~~32.~~ (1) — (1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article ~~31~~ 30 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus ~~shall be~~ 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) ~~(2)~~ — Paragraph (1) ~~shall~~ does not apply in the case of the removal of a public sewer but where such a sewer is removed under article ~~31~~ 30 (statutory undertakers), any person who ~~is~~ is

(a) ~~(a)~~ — the owner or occupier of premises the drains of which communicated with that sewer; or

(b) ~~(b)~~ — the owner of a private sewer which communicated with that sewer,

~~shall be~~ 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) ~~(3)~~ — This article ~~shall~~ does not have effect in relation to apparatus to which article ~~32~~ 31 (apparatus and rights of statutory undertakers in ~~stopped-up~~ streets) or Part 3 of the 1991 Act applies.

(4) ~~(4)~~ — In this ~~paragraph~~ article —

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

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

~~Railway and navigation undertakings~~

34

PART 6

OPERATIONS

Felling or lopping of trees and removal of hedgerows

33. ~~(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;
- (b) from constituting a danger to persons using the authorised development; or
- (c) from obstructing or interfering with the passage of construction vehicles to the extent necessary for the purposes of construction of the authorised development.
- (2) In carrying out any activity authorised by paragraph (1) the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.
- (3) 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.
- (4) The undertaker may, for the purposes of the authorised development subject to paragraph (2) remove any hedgerows within the Order limits that may be required for the purposes of carrying out the authorised development.
- (5) The Undertaker may not pursuant to paragraphs (1) and (4) fell or lop a tree or remove hedgerows within the extent of the publically maintainable highway without the prior consent of the highway authority.
- (6) In this article "hedgerow" has the same meaning as in the Hedgerow Regulations 1997(a).

Protective works to buildings

~~34.(1) — (1)~~ Subject to the following provisions of this article, the undertaker may ~~not under article 8 (street works) break up or open a street where the street, not being a highway maintainable at public expense (within the meaning of the 1980 Act) at its own expense carry out~~ such protective works to any building lying within the Order limits as the undertaker considers necessary or expedient.

~~(2) Protective works may be carried out—~~

- ~~(a) at any time before or during the carrying out in the vicinity of the building of any part of the authorised development; or~~
- ~~(b) after the completion of that part of the authorised development in the vicinity of the building at any time up to the end of the period of five years beginning with—~~
 - ~~(i) in respect of stage 1, completion of stage 1; and~~
 - ~~(ii) in respect of stage 2, completion of stage 2.~~

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

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

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

~~(5) Before exercising—~~

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

(a) S.I. 1997/1160.

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

(6) Where a notice is served under paragraph (5)(a), (5)(c) or (5)(d) the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of ten days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 42 (arbitration).

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

(8) Where—

- (a) protective works are carried out under this article to a building; and
- (b) within the period of five years beginning with the date of completion of the part of the authorised development carried out in the vicinity of the building it appears that the protective works are inadequate to protect the building against damage caused by the carrying out or use of that part of the authorised development.

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

(9) Nothing in this article shall relieve the undertaker from any liability to pay compensation under section 10(2) of the 1965 Act (compensation for injurious affection).

(10) Any compensation payable under paragraph (7) or (8) shall be determined, in case of dispute, under Part 1 of the 1961 Act (determination of questions of disputed compensation).

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

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

PART 7

MISCELLANEOUS AND GENERAL

Protective provisions

35. Schedule 12 (protective provisions) has effect.

- ~~(a) is under the control or management of, or is maintainable by, railway or tramway undertakers or a navigation authority; or~~
- ~~(b) forms part of a level crossing belonging to any such undertakers or to such an authority or to any other person;~~

~~except with the consent of the undertakers or authority or, as the case may be, of the person to whom the level crossing belongs.~~

~~(2) Paragraph (1) shall not apply to the carrying out under this Order of emergency works, within the meaning of Part 3 of the 1991 Act.~~

~~(3) A consent given for the purpose of paragraph (1) may be made subject to such reasonable conditions as may be specified by the person giving it but shall not be unreasonably withheld.~~

~~(4) — In this paragraph "navigation authority" means any person who has a duty or power under any enactment to work, maintain, conserve, improve or control any canal or other inland navigation, navigable river, estuary or harbour.~~

Application of landlord and tenant law

35

~~36.~~⁽¹⁾ — This article applies ~~to~~ to —

^(a) ~~(a)~~ — any agreement for leasing to any person the whole or any part of the authorised ~~project~~ development or the right to operate the same; and

^(b) ~~(b)~~ — any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised ~~project~~ 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⁾ ~~(2)~~ — No enactment or rule of law regulating the rights and obligations of landlords and tenants ~~shall prejudice~~ prejudices the operation of any agreement to which this article applies.

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

^(a) ~~(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) ~~(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) ~~(c)~~ — restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

Operational land for purposes of the 1990 Act

36

^{37.} Development consent granted by this Order ~~shall~~ is to be treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (cases in which land is to be treated as operational land ~~for the purposes of that Act~~).

Deemed consent under section 34 of the Coast Protection Act 1949

37

~~The undertaker is granted deemed consent under section 34 of the Coast Protection Act 1949 to carry out the works described in Schedule H, subject to the requirements set out in that Schedule.~~

Deemed licence under Part 2 of the Food and Environment Protection Act 1985

38

~~The undertaker is granted a deemed licence under Part 2 of the Food and Environment Protection Act 1985 to carry out the works described in Schedule I, subject to the requirements set out in that Schedule.~~

Felling or lopping of trees

39

~~(1) — The undertaker may fell or lop any tree or shrub near any part of the authorised project, 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 project or any apparatus used in connection with the authorised project; or~~
- ~~(b) — from constituting a danger to passengers or other persons using the authorised project.~~
- ~~(2) — In carrying out any activity authorised by paragraph (1), the undertaker shall do no unnecessary damage to any tree or shrub and shall pay compensation to any person for any loss or damage arising from such activity.~~
- ~~(3) — Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, shall be determined under Part 1 of the 1961 Act.~~

Trees subject to tree preservation orders

40

- ~~(1) — The undertaker may fell or lop any tree described in Schedule J [and identified on the [insert name] plan, or cut back its roots if it reasonably believes it to be necessary in order to do so to prevent the tree or shrub—~~
 - ~~(a) — from obstructing or interfering with the construction, maintenance or operation of the authorised project or any apparatus used in connection with the authorised project; or~~
 - ~~(b) — from constituting a danger to passengers or other persons using the authorised project.~~
- ~~(2) — In carrying out any activity authorised by paragraph (1)—~~
 - ~~(a) — the undertaker shall do no unnecessary damage to any tree or shrub and shall pay compensation to any person for any loss or damage arising from such activity; and~~
 - ~~(b) — the duty contained in section 206(1) of the 1990 Act (replacement of trees) shall not apply.~~
- ~~(3) — The authority given by paragraph (1) shall constitute a deemed consent under the relevant tree preservation order.~~
- ~~(4) — Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, shall be determined under Part 1 of the 1961 Act.~~

Defence to proceedings in respect of statutory nuisance

38.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(a) (summary proceedings by persons aggrieved by statutory nuisances) in relation to a nuisance falling within paragraph (c), (d), (e), (fb), (g) or (h) of section 79(1) of that Act (statutory nuisances and inspections therefor) no order is to be made, and no fine may be imposed, under section 82(2) of that Act if the defendant shows that the nuisance

- (a) 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 sites), or a consent given under section 61 (prior consent for work on construction sites) of the Control of Pollution Act 1974(b); or
- (b) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (c) 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

(a) 1990 c.43. Section 82 was amended by section 103 to the Clean Neighbourhoods and Environment Act 2005 (c.16); Section 79 was amended by sections 101 and 102 of the same Act.

(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.

1990) of the Control of Pollution Act 1974 does 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.

Certification of plans etc

41

~~39.(1)~~—(1) The undertaker ~~shall~~must, as soon as practicable after the making of this Order, submit to the

~~decision-maker copies of—(a)—the book of reference;~~

~~(b)—the land plan;~~

~~(c)—the rights plan;~~

~~(d)—the works plan;~~

~~(e)—the sections; and~~Secretary of State copies of all documents and plans listed in Table 17 of Schedule 14 (documents and plans to be certified) to this Order ~~(f)—any other plans or documents referred to in this Order;~~ for certification that they are true copies of the documents referred to in this Order.

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

Service of notices

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

(a) by post;

(b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or

(c) with the consent of the recipient and subject to paragraphs (6) to (8), by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 of the Interpretation Act 1978(a) (references to service by post) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address and otherwise—

(a) in the case of the secretary or clerk of that body corporate, the registered or principal office of that body; and

(b) in any other case, the last known address of that person at that time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having an interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

(a) addressing it to that person by the description of “owner”, or as the case may be “occupier” of the land (describing it); and

(b) either leaving it in the hands of the person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(a) 1978 c.30. Section 7 was amended by paragraph 19 of Schedule 10 to the Road Traffic Regulation Act 1984 (c.27). There are other amendments not relevant to this Order.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is to be taken to be fulfilled only where—

- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
- (b) the notice or document is capable of being accessed by the recipient;
- (c) the notice or document is legible in all material respects; and
- (d) in a form sufficiently permanent to be used for subsequent reference.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within seven days of receipt that the recipient requires a paper copy of all or any part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of an electronic transmission by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
- (b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than seven days after the date on which the notice is given.

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

Procedure in relation to certain approvals etc

41.—(1) Where an application is made to or request is made of any authority or body named in any of the provisions of this Order for any consent, agreement or approval required or contemplated by any of the provisions of the Order, such consent, agreement or approval to be validly given, must be given in writing and must not be unreasonably withheld or delayed.

(2) Schedule 11 (procedure for discharge) is to have effect in relation to all consents, agreements or approvals granted, refused or withheld in relation to any provision of this Order.

Arbitration

42

42. Any difference under any provision of this Order, unless otherwise provided for, ~~shall~~ is to 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 ~~insert appropriate body~~ Secretary of State.

Guarantees in respect of payment of compensation

Schedule A **Authorised Project**

Part 1 **Authorised Development**

[NOTE: This Part should describe as fully as possible the elements of the proposed project (including any associated development), which are development for the purposes of section 32 of the 2008 Act, for which development consent is sought. It should not include any elements of development which would be authorised by specific provisions in the Order.]

Part 2

~~Ancillary Works~~

~~[NOTE: This Part should describe as fully as possible the ancillary works for which consent is sought and which are not development within the meaning of section 32 of the 2008 Act and which would not be the subject of a separate provision [article] in this Order.]~~

~~Model Provisions in respect of requirements~~

43.—(1) The undertaker must not exercise the powers conferred by the provisions referred to in paragraph (2) in relation to any land unless it has first put in place either—

- (a) a guarantee and the amount of that guarantee approved by the Secretary of State in respect of the liabilities of the undertaker to pay compensation pursuant to the provisions referred to in paragraph (2); or
- (b) an alternative form of security and the amount of that security approved by the Secretary of State in respect of the liabilities of the undertaker to pay compensation pursuant to the provisions referred to in paragraph (2).

(2) The provisions are—

- (a) [article 19 \(compulsory acquisition of land\);](#)
- (b) [article 22 \(compulsory acquisition of rights etc\);](#)
- (c) [article 23 \(private rights\);](#)
- (d) [article 27 \(rights under or over streets\);](#)
- (e) [article 28 \(temporary use of land for carrying out the authorised development\);](#)
- (f) [article 29 \(temporary use of land for maintaining the authorised development\);](#) and
- (g) [article 30 \(statutory undertakers\).](#)

(3) A guarantee or alternative form of security given in respect of any liability of the undertaker to pay compensation under this Order is to be treated as enforceable against the guarantor or person providing the alternative form of security by any person to whom such compensation is payable and must be in such a form as to be capable of enforcement by such a person.

(4) Nothing in this article requires a guarantee or alternative form of security to be in place for more than 15 years after the date on which the relevant power is exercised.

Signed by authority of the Secretary of State for Business, Energy and Industrial Strategy

Date _____ Name _____
 Department of Business, Energy and Industrial Strategy

SCHEDULES

SCHEDULE 1

Article 3

AUTHORISED DEVELOPMENT

In the County of North Yorkshire and the District of Selby a nationally significant infrastructure project as defined in sections 14(1)(a) and 15 of the 2008 Act and associated development under section 115(1)(b) of the 2008 Act all as set out in this Schedule.

The nationally significant infrastructure project comprises up to four generating stations with a combined gross electrical output capacity of up to 3,800 megawatts comprising all or any of the work numbers in this schedule or any part of any work number in this schedule—

Work No. 1 – an electricity generating station (Unit X) fuelled by natural gas and with a gross electrical output capacity of up to 1,800 megawatts including—

(a) **Work No. 1A** – a gas generating unit—

- (i) up to two gas turbines able to operate in both combined cycle and open cycle modes;
- (ii) one turbine hall building for the gas turbine(s) within this Work;
- (iii) up to two heat recovery steam generators;
- (iv) up to two heat recovery steam generator buildings and up to two exhaust gas emission flue stacks for the heat recovery steam generator(s) within this Work;
- (v) up to two bypass stacks;
- (vi) transformers;
- (vii) gas turbine air inlet filter house;
- (viii) power control centre;
- (ix) feed water pump house building;
- (x) water supply and pipelines;
- (xi) water storage tanks and pipelines;
- (xii) emergency diesel generator and diesel fuel tank for safe shut-down of the plant;
- (xiii) switch gear and ancillary equipment;
- (xiv) up to two turbine outage store buildings;
- (xv) 400 kilovolt electrical underground cables and telemetry and electrical protection auxiliary cabling connecting to Work No. 4A; and
- (xvi) a new main fuel gas station comprising up to two individual fuel gas stations comprising for each—
 - (aa) a gas receiving area;
 - (bb) gas treatment and control facilities including filters, preheating and liquid collection tanks; and
 - (cc) other auxiliary control cabinets

(b) **Work No. 1B**

- (i) a new main pipe rack carrying main steam and condensate, and auxiliary cabling and pipework between the heat recovery steam generator(s) and the existing steam turbine;
- (ii) piling for foundations to accommodate the pipe rack including in connection with the pipe rack comprising part of Work No. 2B; and
- (iii) modifications to the existing steam turbine, generating plant and turbine hall building

(c) **Work No. 1C** – a new underground gas pipeline across New Road connecting Work No. 1A to Work No. 5

(d) **Work No. 1D** – in connection with and in addition to Work Nos. 1A, 1B and 1C—

- (i) works connecting Work Nos. 1A, 1B and 1C to existing equipment and utilities;
- (ii) ground raising and ground preparation works;
- (iii) site lighting infrastructure, including perimeter lighting columns;
- (iv) internal roadways, car parking, pedestrian network, cycle parking and hardstanding;
- (v) site drainage and waste management infrastructure, including relocation of existing infrastructure as required;
- (vi) electricity (including a 132 kilovolt electricity cable across New Road connecting Work No. 1A to Work No.5), water, wastewater and telecommunications and other services; and
- (vii) hard and soft landscaping including tree planting, ecological mitigation, temporary and permanent fencing and other boundary treatments

Work No. 2 – an electricity generating station (Unit Y) fuelled by natural gas and with a gross electrical output capacity of up to 1,800 megawatts including—

(a) **Work No. 2A** – a gas generating unit—

- (i) up to two gas turbines able to operate in both combined cycle and open cycle modes;
- (ii) one turbine hall building for the gas turbine(s) within this Work;
- (iii) up to two heat recovery steam generators;
- (iv) up to two heat recovery steam generator buildings and up to two exhaust gas emission flue stacks for the heat recovery steam generator(s) within this Work;
- (v) up to two bypass stacks;
- (vi) transformers;
- (vii) gas turbine air inlet filter house;
- (viii) power control centre;
- (ix) feed water pump house building;
- (x) water supply and pipelines;
- (xi) water storage tanks and pipelines;
- (xii) emergency diesel generator and diesel fuel tank for safe shut-down of the plant;
- (xiii) switch gear and ancillary equipment;
- (xiv) 400 kilovolt electrical underground cables and telemetry and electrical protection auxiliary cabling connecting to Work No. 4B; and
- (xv) a new main fuel gas station comprising up to two individual fuel gas stations comprising for each—
 - (aa) a gas receiving area;
 - (bb) gas treatment and control facilities including filters, preheating and liquid collection tanks; and
 - (cc) other auxiliary control cabinets.

(b) **Work No. 2B**

- (i) a new main pipe rack and extension to the pipe rack in Work No. 1B carrying main steam and condensate, and auxiliary cabling and pipework, between the heat recovery steam generator(s) and the existing steam turbine; and
- (ii) modifications to the existing steam turbine, generating plant and turbine hall building.

- (c) Work No. 2C – a new underground gas pipeline across New Road connecting Work No. 2A to Work No. 5 or infrastructure to connect the underground gas pipeline constructed in Work No. 1C to Work No. 2A and Work No. 5.
- (d) Work No. 2D – in connection with and in addition to Work Nos. 2A, 2B and 2C—
 - (i) works connecting Work Nos. 2A, 2B and 2C to existing equipment and utilities;
 - (ii) ground raising and ground preparation works;
 - (iii) site lighting infrastructure, including perimeter lighting columns;
 - (iv) internal roadways, car parking, pedestrian network, cycle parking and hardstanding;
 - (v) site drainage and waste management infrastructure, including relocation of existing infrastructure as required;
 - (vi) electricity, water, wastewater and telecommunications and other services; and
 - (vii) hard and soft landscaping including tree planting, ecological mitigation, temporary and permanent fencing and other boundary treatments

Work No. 3 – up to two battery storage facilities including—

- (a) Work No. 3A – one battery storage facility (in connection with Unit X)—
 - (i) battery energy storage cells with converters;
 - (ii) a structure protecting the battery energy storage cells;
 - (iii) transformers;
 - (iv) switch gear and ancillary equipment;
 - (v) electrical underground cable connecting to Work No. 1A;
 - (vi) ground raising and ground preparation works;
 - (vii) a flood mitigation channel;
 - (viii) site lighting infrastructure, including lighting columns; and
 - (ix) hard and soft landscaping including tree planting, ecological mitigation, temporary and permanent fencing and other boundary treatments
- (b) Work No. 3B – one battery storage facility (in connection with Unit Y)—
 - (i) battery energy storage cells with converters;
 - (ii) a structure protecting the battery energy storage cells or infrastructure to include the battery energy storage cells in the structure(s) within Work No.3A(ii);
 - (iii) transformers;
 - (iv) switch gear and ancillary equipment; and
 - (v) electrical underground cable connecting to Work No. 2A

Work No. 4 – new gas insulated switchgear banking buildings including—

- (a) Work No. 4A (in connection with Unit X)—
 - (i) a building containing gas insulated switchgear and other associated switch gear and ancillary equipment;
 - (ii) a building containing control equipment;
 - (iii) up to 3 sets of cable sealing ends; and
 - (iv) ground raising and ground preparation works
- (b) Work No. 4B (in connection with Unit Y)—
 - (i) a building or an extension to the building in Work No. 4A containing gas insulated switchgear and other switch gear and ancillary equipment;
 - (ii) up to 3 sets of cable sealing ends; and
 - (iii) ground raising and ground preparation works

Work No. 5 – a natural gas receiving facility compound including—

- (a) pipeline inspection gauge (PIG) trap receiving equipment;
- (b) isolation valves, inline valves, metering, heat exchangers, filtering, pressure regulation equipment, pipework;
- (c) electricity supply kiosks and associated cabling;
- (d) emergency generator;
- (e) electrical pre-heaters and electrical compressors housed in a building;
- (f) up to two boiler houses with a total installed capacity of approximately 7.2 megawatts and each with up to two stacks;
- (g) control and instrumentation kiosk(s) and associated wiring;
- (h) creation of a permanent access from New Road including permanent road surface and kerb stones, signing and road markings works, drainage, car parking, fencing and other incidental works;
- (i) security infrastructure, including cameras, lighting (including perimeter lighting columns), stock proof fencing and perimeter fencing;
- (j) a new underground gas pipeline;
- (k) external cooling system;
- (l) ground raising and ground preparation works; and
- (m) hard and soft landscaping including tree planting, ecological mitigation, temporary and permanent fencing and other boundary treatments

Work No. 6 – above ground gas installation including—

(a) Work No. 6A—

- (i) above ground installation (also referred to as a minimum offtake connection compound) containing a minimum offtake connection comprising remotely operable valves, control and instrumentation kiosk(s), pipework and electrical supply kiosk(s);
- (ii) security infrastructure, including cameras, lighting (including perimeter lighting columns), stock proof fencing and perimeter fencing;
- (iii) ground raising and ground preparation works;
- (iv) site drainage including new outfall to Dickon Field Drain, new culvert and waste management infrastructure;
- (v) electricity and telecommunications connections and other services;
- (vi) underground gas pipeline connecting to Work No. 6B;
- (vii) creation of a permanent access from Rusholme Lane including permanent road surface and kerb stones, signing and road markings works, car parking, drainage, fencing and other incidental works;
- (viii) creation of a permanent access from the access in Work No.6A (vii) into the field to the south of Dickon Field Drain including permanent road surface and kerb stones, signing and road markings works, drainage, fencing and other incidental works;
- (ix) creation of a culvert on Dickon Field Drain; and
- (x) hard and soft landscaping including tree planting, ecological mitigation, temporary and permanent fencing and other boundary treatments

(b) Work No. 6B—

- (i) above ground installation containing a pipeline inspection gauge (PIG) facility, comprising a PIG launching facility, emergency control valves, isolation valves, control and instrumentation kiosk(s), pipework and electricity supply kiosk(s);
- (ii) security infrastructure, including cameras, lighting (including perimeter lighting columns), car parking, stock proof fencing and perimeter fencing;

- (iii) ground raising and ground preparation works;
- (iv) site drainage and waste management infrastructure;
- (v) electricity and telecommunications connections and other services;
- (vi) below ground sacrificial anode pit; and
- (vii) hard and soft landscaping including tree planting, ecological mitigation, temporary and permanent fencing and other boundary treatments
- (c) **Work No. 6C** – (in connection with Work No. 6A) temporary construction laydown area
- (d) **Work No. 6D** – (in connection with Work No. 6B) temporary construction laydown area and creation of up to two construction access routes from Rusholme Lane

Work No. 7 – a gas pipeline including—

- (a) **Work No. 7A—**
 - (i) an underground gas pipeline connection and telemetry cabling, approximately 3km in length and up to 600 millimetres nominal diameter, connecting Work No. 5 to Work No. 6B;
 - (ii) pipeline field marker posts and cathodic protection test/ transformer rectifier unit(s);
 - (iii) below ground drainage works;
 - (iv) works required in order to protect existing utilities infrastructure;
 - (v) tree and hedge removal; and
 - (vi) hard and soft landscaping including tree planting, ecological mitigation, temporary and permanent fencing and other boundary treatments
- (b) **Work No. 7B** – temporary construction laydown area for gas pipeline

Work No. 8 – electrical connections including—

- (a) **Work No. 8A** (in connection with Unit X) – up to 400 kilovolt underground electrical connection between Work No. 4A and the existing 400 kilovolt National Grid substation busbars—
 - (i) electrical underground cables and telemetry and electrical protection auxiliary cabling;
 - (ii) one set of cable sealing ends;
 - (iii) insulated switchgear and overhead busbars;
 - (iv) trenching works;
 - (v) site drainage;
 - (vi) security and site lighting infrastructure, including cameras, perimeter fencing and lighting columns; and
 - (vii) hard and soft landscaping including ecological mitigation.
- (b) **Work No. 8B** (in connection with Unit Y) – up to 400 kilovolt underground electrical connection between Work No. 4B and the existing 400 kilovolt National Grid substation busbars of either—
 - (i) electrical underground cables and telemetry and electrical protection auxiliary cabling;
 - (ii) one set of cable sealing ends;
 - (iii) insulated switchgear and overhead busbars;
 - (iv) trenching works;
 - (v) site drainage;
 - (vi) security and site lighting infrastructure, including cameras, perimeter fencing and lighting columns; and
 - (vii) hard and soft landscaping including ecological mitigation.

Or—

- (i) electrical underground cables and telemetry and electrical protection auxiliary cabling;
- (ii) a 400 kilovolt cable sealing end compound—
 - (aa) one set of cable sealing ends;
 - (bb) air insulated switchgear and overhead busbars; and
 - (cc) overhead conductor gantry, overhead conductors and other plant and structures required to manage the transmission of electricity;
- (iii) trenching works;
- (iv) site drainage;
- (v) security and site lighting infrastructure, including cameras, perimeter fencing and lighting columns; and
- (vi) hard and soft landscaping including ecological mitigation.

Work No. 9 – temporary construction laydown areas including—

- (a) Work No. 9A – temporary construction laydown area—**
 - (i) areas of hardstanding;
 - (ii) car parking;
 - (iii) pedestrian bridge including ducts for the carrying of electricity and other utility services;
 - (iv) site and welfare offices and workshops;
 - (v) security infrastructure, including cameras, perimeter fencing and lighting;
 - (vi) site drainage and waste management infrastructure (including sewerage); and
 - (vii) electricity, water, waste water and telecommunications connections.
- (b) Work No. 9B – a temporary construction laydown area—**
 - (i) areas of hardstanding;
 - (ii) security infrastructure, including cameras, perimeter fencing and lighting;
 - (iii) up to two means of access;
 - (iv) site drainage and waste management infrastructure (including sewerage);
 - (v) car parking; and
 - (vi) electricity, water, waste water and telecommunications connections.

Work No. 10 – carbon capture readiness including—

- (i) Work No. 10A – carbon capture readiness reserve space;
- (ii) Work No. 10B – diversions for public rights of way 35.47/1/1 and 35.47/6/1; and
- (iii) Work No. 10C – hard and soft landscaping including tree planting, ecological mitigation, temporary and permanent fencing and other boundary treatments.

Work No. 11 – retained and enhanced landscaping including—

- (a) soft landscaping including planting;
- (b) landscape and biodiversity enhancement measures; and
- (c) security fencing, gates, boundary treatment and other means of enclosure.

Work No. 12 – decommissioning and demolition of sludge lagoons and construction of replacement sludge lagoons including—

- (a) Work No. 12A (in connection with Unit X)—**
 - (i) decommissioning and demolition of one existing sludge lagoon; and
 - (ii) reinstatement of one existing out of service sludge lagoon—

- (aa) bund walls;
- (bb) underground pipework, valves and sluices; and
- (cc) access roads.

(b) Work No. 12B (in connection with Unit Y)—

- (i) decommissioning and demolition of 2 existing sludge lagoons; and
- (ii) construction of up to two new sludge lagoons—
 - (aa) bund walls;
 - (bb) underground pipework, valves and sluices; and
 - (cc) access roads.

Work No. 13 – removal of existing 132 kilovolt overhead line and removal of two 132 kilovolt pylons and foundations.

Work No. 14 – construction of temporary passing place on Rusholme Lane

In connection with and in addition to Work Nos. 1–14, further associated development including—

- (a) surface water drainage systems, storm water attenuation systems including storage basins, oil water separators, including channelling and culverting and works to existing drainage systems;
- (b) electrical, gas, water, foul water drainage and telecommunications infrastructure connections and works to, and works to alter the position of, such services and utilities connections;
- (c) hard standing and hard landscaping;
- (d) biodiversity measures;
- (e) closed circuit television cameras and columns and other security measures;
- (f) site establishments and preparation works including site clearance (including vegetation removal, demolition of existing buildings and structures); earthworks (including soil stripping and storage and site levelling) and excavations; the alteration of the position of services and utilities; and works for the protection of buildings and land;
- (g) temporary construction laydown areas and contractor facilities, including materials and plant storage and laydown areas; generators; concrete batching facilities; vehicle and cycle parking facilities; pedestrian and cycle routes and facilities; offices and staff welfare facilities; security fencing and gates; external lighting; roadways and haul routes; wheel wash facilities; and signage;
- (h) vehicle parking and cycle storage facilities;
- (i) accesses, roads and pedestrian and cycle routes;
- (j) tunnelling, boring and drilling works,

and further associated development comprising such other works or operations as may be necessary or expedient for the purposes of or in connection with the construction, operation and maintenance of the authorised development but only within the Order limits and insofar as they are unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

REQUIREMENTS**Interpretation****1****In this Schedule—**

~~"the 1990 Act" means the Town and Country Planning Act 1990;~~

~~"the 2008 Act" means the Planning Act 2008;~~

~~"authorised development" means the development and associated development described in Part 1 of Schedule A (authorised project) [and any other development authorised by this Order], which is development within the meaning of section 32 of the 2008 Act;~~

~~"the authorised project" means the authorised development and the ancillary works authorised by this Order;~~

~~"the code of construction practice" means the code of construction practice agreed by [insert relevant body] on [insert date];~~

~~"the environmental document" means the document certified as the environmental document by the decision-maker for the purposes of this Order;~~

~~"highway" and "highway authority" have the same meaning as in the Highways Act 1980;~~

~~"the Order limits" means the limits shown on the works plan within which the authorised project may be carried out;~~

~~"relevant planning authority" means—~~

~~(i) the district planning authority for the area in which the land to which the provisions of this Order apply is situated unless the provisions relate to the construction or alteration of a hazardous waste facility, in which case it means the county planning authority;~~

~~(ii) a National Park Authority;~~

~~(iii) the Broads Authority; and~~

~~(iv) the Greater London Authority if the land to which the provisions of this Order or requirements apply is situated in Greater London;~~

~~"stage" means a defined section or part of the authorised development, the extent of which is shown in a scheme submitted to and approved by the Commission pursuant to requirement 3 (stages of authorised development);~~

Time limits**2**

~~The authorised development must be begun within [insert number] years of the date of this Order.~~

1. In this Schedule—

"construction laydown area" means the land on which numbered work 9 is authorised to be carried out as shown on the works plans;

"pipeline area" means the land on which numbered works 5, 6 and 7 are authorised to be carried out as shown on the works plans;

"power station area" means the land on which numbered works 1, 2, 3, 4, 8, 12 and 13 are authorised to be carried out as shown on the works plans;

“shut down period” means a period after physical construction works have finished for the day during which activities including changing out of work gear, the departure of workers, post-works briefings and closing and securing the site take place; and

“start up period” means a period prior to physical construction works starting for the day during which activities including the opening up of the site, the arrival of workers, changing into work wear and pre-work briefings take place.

Commencement of the authorised development

2. The authorised development must not be commenced after the expiration of five years from the date this Order comes into force.

Stages of Phasing of the authorised development

3.—(1) No part of the authorised development

~~the extent of which is shown in a scheme submitted to and approved by the Commission pursuant to requirement 3 (stages of authorised development).~~ **Time limits**

2

~~The authorised development must be begun within [insert number] years of the date of this Order.~~

Stages of authorised development

3

~~No authorised development shall~~ is to commence until a written scheme setting out ~~all the stages of the authorised development has~~ the phasing of construction of numbered works 1, after consultation with the relevant planning authority and highway authority, 2 and 3 has been submitted to and approved by the ~~Commission~~ relevant planning authority.

(2) The scheme submitted and approved pursuant to sub-paragraph (1) must be substantially in accordance with the phasing as detailed in chapter 3 (site and project description) of the environmental statement and must include details of timescales for the reinstatement or restoration of the temporary construction laydown areas comprised in numbered works 6C, 6D, 7B and 9, in line with the outline landscape and biodiversity strategy.

(3) The scheme submitted and approved pursuant to sub-paragraph (1) must be implemented as approved.

Notice of start of commissioning and notice of date of full commissioning

4.—(1) Notice of the intended start of commissioning of each of numbered works 1A and 2A must be given to the relevant planning authority prior to such start and in any event within seven days from the date that commissioning is started.

(2) Within seven days of the completion of the commissioning of numbered work 1A, the undertaker must provide the relevant planning authority with notice of the date upon which such commissioning was duly completed.

(3) Within seven days of the completion of the commissioning of numbered work 2A, the undertaker must provide the relevant planning authority with notice of the date upon which such commissioning was duly completed.

Requirement for written approval

5. Where under any of these requirements the approval or agreement of the relevant planning authority or another person is required, that approval or agreement must be provided in writing.

Approved details and amendments to them

6.—(1) With respect to the documents certified under article 39 (certification of plans etc) the parameters specified in Tables 12, 13 and 14 of Schedule 13 (design parameters) and any other plans, details or schemes which require approval by the relevant planning authority pursuant to any requirement (together “Approved Documents, Plans, Parameters, Details or Schemes”), the undertaker may submit to the relevant planning authority for approval any amendments to the Approved Documents, Plans, Parameters, Details or Schemes and following any such approval by the relevant planning authority the Approved Documents, Plans, Parameters, Details or Schemes are to be taken to include the amendments approved by the relevant planning authority pursuant to this paragraph.

(2) Approval under sub-paragraph (1) for the amendments to Approved Documents, Plans, Parameters, Details or Schemes must not be given except where it has been demonstrated to the satisfaction of the relevant planning authority that the subject matter of the approval sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

Detailed design approval

4

~~7.~~No ~~[stage]~~—(1) In relation to any part of the ~~the~~ authorised development ~~shall comprised in~~ numbered work 1, no development of that part must commence until ~~[for that stage] written~~ details of the following ~~for that part have been submitted to and, in respect of sub-paragraph (1)(d) after consultation with the highway authority, approved by the relevant planning authority, been submitted to and approved by the Commission—~~

~~for~~

5

~~(a) No ~~[stage of the]~~ authorised development shall commence until details of the ~~the~~ siting, layout, scale and external appearance ~~of the following elements of the authorised development [within that stage] have, after consultation with the relevant planning authority, been submitted to and approved by the Commission], including colour, materials and surface finishes of all new permanent buildings and structures;~~~~

~~(b) finished floor levels;~~

~~(c) hard standings; and~~

~~(d) the internal vehicular access and circulation roads, vehicle parking, cycle parking and routes, and pedestrian facilities and routes.~~

(2) In relation to any part of the authorised development comprised in numbered work 2, no development of that part must commence until details of the following for that part have been submitted to and, in respect of sub-paragraph (d) after consultation with the highway authority, approved by the relevant planning authority—

(a) the siting, layout, scale and external appearance, including colour, materials and surface finishes of all new permanent buildings and structures;

(b) finished floor levels;

(c) hard standings; and

(d) the internal vehicular access and circulation roads, vehicle parking, cycle parking and routes, and pedestrian facilities and routes.

(3) In relation to any part of the authorised development comprised in numbered work 3A, no development of that part must commence until details of the following for that part have ~~been submitted to and approved by the relevant planning authority—~~

(a) the siting, layout, scale and external appearance, including colour, materials and surface finishes of all new permanent buildings and structures including any cladding or shield to enclose or protect the battery energy storage cells;

(b) finished floor levels;

- (c) flood mitigation channel;
- (d) hard standings; and
- (e) the internal vehicular access and circulation roads.

(4) In relation to any part of the authorised development comprised in numbered work 3B, no development of that part must commence until details of the following for that part have been submitted to and approved by the relevant planning authority—

- (a) the siting, layout, scale and external appearance, including colour, materials and surface finishes of all new permanent buildings and structures including any cladding or shield to enclose or protect the battery energy storage cells;
- (b) finished floor levels;
- (c) hard standings; and
- (d) the internal vehicular access and circulation roads.

(5) In relation to any part of the authorised development comprised in numbered work 4A, no development of that part must commence until details of the following for that part have been submitted to and, in respect of sub-paragraph (e) after consultation with the highway authority, approved by the relevant planning authority—

- (a) the siting, layout, scale and external appearance, including colour, materials and surface finishes of all new permanent buildings and structures;
- (b) finished floor levels;
- (c) hard standings;
- (d) security infrastructure; and
- (e) the internal vehicular access, circulation roads and vehicle parking.

(6) In relation to any part of the authorised development comprised in numbered work 4B, no development of that part must commence until details of the following for that part have been submitted to and, in respect of sub-paragraph (e) after consultation with the highway authority, approved by the relevant planning authority—

- (a) the siting, layout, scale and external appearance, including colour, materials and surface finishes of all new permanent buildings and structures;
- (b) finished floor levels;
- (c) hard standings;
- (d) security infrastructure; and
- (e) the internal vehicular access, circulation roads and vehicle parking.

(7) In relation to any part of the authorised development comprised in numbered work 5, no development of that part must commence until details of the following for that part have been submitted to and, in respect of sub-paragraph (e) after consultation with the highway authority, approved by the relevant planning authority—

- (a) the siting, layout, scale and external appearance, including colour, materials and surface finishes of all new permanent buildings and structures;
- (b) finished floor levels;
- (c) hard standings;
- (d) security infrastructure; and
- (e) the internal vehicular access, circulation roads and vehicle parking.

(8) In relation to any part of the authorised development comprised in numbered work 6, no development of that part must commence until details of the following for that part have been submitted to and, in respect of sub-paragraph (f) after consultation with the highway authority, approved by the relevant planning authority—

- (a) the siting, layout, scale and external appearance, including colour, materials and surface finishes of all new permanent buildings and structures;

- (b) finished floor levels;
- (c) hard standings;
- (d) the size of the culvert in numbered work 6A(xi);
- (e) security infrastructure; and
- (f) the internal vehicular access, circulation roads and vehicle parking.

6

~~(9) The authorised development~~ The pedestrian bridge in numbered work 9A must be carried out in accordance with the ~~approved details~~ pedestrian bridge plan.

(10) The authorised development must be carried out in accordance with the relevant parameters in Schedule 13 (design parameters).

(11) Numbered works 1, 2, 3A, 4A, 4B, 5 and 6 must be carried out in accordance with the approved details under this requirement.

Provision of landscape and biodiversity mitigation

8.—(1) No part of the numbered works comprising stage 1 must be commenced until, for those numbered works, a written strategy which is substantially in accordance with the outline landscape and biodiversity strategy and chapter 9 (biodiversity) of the environmental statement (as each is relevant for that numbered work) has been submitted to and, after consultation with North Yorkshire County Council, approved by the relevant planning authority.

(2) No part of the numbered works comprising stage 2 must be commenced until, for those numbered works, a written strategy which is substantially in accordance with the outline landscape and biodiversity strategy and chapter 9 (biodiversity) of the environmental statement (as each is relevant for that numbered work) has been submitted to and, after consultation with North Yorkshire County Council, approved by the relevant planning authority.

Provision of landscaping

7

~~(3) No [stage of the] authorised development shall until commence a written landscaping scheme [for that stage] has, after consultation with the relevant planning authority, been submitted to and approved by the Commission. The landscaping scheme—~~ The strategies submitted and approved pursuant to sub-paragraphs (1) and (2) (as applicable) must include details of all proposed hard and soft landscaping works and ecological mitigation measures (as applicable for the relevant numbered work) and, including—where applicable,—

- ~~(a) (a) —~~ the location, number, species, size and planting density of any proposed planting including details of any proposed tree planting and the proposed times of such planting;
- ~~(b) (b) —~~ cultivation, importing of materials and other operations to ensure plant establishment;
- ~~(c) —~~ proposed finished ground levels;
- ~~(d) —~~ hard surfacing materials;
- ~~(e) —~~ vehicular and pedestrian access, parking and circulation areas;
- ~~(f) —~~ minor structures, such as furniture, refuse or other storage units, signs and lighting;
- ~~(g) —~~ proposed and existing functional services above and below ground, including drainage, power and communications cables and pipelines, manholes and supports;
- ~~(h) —~~ an implementation timetable;
- ~~(i) —~~ annual landscaping and biodiversity management and maintenance; and
- ~~(j) —~~ the ecological surveys required to be carried out prior to commencement of a numbered work, or following completion of a numbered work in order to monitor the effect of the ecological mitigation measures.

- (h) ~~— details of existing trees to be retained, with measures for their protection during the construction period;~~
- (i) ~~— retained historic landscape features and proposals for restoration, where relevant; and~~
- (j) ~~— implementation timetables for all landscaping works.~~

Implementation and maintenance of landscaping

8

~~(1) — All landscaping works must be carried out in accordance with the landscaping scheme approved under requirement 7 and to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards or other recognised codes of good practice.~~

~~(2) — The landscaping works must be carried out in accordance with implementation timetables approved under requirement 6.~~

~~(4) (3) — Any tree or shrub planted as part of an approved landscaping scheme~~ Any shrub or tree planted as part of the approved strategy that, within a period of five years after planting, is removed, dies or becomes, in the opinion of the ~~Commission~~ relevant planning authority, seriously damaged or diseased, must be replaced in the first available planting ~~season~~ seasons with a specimen of the same species and size as that originally planted, ~~unless otherwise approved by the Commission.~~

(5) The strategies must be implemented and maintained in accordance with the implementation timetable in the strategy submitted and approved pursuant to sub-paragraphs (1) and (2).

Public rights of way diversions

9.—(1) Numbered work 7 of the authorised development must not commence until, for that numbered work, a public rights of way management plan for any sections of public rights of way shown to be temporarily closed on the access and rights of way plans for that numbered work and which is substantially in accordance with the outline public rights of way management plan has been submitted to and, after consultation with the highway authority, approved by the relevant planning authority.

(2) The plan submitted and approved pursuant to sub-paragraph (1) must be implemented as approved.

(3) No public right of way specified in columns (2) and (3) of the table in Schedule 7 (public rights of way to be permanently stopped up) is to be wholly or partly stopped up under article 13 of this Order until the detail of the materials for the form and lay out of the surface of the new public right of way to be substituted for it, which is specified in column (4) of the table in Schedule 7, have been submitted to and, after consultation with the highway authority, approved by the relevant planning authority.

(4) The details submitted and approved pursuant to sub-paragraph (3) must be implemented as approved.

External lighting during construction and operation

10.—(1) No part of the numbered works comprising stage 1 must commence until a written scheme for the temporary external lighting to be installed for the purposes of construction for that numbered work has been submitted to and approved by the relevant planning authority.

(2) No part of the numbered works comprising stage 2 must commence until a written scheme for the temporary external lighting to be installed for the purposes of construction for that numbered work has been submitted to and approved by the relevant planning authority.

(3) The schemes submitted and approved pursuant to sub-paragraphs (1) and (2) of this requirement must be substantially in accordance with the principles set out in chapter 9 (biodiversity) and chapter 10 (landscape and visual amenity) of the environmental statement and

the objectives set out in the outline construction environmental management plan and must include details of the temporary external lighting to be installed for the purposes of the construction of the relevant numbered works.

(4) Prior to the date of Work No. 1A full commissioning a written scheme for the permanent external lighting to be installed for the purposes of operation for the numbered works comprising stage 1 must be submitted to and approved by the relevant planning authority.

(5) Prior to the date of Work No. 2A full commissioning a written scheme for the permanent external lighting to be installed for the purposes of operation for the numbered works comprising stage 2 must be submitted to and approved by the relevant planning authority.

(6) The schemes submitted and approved pursuant to sub-paragraphs (4) and (5) of this requirement must be substantially in accordance with the principles set out in chapter 9 (biodiversity) and chapter 10 (landscape and visual amenity) of the environmental statement and must include details of the permanent external lighting to be installed for the purposes of the operation of the relevant numbered works.

(7) The schemes must be implemented as approved.

Highway accesses and passing place during construction

11.—(1) Each of numbered works 5, 6, 7, 9B and 14 of the authorised development must not commence until details of the siting, design and layout (including visibility splays and construction specification) of any new or modified permanent or temporary means of access and passing place between any part of the Order limits and the public highway to be used by vehicular traffic during construction, and the means of reinstating any temporary means of access and passing place after construction (where reinstatement is to take place) has, for that numbered work, been submitted to and, after consultation with the highway authority, approved by the relevant planning authority.

Trees

9

~~(1)—No [stage of the] authorised development shall commence until written details of any proposed tree planting and the proposed times of planting have, after consultation with the relevant planning authority, been approved in writing by the Commission; and all tree planting shall be carried out in accordance with those details and at those times.~~

~~(2)—If within a period of [two years] beginning with the date of the planting of any tree that tree, or any tree planted in replacement for it, is removed, uprooted or destroyed or dies, [or becomes, in the opinion of the Commission, seriously damaged or defective,] another tree of the same species and size as that originally planted shall be planted at the same place, unless the Commission gives its written consent to a variation.~~

Highway accesses

10

~~(1)—No [stage of the] authorised development shall commence until [for that stage,] written details of the siting, design and layout of any new permanent or temporary means of access to a highway to be used by vehicular traffic, or any alteration to an existing means of access to a highway used by vehicular traffic, has, after consultation with the relevant planning authority and highway authority, been submitted to and approved by the Commission.~~

(2) (2)—The highway accesses and passing place approved pursuant to sub-paragraph (1) must be constructed in accordance with the approved details, prior to the start of construction of the relevant numbered work (other than the accesses and passing place), and where temporary, reinstated prior to—

(a) in respect of numbered works 5, 6, 7 and 14, the date that is no later than 12 months after the date of Work No. 1A full commissioning; and

(b) in respect of numbered work 9B, the date that is no later than 12 months after the date of Work No. 2A full commissioning.

~~(3) No [stage of the] authorised development shall be begun until [for that stage,] a written Access Management Scheme has, after consultation with the relevant planning authority and highway authority, been submitted to and approved by the Commission.~~

~~(4) The Access Management Scheme must be carried out in accordance with the approved details.~~

Public rights of way

11

~~(1) No [stage of the] authorised development shall commence that would affect [insert details of relevant right of way] until a written implementation plan and specification for the making up of an alternative right of way has, after consultation with the relevant planning authority and highway authority, been submitted to and approved by the Commission.~~

~~(2) The alternative [insert details of relevant right of way] shall be implemented in accordance with the approved plan and specification.~~

Fencing special roads

12

~~(1) No [stage of the] authorised development shall commence until written details of the design and construction of any boundary fencing for special roads have, after consultation with the relevant planning authority and highway authority, been submitted to and approved by the Commission.~~

~~(2) The authorised development shall be carried out in accordance with the approved design and construction.~~

~~(3) "Special road" has the same meaning as in section 329 of the Highways Act 1980.~~

Fencing and other means Means of enclosure

13

~~(1) No [stage of the] authorised development shall commence until written details of all proposed permanent and temporary fences, walls or other means of enclosure [for that stage] have, after consultation with the relevant planning authority, been submitted to and approved by the Commission.~~

12.—(1) Each of numbered works 5, 6A, 6B, 7, 8B (in relation to the 400 kilovolt cable sealing end compound) and 9 of the authorised development must not commence until details of a programme for the removal of all temporary means of enclosure for any construction areas or sites have, for that numbered work, been submitted to and approved by the relevant planning authority.

(2) (2) — The [insert description], and any Any construction areas or sites, — must remain securely fenced at all times during construction and commissioning of the authorised development in accordance with the details approved pursuant to sub-paragraph (1).

(3) Prior to the date of Work No. 1A full commissioning—

(a) details of any proposed permanent means of enclosure for each of numbered works 5, 6A and 6B must be submitted to and approved by the relevant planning authority; and

(b) the approved permanent means of enclosure must be completed.

(4) Prior to the date of Work No. 2A full commissioning—

(a) details of any proposed permanent means of enclosure for numbered work 8B (in relation to the 400 kilovolt cable sealing end compound) must be submitted to and approved by the relevant planning authority; and

(b) the approved permanent means of enclosure must be completed.

~~(3) Any temporary fencing must be removed on completion of the authorised development.~~

~~(4) Any approved permanent fencing of the new [insert description] must be completed before the [insert description] is brought into use.~~

Surface water drainage

14

~~13. (1) No [stage of the] authorised development shall commence until [for that stage,] written details of the surface and foul water drainage system (including means of pollution control) have, after consultation with — (1) Each of numbered works 1, 2, 3A, 5 and 6 of the authorised development must not commence until a surface water drainage scheme for that numbered work has been submitted to, and after consultation with the Environment Agency, lead local flood authority and relevant internal drainage board, approved by the relevant planning authority and the sewerage and drainage authority, been submitted to and approved by the Commission.~~

(2) The details approved pursuant to sub-paragraph (1) must be implemented as approved and maintained throughout the construction of numbered works 1, 2, 3A, 5 and 6 of the authorised development.

(3) The surface water drainage scheme submitted and approved pursuant to sub-paragraph (1) must be substantially in accordance with the principles set out in the outline surface water drainage strategy.

(4) The details approved pursuant to sub-paragraph (1) must be implemented as approved and maintained throughout the construction and operation of numbered works 1, 2, 3A, 5 and 6 of the authorised development.

Flood risk mitigation

14.—(1) The authorised development must be carried out in accordance with the flood risk assessment.

(2) In relation to any part of the authorised development comprised in numbered work 3A, no development of that part must commence until the flood mitigation channel comprised in that numbered work has been completed.

Ground conditions

15.—(1) No part of the numbered works comprising stage 1 must commence (including permitted preliminary works comprising demolition of existing structures, environmental surveys, geotechnical surveys and other investigations for the purpose of assessing ground conditions only) until a written strategy in relation to the identification and remediation of any risks associated with the contamination of the Order limits associated with that numbered work has been submitted to and approved by the relevant planning authority.

(2) No part of the numbered works comprising stage 2 must commence (including permitted preliminary works comprising demolition of existing structures, environmental surveys, geotechnical surveys and other investigations for the purpose of assessing ground conditions only) until a written strategy in relation to the identification and remediation of any risks associated with the contamination of the Order limits associated with that numbered work has been submitted to and approved by the relevant planning authority.

(3) The strategy submitted and approved pursuant to sub-paragraph (1) or (2) must—

- (a) include a site investigation scheme, based on the preliminary risk assessment set out in chapter 11 (ground conditions and contamination) of the environmental statement and providing details of the detailed risk assessment to be carried out for the receptors on or in the vicinity of the Order limits that may be affected by the authorised development;
- (b) set out how the outcomes of the site investigation scheme and detailed risk assessment carried out pursuant to (a) above will be reported, and provide for the submission and approval by the relevant planning authority of an options appraisal and remediation strategy based on such outcomes and providing details of any remediation measures required and how they are to be carried out; and

(c) include a verification plan identifying the data to be collected in order to demonstrate that the remediation measures set out in the options appraisal and remediation strategy prepared pursuant to (b) above have been completed and are effective, and any requirement for long term monitoring of pollutant linkages, maintenance or arrangements for contingency action.

(4) Prior to the date of Work No. 1A full commissioning a report prepared substantially in accordance with the verification plan prepared pursuant to sub-paragraph (3)(c) and approved pursuant to sub-paragraph (1) must be submitted to and approved by the relevant planning authority.

(5) Prior to the date of Work No. 2A full commissioning a report prepared substantially in accordance with the verification plan prepared pursuant to sub-paragraph (3)(c) and approved pursuant to sub-paragraph (2) must be submitted to and approved by the relevant planning authority.

(6) If, during the carrying out of the authorised development on—

(a) the power station area;

(b) the pipeline area; or

(c) the construction laydown area

contamination not previously identified is found to be present on such area(s) no further development (unless otherwise agreed in writing with the relevant planning authority) must be carried out on the area(s) on which the contamination has been found until a remediation strategy detailing how such contamination must be dealt with has been submitted to and approved by the relevant planning authority.

(7) The authorised development must be carried out in accordance with the strategy approved pursuant to sub-paragraph (1) and any remediation strategy approved pursuant to sub-paragraph (6).

~~(2)—The surface and foul water drainage system must be constructed in accordance with the approved details.~~

Contaminated land and groundwater

15

~~(1)—No [stage of the] authorised development shall commence until a written scheme [applicable to that stage,] to deal with the contamination of any land, including groundwater, within the Order limits which is likely to cause significant harm to persons or pollution of controlled waters or the environment has, after consultation with the relevant planning authority and the Environment Agency, been submitted to and approved by the Commission.~~

~~(2)—The scheme shall include an investigation and assessment report, prepared by a specialist consultant approved by the relevant planning authority, to identify the extent of any contamination and the remedial measures to be taken to render the land fit for its intended purpose, together with a management plan which sets out long term measures with respect to any contaminants remaining on the site.~~

~~(3)—Remediation must be carried out in accordance with the approved scheme.~~

Archaeology

16

~~16.(1)—No [stage of the] authorised development shall commence until [for that stage,] a written scheme for the investigation of areas of archaeological interest [as identified in section [] of the environmental document] has, after consultation with —(1) Each of numbered works 5, 6, 7, 9B and 14 of the authorised development must not commence (including permitted preliminary works comprising intrusive archaeological surveys only) until a written scheme of investigation has, for that numbered work, been submitted to and, after consultation with North Yorkshire County Council in its capacity as the relevant archaeological body, approved by the relevant planning authority, been submitted to and approved by the Commission.~~

(2) The scheme submitted and approved pursuant to sub-paragraph (1) must be substantially in accordance with chapter 8 (cultural heritage) of the environmental statement.

(3) The scheme must—

(a) identify any areas where further archaeological investigations are required and the nature and extent of the investigation required in order to preserve by knowledge or in-situ any archaeological features that are identified; and

(b) ~~(2) —The scheme shall identify areas where field work and/or a watching brief are required, and provide details of~~ the measures to be taken to protect, record or preserve any significant archaeological ~~remains-features~~ that may be found.

(4) Without prejudice to the generality of sub-paragraph (3), the scheme for numbered work 6 must provide details of a strip, map and record excavation for that numbered work.

(5) Without prejudice to the generality of sub-paragraph (3), the scheme for numbered works 5, 7, 9B and 14 must provide details of archaeological monitoring to be undertaken during construction of those numbered works.

(6) Any archaeological investigations implemented and measures taken to protect record or preserve any identified significant archaeological features that may be found must be carried out—

(a) in accordance with the approved scheme; and

(b) ~~(3) —Any archaeological works or watching brief carried out under the scheme must be~~ by a suitably qualified person or ~~body~~-organisation approved by the ~~Commission~~-relevant planning authority in consultation with North Yorkshire County Council.

Construction environmental management plan

17.—(1) No part of the authorised development must commence (including permitted preliminary works comprising site clearance only), until a construction environmental management plan for that part ~~has been submitted to and approved by the~~ relevant planning authority.

(2) The plan submitted and approved pursuant to sub-paragraph (1) must be substantially in accordance with the outline construction environmental management plan and must detail how the outcomes of the ground investigations carried out pursuant to requirement 15 have been taken into account in the preparation of the plan.

(3) ~~(4) —Any archaeological works or watching brief~~ All construction works associated with the authorised development must be carried out in accordance with the approved ~~scheme~~-construction environmental management plan.

Construction traffic management plan

18.—(1) No part of the authorised development must commence, save for numbered works 11, 13 and 14, until a construction traffic management plan has, for that part, been submitted to and, after consultation with Highways England and the highway authority, approved by ~~the~~ relevant planning authority.

(2) The plan submitted and approved pursuant to sub-paragraph (1) must be substantially in accordance with the relevant part of the outline construction traffic management plan.

~~(2) —The ecological management plan shall include an implementation timetable and must be carried out as approved.~~

Ecological management plan

17

~~(1) —No [stage of the] authorised development shall commence until a written ecological management plan [for that stage] reflecting the survey results and ecological mitigation and enhancement measures included in the environmental document, after consultation with ~~the~~ relevant planning authority, shall be submitted to and approved by the Commission~~

Code of construction practice

18

~~Construction works shall be carried out in accordance with the agreed code of construction practice, unless otherwise agreed by the Commission, after consultation with relevant planning authority.~~

~~for~~

19

~~(1) No [stage of the] authorised development shall commence until a code of construction practice shall, after consultation with the relevant planning authority, be submitted to and approved by the Commission.~~

~~(2) All construction works shall be undertaken in accordance with the approved code, unless otherwise agreed by the Commission.~~

~~[Note: The code should specify measures designed to minimise the impacts of construction works, such as means of minimising pollution from dust, noise, vibration and lighting, wheel cleansing facilities, routes for construction traffic, working hours etc To the extent that it does not, or does not do so adequately, separate conditions are likely to be required, some of which are indicated below].~~

Design of roads

20

~~(1) No [stage of the] authorised development consisting of the construction or alteration of a street which is a trunk road or including any traffic management and control measures shall commence until written details of the design of the street shall, after consultation with the Highways Agency, be submitted to and approved by the Commission.~~

~~(2) The [authorised development] construction or alteration of the street or the taking of traffic management and control measures shall be carried out in accordance with the approved design.~~

External lighting

21

~~No [stage of the] authorised development, shall commence until written details of any external lighting to be installed at any of the construction sites [within that stage], including measures to prevent light spillage, shall, after consultation with the relevant planning authority and the highway authority, be submitted to and approved by the Commission; and any approved means of lighting must subsequently be installed and retained for the duration of the construction period.~~

Construction traffic

22

~~(1) No [stage of the] authorised development shall commence until written details of the preferred route to be used by construction traffic shall, after consultation with the relevant planning authority and the highway authority, be submitted to and approved by the Commission.~~

~~(3) (2) Notices shall~~ Notices must be erected and maintained throughout the period of construction at every entrance to and exit from the construction site ~~exit~~, indicating to drivers the ~~route agreed by the Commission~~ approved routes for traffic entering and leaving the ~~site~~ construction site.

(4) The plan must be implemented as approved.

Control of noise during construction and maintenance

Construction worker travel plan

~~19.(1) — No [stage of the] —~~ (1) No part of the authorised development ~~shall~~ must commence ~~until~~, save for numbered works 11, 13 and 14, until a construction worker travel plan has, for that part, been submitted to and, after consultation with the highway authority, approved by the relevant planning authority, ~~a written scheme for noise management during construction and maintenance [of that stage] has been submitted to and approved by the Commission.~~

(2) The plan submitted and approved pursuant to sub-paragraph (1) must be substantially in accordance with the relevant part of the outline construction worker travel plan.

(3) The plan must be implemented as approved.

~~(2) — The scheme shall 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) — a scheme for monitoring the noise during the works to ensure compliance with the noise limits and the effectiveness of the attenuation measures.~~

~~(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.~~

Construction hours

~~(1) — Construction work shall not take place other than between [0800 and 1800 hours on weekdays and 0800 and 1300 hours on Saturdays, excluding public holidays], unless otherwise agreed by the Commission.~~

~~(2) — Nothing in paragraph (1) precludes a start-up period from [0730 to 0800] and a shut down period from [1800 to 1830] on weekdays (excluding public holidays).~~

Control of noise during operational phase

20.—(1) Construction work relating to the authorised development must not take place on Sundays, bank holidays nor otherwise outside the hours of—

(a) 0700 to 1900 hours on Monday to Friday; and

(b) 0700 to 1300 hours on a Saturday.

(2) Delivery or removal of materials, plant and machinery must not take place on Sundays, bank holidays nor otherwise outside the hours of—

(a) 0800 to 1800 hours on Monday to Friday; and

(b) 0800 to 1300 hours on a Saturday.

(3) The restrictions in sub-paragraphs (1) and (2) do not apply to construction work or the delivery or removal of materials, plant and machinery, where these—

(a) are carried out within existing buildings or buildings constructed as part of the authorised development;

(b) (1) — No authorised development shall commence operation until, after consultation with are carried out with the prior approval of the relevant planning authority, a written

~~scheme for noise management including monitoring and attenuation for the use of the authorised project has been submitted to and approved by the Commission; or~~

(c) are associated with an emergency.

~~(2) — The noise management scheme must be implemented as approved and maintained for the duration of use of the authorised project.~~

Control of odour emissions

26

(4) The restrictions in sub-paragraph (2) do not apply to the delivery of abnormal indivisible loads, where this is—

(a) associated with an emergency; or

(b) (1) — No [stage of the] authorised development shall commence until, after consultation with carried out with the prior approval of the relevant planning authority, a written scheme for the management and mitigation of odour emissions has been submitted to and approved by the Commission.

~~with the relevant planning authority, a written scheme to ensure the prevention of infestation or emanation of insects from the authorised development has been submitted to and approved by the Commission.~~
~~(2) — The approved scheme for the prevention of infestation or emanation of insects must be implemented before and maintained during the construction, operation and decommissioning of the [relevant stage of the] authorised development.~~

~~(3) — For the purposes of this requirement, "insects" excludes insects that are wild animals included in Schedule 5 to the Wildlife and Countryside Act 1981 (animals which are protected), unless they are included in respect of section 9(5) of that Act only.~~

Accumulations and deposits

32

~~(1) — No [stage of the] authorised development shall commence until, after consultation with the relevant planning authority, a written scheme for the management of any accumulations [or] and deposits whose effects may be harmful or visible or otherwise noticeable from outside the Order limits has been submitted to and approved by the Commission.~~

~~(2) — The approved scheme for the management of accumulations and deposits must be implemented before and maintained during the construction, operation and decommissioning of the [relevant stage of the] authorised development.~~

Travel plan

33

~~(1) — No [stage of the] of the authorised development shall be begun until, after consultation with the relevant planning authority and the highway authority, a travel plan [for the contractor's workforce], which must include details of the expected means of travel to and from [the authorised [project]] [the construction site] and any parking to be provided, has been submitted to and approved by the Commission.~~

~~(2) — The approved scheme for the management and mitigation of odour emissions must be implemented before and maintained during the construction, operation and decommissioning of the [relevant stage of the] authorised development.~~

Control of artificial light emissions

27

~~(1) — No [stage of the] authorised development shall commence until, after consultation with the relevant planning authority, a written scheme for the management and mitigation of artificial light emissions has been submitted to and approved by the Commission.~~

~~(2) — The approved scheme for the management and mitigation of artificial light emissions must be implemented before and maintained during the construction, operation and decommissioning of the [relevant stage of the] authorised development.~~

Control of dust emissions

28

~~(1) — No [stage of the] authorised development shall commence until, after consultation with the relevant planning authority, a written scheme for the management and mitigation of dust emissions has been submitted to and approved by the Commission.~~

~~(2) — The approved scheme for the management and mitigation of dust emissions must be implemented before and maintained during the construction, operation and decommissioning of the [relevant stage of the] authorised development~~

Control of smoke emissions

29

~~(1) — No [stage of the] authorised development shall commence until, after consultation with the relevant planning authority, a written scheme for the management and mitigation of smoke emissions has been submitted to and approved by the Commission.~~

~~(2) — The approved scheme for the management and mitigation of smoke emissions must be implemented before and maintained during the construction, operation and decommissioning of the [relevant stage of the] authorised development.~~

Control of steam emissions

30

~~(1) — No [stage of the] authorised development shall commence until, after consultation with the relevant planning authority, a written scheme for the management and mitigation of steam emissions has been submitted to and approved by the Commission.~~

~~(2) — The approved scheme for the management and mitigation of steam emissions must be implemented before and maintained during the construction, operation and decommissioning of the [relevant stage of the] authorised development.~~

Control of insects

31

~~(1) — No [stage of the] authorised development shall commence until, after consultation~~
Sub. (2) — No part of the authorised project shall be brought into use until, after consultation with the relevant planning authority and the highway authority, a travel plan, which must include details of the expected means of travel to and from the authorised project and any parking to be provided, has been submitted to and approved by the Commission. paragraph (1) does not preclude—

(a) for numbered work 9 and at the corresponding numbered area shown on the works plans a start up period from 0600 to 0700 and a shut down period from 1900 to 2000 Monday to Friday and a start up period from 0600 to 0700 and a shut down period from 1300 to 1400 on a Saturday; or

(b) (3) — The plan approved under paragraph (1) must be implemented during maintenance at any time of plant and machinery engaged in the construction of the authorised development and the plan approved under paragraph (2) must be implemented [within one month of the authorised project being brought into use] and shall continue to be implemented for as long as the authorised project is used.

(6) 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.

Control of noise – operation

21.—(1) The noise emitted from the top of the stacks at source in numbered works 1A and 2A must not exceed a sound power level of 98 dB(A).

(2) Prior to the date of Work No. 1A full commissioning a written scheme for the monitoring of noise emitted from the top of the stacks at source during operation of numbered work 1A must be submitted to and approved by the relevant planning authority.

(3) Prior to the date of Work No. 2A full commissioning a written scheme for the monitoring of noise emitted from the top of the stacks at source during operation of numbered work 2A must be submitted to and approved by the relevant planning authority.

(4) The schemes submitted under sub-paragraphs (2) and (3) must be implemented as approved.

Carbon capture readiness reserve space

22.—(1) Following commencement of the authorised development and until such time as the authorised development is decommissioned, the undertaker must not, without the consent of the Secretary of State—

(a) dispose of any interest in the carbon capture readiness reserve space; or

(b) do anything, or allow anything to be done or to occur,

which may reasonably be expected to diminish the undertaker's ability, within two years of such action or occurrence, to prepare the carbon capture readiness reserve space for the installation and operation of carbon capture equipment, should it be deemed necessary to do so.

Carbon capture readiness monitoring report

23.—(1) The undertaker must make a report ('carbon capture readiness monitoring report') to the Secretary of State—

(a) on or before the date on which three months have passed from the date of Work No. 1A full commissioning; and

(b) within one month of the second anniversary, and each subsequent even-numbered anniversary, of that date.

(2) Each carbon capture readiness monitoring report must provide evidence that the undertaker has complied with requirement 22—

(a) in the case of the first carbon capture readiness monitoring report, since commencement of the authorised development; and

(b) in the case of any subsequent report, since the making of the previous carbon capture readiness monitoring report, and explain how the undertaker expects to continue to comply with requirement 22 over the next two years.

(3) Each carbon capture readiness monitoring report must state whether the undertaker considers the retrofit of carbon capture technology is feasible explaining the reasons for any such conclusion and whether any impediments could be overcome.

(4) Each carbon capture readiness monitoring report must state, with reasons, whether the undertaker has decided to seek any additional regulatory clearances, or to modify any existing regulatory clearances, in respect of any carbon capture readiness proposals.

Air Safety

24. No part of the authorised development must commence until the undertaker has submitted confirmation to the relevant planning authority that it has provided details of the information that is required by the Defence Geographic Centre of the Ministry of Defence to chart the site for aviation purposes.

Local liaison committee

25.—(1) The authorised development must not commence until the undertaker has established a committee to liaise with local residents and organisations about matters relating to the authorised development (a ‘local liaison committee’).

(2) The undertaker must invite the relevant planning authority and other relevant interest groups, as may be agreed with the relevant planning authority, to nominate representatives to join the local liaison committee.

(3) The undertaker must provide a full secretariat service and supply an appropriate venue for the local liaison committee meetings to take place.

(4) The local liaison committee must—

- (a) include representatives of the undertaker;
- (b) meet every other month, starting in the month prior to commencement of stage 1 of the authorised development until the date of Work No. 1A full commissioning, or if stage 2 of the authorised development has commenced prior to the date of Work No. 1A full commissioning, the date of Work No. 2A full commissioning, unless otherwise agreed by the majority of the members of the local liaison committee;
- (c) if stage 2 of the authorised development has not commenced prior to the date of Work No. 1A full commissioning, meet every month, starting in the month prior to commencement of stage 2 of the authorised development until the date of Work No. 2A full commissioning, unless otherwise agreed by the majority of the members of the local liaison committee; and
- (d) during the operation of the authorised development meet once a year unless otherwise agreed by the majority of the members of the local liaison committee.

Decommissioning environmental management plan

26.—(1) Within 12 months of the date that the undertaker decides to decommission any part of the authorised development, the undertaker must submit to the relevant planning authority for its approval a decommissioning environmental management plan for that part.

(2) No decommissioning works must be carried out until the relevant planning authority has approved the plan submitted under sub-paragraph (1) in relation to such works.

(3) The plan submitted and approved must include details of—

- (a) the buildings to be demolished;
- (b) the means of removal of the materials resulting from the decommissioning works;
- (c) the phasing of the demolition and removal works;
- (d) any restoration works to restore the land to a condition agreed with the relevant planning authority;
- (e) the phasing of any restoration works; and
- (f) a timetable for the implementation of the scheme.

(4) The plan must be implemented as approved.

Decommissioning traffic management plan

27.—(1) Within 12 months of the date that the undertaker decides to decommission any part of the authorised development, the undertaker must submit to the relevant planning authority for its approval, after consultation with Highways England and the highway authority, a decommissioning traffic management plan for that part.

(2) No decommissioning works must be carried out until the relevant planning authority has approved the plan submitted under sub-paragraph (1) in relation to such works.

(3) The plan submitted and approved must include details of—

- (a) route diversions; and
- (b) routing of abnormal loads and HGVs.
- (4) The plan must be implemented as approved.

STREETS SUBJECT TO STREET WORKS

Table 1

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>	<i>(4)</i> <i>New street to be substituted</i>
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<u>(1)</u> <u>Area</u>	<u>(2)</u> <u>Streets subject to street works</u>	<u>(3)</u> <u>Description of the street works</u>
<u>In the District of Selby</u>	<u>New Road</u>	<u>Works for the provision of a new permanent access to Work No.5 on the east side of New Road between the points marked AI and AJ on sheet 3 of the access and rights of way plans</u>
<u>In the District of Selby</u>	<u>New Road</u>	<u>Works for the installation and maintenance of Work Nos. 1C, 1D, 2C and 2D in the street between the points marked AZ and AY and AJ and AI on sheet 3 of the access rights of way plans</u>
<u>In the District of Selby</u>	<u>New Road</u>	<u>Works for the provision of a new temporary pedestrian bridge in Work No. 9A over New Road between the points marked C and D on sheet 2 of the access and rights of way plans</u>
<u>In the District of Selby</u>	<u>New Road</u>	<u>Works for the provision of a new construction access to Work No. 9B on the east side of New Road between the points marked C and D on sheet 2 of the access and rights of way plans</u>
<u>In the District of Selby</u>	<u>New Road</u>	<u>Works for the provision of a new construction access to Work No. 9B on the east side of New Road between the points marked AT and AU on sheet 2 of the access and rights of way plans</u>
<u>In the District of Selby</u>	<u>Carr Lane / Wren Hall Lane</u>	<u>Widening and improvement works to the junction at Carr Lane and Wren Hall Lane between the points marked AM and AN on sheet 5 of the</u>

		access and rights of way plans
In the District of Selby	Wren Hall Lane	Widening and works for the provision of a new construction access to Work No. 7 on the east side of Wren Hall Lane between the points marked V and U on sheet 5 of the access and rights of way plans
In the District of Selby	Wren Hall Lane	Widening and works for the provision of a new construction access to Work No. 7 on the west side of Wren Hall Lane between the points marked V and U on sheet 5 of the access and rights of way plans
In the District of Selby	Wren Hall Lane	Works for the installation and maintenance of Work No. 7 in the street between the points marked U and V on sheet 5 of the access rights of way plans
In the District of Selby	Main Road	Widening and works for the provision of a new construction access to Work No. 7 on the east side of Main Road between the points marked AQ and W on sheet 5 of the access and rights of way plans
In the District of Selby	Main Road	Widening and works for the provision of a new construction access to Work No. 7 on the west side of Main Road between the points marked AQ and W on sheet 5 of the access and rights of way plans
In the District of Selby	Main Road	Works for the installation and maintenance of Work No. 7 in the street between the points marked AQ and W on sheet 5 of the access rights of way plans
In the District of Selby	Rusholme Lane	Widening and works for the provision of a new construction access to Work No. 7 on the north side of Rusholme Lane between the points marked Y and Z on sheet 8 of the access and rights of way plans
In the District of Selby	Rusholme Lane	Widening and works for the provision of a new construction access to Work No. 6D and Work No. 7 on the

		south side of Rusholme Lane between the points marked Y and Z on sheet 8 of the access and rights of way plans
In the District of Selby	Rusholme Lane	Works for the installation and maintenance of Work No. 7 in the street between the points marked BY and Z on sheet 8 of the access rights of way plans
In the District of Selby	Rusholme Lane	Works for the provision of a new permanent access to Work No. 6 on the south side of Rusholme Lane between the points marked AW and AV on sheet 8 of the access rights of way plans
In the District of Selby	Rusholme Lane	Widening and works for the provision of a passing place (Work No. 14) on the west side of Rusholme Lane between the points marked AT and AS on sheet 9 of the access and rights of way plans
In the District of Selby	A645/New Road	Street works at the A645/New Road roundabout between the points marked AB and BV on sheet 4 of the access and rights of way plans
In the District of East Riding of Yorkshire	A161 roundabout	Street works to the A161 roundabout between the points marked BO and BP on sheet 23 of the access and rights of way plans
In the District of East Riding of Yorkshire	A161 roundabout	Street works to the A161 roundabout between the points marked BH and BI on sheet 22 of the access and rights of way plans
In the District of East Riding of Yorkshire	A614 roundabout / M62	Street works to the A614 roundabout between the points marked AE and BC on sheet 14 of the access and rights of way plans
In the District of East Riding of Yorkshire	A614 roundabout junction with Glews Services	Street works to the A614 roundabout with Glews Services between the points marked BA and BB on sheet 14 of the access and rights of way plans
In the District of East Riding of Yorkshire	A614 / A645	Street works at the A614 / A645 roundabout between the points marked BF and BG on sheet 13 of the access and rights of way plans

Schedule C
Streets to be Stopped Up

Part 1
Streets for which a Substitute is to be Provided

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>
<i>Area</i>	<i>Street to be stopped up</i>	<i>Extent of stopping up</i>	<i>New street to be substituted</i>

STREETS SUBJECT TO PERMANENT AND TEMPORARY
ALTERATION OF LAYOUT

PART 1

PERMANENT ALTERATION OF LAYOUT

Table 2

<u>(1)</u> <u>Area</u>	<u>(2)</u> <u>Streets subject to alteration of layout</u>	<u>(3)</u> <u>Description of alteration</u>
<u>In the District of Selby</u>	<u>New Road</u>	<u>Works for the provision of a new permanent access to Work No. 5 on the east side of New Road between the points marked AI and AJ on sheet 3 of the access and rights of way plans</u>
<u>In the District of Selby</u>	<u>Rusholme Lane</u>	<u>Works for the provision of a new permanent access to Work No. 6 on the south side of Rusholme Lane between the points marked AW and AV on sheet 8 of the access rights of way plans</u>

PART 2

TEMPORARY ALTERATION OF LAYOUT

Table 3

<u>(1)</u> <u>Area</u>	<u>(2)</u> <u>Streets subject to alteration of layout</u>	<u>(3)</u> <u>Description of alteration</u>
<u>In the District of Selby</u>	<u>New Road</u>	<u>Works for the provision of a new construction access to Work No. 9B on the east side of New Road between the points marked C and D on sheet 2 of the access and rights of way plans</u>
<u>In the District of Selby</u>	<u>New Road</u>	<u>Works for the provision of a new construction access to Work No. 9B on the east side of New Road between the points marked AT and AU on sheet 2 of the access and rights of way plans</u>

		of way plans
In the District of Selby	Carr Lane / Wren Hall Lane	Widening and improvement works to the junction at Carr Lane and Wren Hall Lane between the points marked AM and AN on sheet 5 of the access and rights of way plans
In the District of Selby	Wren Hall Lane	Widening and works for the provision of a new construction access to Work No.7 on the east side of Wren Hall Lane between the points marked V and U on sheet 5 of the access and rights of way plans
In the District of Selby	Wren Hall Lane	Widening and works for the provision of a new construction access to Work No.7 on the west side of Wren Hall Lane between the points marked V and U on sheet 5 of the access and rights of way plans
In the District of Selby	Main Road	Widening and works for the provision of a new construction access to Work No.7 on the east side of Main Road between the points marked AQ and W on sheet 5 of the access and rights of way plans
In the District of Selby	Main Road	Widening and works for the provision of a new construction access to Work No.7 on the west side of Main Road at the point marked AQ and W on sheet 5 of the access and rights of way plans
In the District of Selby	Rusholme Lane	Widening and works for the provision of a new construction access to Work No.7 on the north side of Rusholme Lane between the points marked Y and Z on sheet 8 of the access and rights of way plans
In the District of Selby	Rusholme Lane	Widening and works for the provision of a new construction access to Work No.6D and Work No.7 on the south side of Rusholme Lane between the points marked Y and Z on sheet 8 of the access and rights of way plans
In the District of Selby	Rusholme Lane	Widening and works for the provision of a passing place

		<u>(Work No.14) on the west side of Rusholme Lane between the points marked AT and AS on sheet 9 of the access and rights of way plans</u>
<u>In the District of Selby</u>	<u>A645 / New Road</u>	<u>Street works at the A645 / New Road roundabout between the points marked AB and BV on sheet 4 of the access and rights of way plans</u>
<u>In the District of Selby</u>	<u>A645 / New Road</u>	<u>Works in the street to remove street furniture between the points marked AB and BV on sheet 4 of the access and rights of way plans</u>
<u>In the District of East Riding of Yorkshire</u>	<u>Aldam Dock</u>	<u>Works in the street to remove street furniture from the exit of Aldam Dock at the points marked AH and BR on sheet 23 of the access and rights of way plans</u>
<u>In the District of East Riding of Yorkshire</u>	<u>Normandy Way</u>	<u>Works in the street to remove street furniture between the points marked BO and BS on sheet 23 of the access and rights of way plans</u>
<u>In the District of East Riding of Yorkshire</u>	<u>Stanhope Street / Coronation Street</u>	<u>Works in the street to remove street furniture between the points marked BN and BM on sheet 23 of the access and rights of way plans</u>
<u>In the District of East Riding of Yorkshire</u>	<u>Coronation Street / Boothferry Road</u>	<u>Works in the street to remove street furniture between the points marked BM and BL on sheet 23 of the access and rights of way plans</u>
<u>In the District of East Riding of Yorkshire</u>	<u>Boothferry Road</u>	<u>Works in the street to remove street furniture between the points marked BL and BK on sheet 23 of the access and rights of way plans</u>
<u>In the District of East Riding of Yorkshire</u>	<u>Boothferry Road/Airmyn Road (A614) / Rawcliffe Road (A614)</u>	<u>Works in the street to remove street furniture between the points marked BK, BT and BU on sheet 23 of the access and rights of way plans</u>
<u>In the District of East Riding of Yorkshire</u>	<u>A161 roundabout</u>	<u>Street works to the A161 roundabout between the points marked BO and BP on sheet 23 of the access and rights of way plans</u>
<u>In the District of East Riding of Yorkshire</u>	<u>A161 roundabout</u>	<u>Street works to the A161 roundabout between the points marked BH and BI on sheet 22 of the access and rights of way plans</u>

<u>In the District of East Riding of Yorkshire</u>	<u>A161 roundabout</u>	<u>Works in the street to remove street furniture between the points marked BH and BI on sheet 22 of the access and rights of way plans</u>
<u>In the District of East Riding of Yorkshire</u>	<u>A161</u>	<u>Works in the street to remove street furniture between the points marked BI and BJ on sheets 22 and 23 of the access and rights of way plans</u>
<u>In the District of East Riding of Yorkshire</u>	<u>A161 roundabout / A614</u>	<u>Works in the street to remove street furniture between the points marked AF and BE on sheet 14 of the access and rights of way plans</u>
<u>In the District of East Riding of Yorkshire</u>	<u>M62 carriageway</u>	<u>Works in the street to remove safety barrier between the points marked BD and AG on sheets 14, 19, 20 and 21 of the access and rights of way plans</u>
<u>In the District of East Riding of Yorkshire</u>	<u>A614 roundabout / M62</u>	<u>Street works to the A614 roundabout between the points marked AE and BC on sheet 14 of the access and rights of way plans</u>
<u>In the District of East Riding of Yorkshire</u>	<u>A614 roundabout / M62</u>	<u>Works in the street to remove street furniture between the points marked AE and BC on sheet 14 of the access and rights of way plans</u>
<u>In the District of East Riding of Yorkshire</u>	<u>A614 roundabout junction with Glews Services</u>	<u>Street works to the A614 roundabout with Glews Services between the points marked BA and BB on sheet 14 of the access and rights of way plans</u>
<u>In the District of East Riding of Yorkshire</u>	<u>A614 roundabout junction with Glews Services</u>	<u>Works in the street to remove street furniture between the points marked BA and BB on sheet 14 of the access and rights of way plans</u>
<u>In the District of East Riding of Yorkshire</u>	<u>A614 / A645</u>	<u>Street works at the A614 / A645 roundabout between the points marked BF and BG on sheet 13 of the access and rights of way plans</u>
<u>In the District of East Riding of Yorkshire</u>	<u>A614 / A645</u>	<u>Works in the street to remove street furniture between the points marked BF and BG on sheet 13 of the access and rights of way plans</u>

ACCESS

PART 1

THOSE PARTS OF THE ACCESS TO BE MAINTAINED AT THE PUBLIC
EXPENSE

Table 4

<u>(1)</u> <u>Area</u>	<u>(2)</u> <u>Street</u>	<u>(3)</u> <u>Description of relevant part of access</u>
<u>In the District of Selby</u>	<u>New Road</u>	<u>That part of the access in the area cross hatched in blue between the points marked AI and AJ on sheet 3 of the access and rights of way plans</u>
<u>In the District of Selby</u>	<u>Rusholme Lane</u>	<u>That part of the access in the area cross hatched in blue between the points marked AW and AV on sheet 8 of the access and rights of way plans</u>

PART 2

THOSE PARTS OF THE ACCESS TO BE MAINTAINED BY THE STREET
AUTHORITY

Table 5

<u>(1)</u> <u>Area</u>	<u>(2)</u> <u>Street</u>	<u>(3)</u> <u>Description of relevant part of access</u>
<u>In the District of Selby</u>	<u>New Road</u>	<u>That part of the access in the area cross hatched in red between the points marked AI and AJ on sheet 3 of the access and rights of way plans</u>
<u>In the District of Selby</u>	<u>Rusholme Lane</u>	<u>That part of the access in the area cross hatched in red between the points marked AW and AV on sheet 8 of the access and rights of way plans</u>

PART 3

THOSE WORKS TO RESTORE THE TEMPORARY ACCESSES WHICH WILL BE MAINTAINED BY THE STREET AUTHORITY

Table 6

<u>(1)</u> <u>Area</u>	<u>(2)</u> <u>Street</u>	<u>(3)</u> <u>Description of relevant part of access</u>
<u>In the District of Selby</u>	<u>New Road</u>	<u>That part of the temporary construction access to Work No. 9B on the east side of New Road between the points marked C and D on sheet 2 of the access and rights of way plans</u>
<u>In the District of Selby</u>	<u>New Road</u>	<u>That part of the temporary construction access to Work No. 9B on the east side of New Road between the points marked AT and AU on sheet 2 of the access and rights of way plans</u>
<u>In the District of Selby</u>	<u>Carr Lane / Wren Hall Lane</u>	<u>That part of the junction at Carr Lane and Wren Hall Lane between the points marked AM and AN on sheet 5 of the access and rights of way plans</u>
<u>In the District of Selby</u>	<u>Wren Hall Lane</u>	<u>That part of the temporary construction access on the east side of Wren Hall Lane between the points marked V and U on sheet 5 of the access and rights of way plans</u>
<u>In the District of Selby</u>	<u>Wren Hall Lane</u>	<u>That part of the temporary construction access on the west side of Wren Hall Lane between the points marked V and U on sheet 5 of the access and rights of way plans</u>
<u>In the District of Selby</u>	<u>Main Road</u>	<u>That part of the temporary construction access on the east side of Main Road between the points marked AQ and W on sheet 5 of the access and rights of way plans</u>
<u>In the District of Selby</u>	<u>Main Road</u>	<u>That part of the temporary construction access on the west side of Main Road between the points marked AQ and W on sheet 5 of the access and rights of way plans</u>
<u>In the District of Selby</u>	<u>Rusholme Lane</u>	<u>That part of the new construction access on the north side of Rusholme Lane</u>

		<u>between the points marked Y and Z on sheet 8 of the access and rights of way plans</u>
<u>In the District of Selby</u>	<u>Rusholme Lane</u>	<u>That part of the new construction access on the south side of Rusholme Lane between the points marked Y and Z on sheet 8 of the access and rights of way plans</u>
<u>In the District of Selby</u>	<u>Rusholme Lane</u>	<u>That part of the west side of Rusholme Lane between the points marked AT and AS on sheet 9 of the access and rights of way plans</u>
<u>In the District of Selby</u>	<u>A645 / New Road</u>	<u>That part of the A645 / New Road roundabout between the points marked AB and BV on sheet 4 of the access and rights of way plans</u>
<u>In the District of East Riding of Yorkshire</u>	<u>A161 roundabout</u>	<u>That part of the A161 roundabout between the points marked BO and BP on sheet 23 of the access and rights of way plans</u>
<u>In the District of East Riding of Yorkshire</u>	<u>A161 roundabout</u>	<u>That part of the A161 roundabout between the points marked BH and BI on sheet 22 of the access and rights of way plans</u>
<u>In the District of East Riding of Yorkshire</u>	<u>A614 roundabout / M62</u>	<u>That part of the A614 roundabout between the points marked AE and BC on sheet 14 of the access and rights of way plans</u>
<u>In the District of East Riding of Yorkshire</u>	<u>A614 roundabout junction with Glews Services</u>	<u>That part of the A614 roundabout with Glews Services between the points marked BA and BB on sheet 14 of the access and rights of way plans</u>
<u>In the District of East Riding of Yorkshire</u>	<u>A614 / A645</u>	<u>That part of the A614 / A645 roundabout between the points marked BF and BG on sheet 13 of the access and rights of way plans</u>

STREETS AND PUBLIC RIGHTS OF WAY TO BE TEMPORARILY STOPPED UP

PART 1

STREETS TO BE TEMPORARILY STOPPED UP ETC

Table 7

<u>(1)</u> <u>Area</u>	<u>(2)</u> <u>Street</u>	<u>(3)</u> <u>Description of temporary stopping up</u>
<u>In the District of Selby</u>	<u>New Road</u>	<u>Temporary closure of that part of the street shown between points AB and E on sheets 2, 3 and 4 of the access and rights of way plans to ensure the safe and unhindered passage of heavy goods vehicles and abnormal indivisible loads</u>
<u>In the District of Selby</u>	<u>Wren Hall Lane</u>	<u>Temporary closure of that part of the street shown between points AO and AP on sheet 5 of the access and rights of way plans to install and facilitate the construction of Work No. 7</u>
<u>In the District of Selby</u>	<u>Main Road</u>	<u>Temporary closure of that part of the street shown between points W and X on sheet 5 of the access and rights of way plans to install and facilitate the construction of Work No. 7</u>
<u>In the District of Selby</u>	<u>Rusholme Lane</u>	<u>Temporary closure of that part of the street shown between points Y and AV on sheet 8 of the access and rights of way plans to install and facilitate the construction of Work Nos. 6 and 7</u>
<u>In the District of Selby</u>	<u>A645</u>	<u>Temporary closure of that part of the street shown between points AB and AC on sheets 10 and 11 of the access and rights of way plans to ensure the safe and unhindered passage of heavy goods vehicles and abnormal indivisible loads</u>
<u>In the District of East Riding of Yorkshire</u>	<u>A645</u>	<u>Temporary closure of that part of the street shown between points AC and BF on sheets 11, 12 and 13 of the access and</u>

		rights of way plans to ensure the safe and unhindered passage of heavy goods vehicles and abnormal indivisible loads
In the District of East Riding of Yorkshire	A614	Temporary closure of that part of the street shown between points BG and AE on sheets 13 and 14 of the access and rights of way plans to ensure the safe and unhindered passage of heavy goods vehicles and abnormal indivisible loads
In the District of East Riding of Yorkshire	M62	Temporary closure of that part of the street shown between points BX and AG on sheets 14, 15, 16, 17, 18, 19, 20 and 21 of the access and rights of way plans to ensure the safe and unhindered passage of heavy goods vehicles and abnormal indivisible loads
In the District of East Riding of Yorkshire	A161	Temporary closure of that part of the street shown between points AF and AH on sheets 22 and 23 of the access and rights of way plans to ensure the safe and unhindered passage of heavy goods vehicles and abnormal indivisible loads
In the District of East Riding of Yorkshire	Aldam Dock	Temporary closure of that part of the street shown between points AX and BN on sheet 23 of the access and rights of way plans to ensure the safe and unhindered passage of heavy goods vehicles and abnormal indivisible loads
In the District of East Riding of Yorkshire	Stanhope Street / Coronation Street	Temporary closure of that part of the street shown between points BN and BM on sheet 23 of the access and rights of way plans to ensure the safe and unhindered passage of heavy goods vehicles and abnormal indivisible loads
In the District of East Riding of Yorkshire	Coronation Street / Boothferry Road	Temporary closure of that part of the street shown between points BM and BL on sheet 23 of the access and rights of way plans to ensure the safe and unhindered passage of heavy goods vehicles and abnormal indivisible loads

<u>In the District of East Riding of Yorkshire</u>	<u>Boothferry Road</u>	<u>Temporary closure of that part of the street shown between points BL and BK on sheet 23 of the access and rights of way plans to ensure the safe and unhindered passage of heavy goods vehicles and abnormal indivisible loads</u>
<u>In the District of East Riding of Yorkshire</u>	<u>A614 / A161</u>	<u>Temporary closure of that part of the street shown between BT and AF on sheets 22 and 23 of the access and rights of way plans to ensure the safe and unhindered passage of heavy goods vehicles and abnormal indivisible loads</u>

PART 2

PUBLIC RIGHTS OF WAY TO BE TEMPORARILY STOPPED UP ETC

Table 8

<u>(1)</u> <u>Area</u>	<u>(2)</u> <u>Public right of way</u>	<u>(3)</u> <u>Description of temporary stopping up etc</u>
<u>In the District of Selby</u>	<u>Public footpath 35.47/4/1</u>	<u>Between the points marked M and N on sheet 5 of the access and rights of way plans</u>
<u>In the District of Selby</u>	<u>Public footpath 35.47/5/1</u>	<u>Between the points marked O and P on sheet 5 of the access and rights of way plans</u>
<u>In the District of Selby</u>	<u>Public footpath 35.47/9/1</u>	<u>Between the points marked Q and R on sheet 6 of the access and rights of way plans</u>
<u>In the District of Selby</u>	<u>Public footpath 35.49/2/1</u>	<u>Between the points marked S and T on sheet 6 of the access and rights of way plans</u>

PUBLIC RIGHTS OF WAY TO BE PERMANENTLY STOPPED UPTable 9

<u>(1)</u> <u>Area</u>	<u>(2)</u> <u>Public right of way to</u> <u>be stopped up</u>	<u>(3)</u> <u>Extent of stopping up</u>	<u>(4)</u> <u>Replacement public</u> <u>right of way</u>
<u>In the District of</u> <u>Selby</u>	<u>Public footpath</u> <u>35.47/1/1</u>	<u>Between the points</u> <u>marked J and K on</u> <u>sheet 2 of the access</u> <u>and rights of way</u> <u>plans</u>	<u>Between the points</u> <u>marked J and L on</u> <u>sheet 2 of the access</u> <u>and rights of way</u> <u>plans</u>
<u>In the District of</u> <u>Selby</u>	<u>Public footpath</u> <u>35.47/6/1</u>	<u>Between the points</u> <u>marked G and H on</u> <u>sheet 2 of the access</u> <u>and rights of way</u> <u>plans</u>	<u>Between the points</u> <u>marked G and I on</u> <u>sheet 2 of the access</u> <u>and rights of way</u> <u>plans</u>

LAND IN WHICH ONLY NEW RIGHTS ETC MAY BE ACQUIRED

Interpretation**1. In this Schedule—**

“Work Nos. 1C, 1D, 2C and 2D infrastructure” means any works or development comprised within Work Nos. 1C, 1D, 2C and 2D in schedule 1, ancillary apparatus and including any other necessary works or development permitted within the area delineated as Work Nos. 1C, 1D, 2C and 2D on the works plans;

“Work No. 5 infrastructure” means any works or development comprised within Work No. 5 in schedule 1, ancillary apparatus and including any other necessary works or development permitted within the area delineated as Work No. 5 on the works plans;

“Work No. 6 infrastructure” means any works or development comprised within Work No. 6 in schedule 1, ancillary apparatus and including any other necessary works or development permitted within the area delineated as Work No. 6 on the works plans;

“Work No. 6A access road” means any works or development comprised within Work No. 6A(viii), including any other necessary works or development permitted within the area delineated as Work No. 6A on the works plans;

“Work No. 6A infrastructure” means any works or development comprised within Work No. 6A(ii), including any other necessary works or development permitted within the area delineated as Work No. 6A on the works plans;

“Work No. 6A planting” means the hard and soft landscaping comprised within Work No. 6A(viii), including any other necessary works or development permitted in respect of such landscaping within the area delineated as Work No. 6A on the works plans;

“Work No. 6B infrastructure” means any works or development comprised within Work No. 6B(ii), including any other necessary works or development permitted within the area delineated as Work No. 6B on the works plans;

“Work No. 6B planting” means the hard and soft landscaping comprised within Work No. 6B(vii), including any other necessary works or development permitted in respect of such landscaping within the area delineated as Work No. 6B on the works plans;

“Work No. 7 infrastructure” means any works or development comprised within Work No. 7 in schedule 1, ancillary apparatus and including any other necessary works or development permitted within the area delineated as Work No. 7 on the works plans;

“Work No. 7A planting” means the hard and soft landscaping comprised within Work No. 7A(vi) in schedule 1, including any other necessary works or development permitted in respect of such landscaping within the area delineated as Work No. 7A on the works plans;

“Work No. 8 infrastructure” means any works or development comprised within Work No. 8 in schedule 1, ancillary apparatus and including any other necessary works or development permitted within the area delineated as Work No. 8 on the works plans;

“Work No. 8 planting” means the hard and soft landscaping comprised within Work Nos. 8A(vi) and 8B(vi) in schedule 1, including any other necessary works or development permitted in respect of such landscaping within the area delineated as Work Nos. 8A and 8B on the works plans;

“Work No. 9A(iii) infrastructure” means any works or development comprised within Work No. 9A(iii) in schedule 1, ancillary apparatus and including any other necessary works or development permitted within the area delineated as Work No. 9A(iii) on the works plans;

“Work No. 10C planting” means the hard and soft landscaping comprised within Work No. 10C in schedule 1, including any other necessary works or development permitted in respect of such landscaping within the area delineated as Work No. 10C on the works plans;

“Work No. 11 planting” means the retained and enhanced landscaping comprised within Work No. 11 in schedule 1, including any other necessary works or development permitted in respect of such landscaping within the area delineated as Work No. 11 on the works plans;

“Work No. 13 infrastructure” means any works or development comprised within Work No. 13 in schedule 1, ancillary apparatus and including any other necessary works or development permitted within the area delineated as Work No. 13 on the works plans.

Table 10

Part 2
Streets for which No Substitute is to be Provided

<i>(1)</i>	<i>(2)</i>
<i>Area</i>	<i>Description of access</i>

<u>(1)</u> <u>Number of plot shown on the land plans</u>	<u>(2)</u> <u>Rights etc. which may be acquired</u>
<u>5</u>	<u>For and in connection with the Work Nos. 1C, 1D, 2C and 2D infrastructure and the Work No. 8 infrastructure, the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work Nos. 1C, 1D, 2C and 2D infrastructure and the Work No. 8 infrastructure, together with the right to install, retain, use and maintain the Work Nos. 1C, 1D, 2C and 2D infrastructure and the Work No. 8 infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work Nos. 1C, 1D, 2C and 2D infrastructure and the Work No. 8 infrastructure, or interfere with or obstruct access from and to the Work Nos. 1C, 1D, 2C and 2D infrastructure and the Work No. 8 infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.</u> <u>For and in connection with the Work No. 8 planting, the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and repass, on foot, with or without vehicles, plant and machinery, for all purposes in connection</u>

	<u>with improvement, reinstatement, installation, implementation, retention, removal, relocation and maintenance of the Work No. 8 planting, together with the right to retain, maintain, inspect and replant the Work No. 8 planting, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 8 planting, or interfere with or obstruct access from and to the Work No. 8 planting.</u> <u>For and in connection with the Work No. 13 infrastructure the right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the removal of the Work No. 13 infrastructure.</u>
<u>8a</u>	<u>For and in connection with the Work No. 10C planting, the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and repass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with improvement, reinstatement, installation, implementation, retention, removal, relocation and maintenance of the Work No. 10C planting, together with the right to retain, maintain, inspect and replant the Work No. 10C planting, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 10C planting, or interfere with or obstruct access from and to the Work No. 10C planting.</u> <u>For and in connection with the Work No. 11 planting, the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and repass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with improvement, reinstatement, installation, implementation, retention, removal, relocation and maintenance of the Work No. 11 planting, together with the right to retain, maintain, inspect and replant the Work No. 11 planting, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 11 planting, or interfere with or obstruct access from and to the Work No. 11 planting.</u>
<u>9a</u>	<u>For and in connection with the Work Nos. 1C, 1D, 2C and 2D infrastructure the right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying,</u>

	<u>installation, use and maintenance of the Work Nos. 1C, 1D, 2C and 2D infrastructure, together with the right to install, retain, use and maintain the Work Nos. 1C, 1D, 2C and 2D infrastructure, and a right of support for it, and the right to the free flow of water, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work Nos. 1C, 1D, 2C and 2D infrastructure, or interfere with or obstruct access from and to the Work Nos. 1C, 1D, 2C and 2D infrastructure, including the right to prevent or remove the whole of any fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.</u>
<u>12</u>	<u>For and in connection with the Work Nos. 1C, 1D, 2C and 2D infrastructure and the Work No. 5 infrastructure the right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work Nos. 1C, 1D, 2C and 2D infrastructure and the Work No. 5 infrastructure, together with the right to install, retain, use and maintain the Work Nos. 1C, 1D, 2C and 2D infrastructure and the Work No. 5 infrastructure, and a right of support for it, and the right to the free flow of water, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work Nos. 1C, 1D, 2C and 2D infrastructure and the Work No. 5 infrastructure, or interfere with or obstruct access from and to the Work Nos. 1C, 1D, 2C and 2D infrastructure and the Work No. 5 infrastructure, including the right to prevent or remove the whole of any fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.</u> <u>For and in connection with the Work No. 7 infrastructure within a corridor of up to 15m in width, the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 7 infrastructure, together with the right to install, retain, use and maintain the Work No. 7 infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which</u>

	<u>may interfere with or damage the Work No. 7 infrastructure, or interfere with or obstruct access from and to the Work No. 7 infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.</u> <u>For and in connection with the Work No. 7A planting, the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and repass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with improvement, reinstatement, installation, implementation, retention, removal, relocation and maintenance of the Work No. 7A planting, together with the right to protect, retain, maintain, inspect and replant the Work No. 7A planting and existing planting, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 7A planting or existing planting, or interfere with or obstruct access from and to the Work No. 7A planting or existing planting.</u>
<u>14</u>	<u>For and in connection with the Work No. 9A(iii) infrastructure within an air-space corridor of up to 10m in width, the right for the undertaker and all persons authorised on its behalf to enter, pass and repass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the installation, use, maintenance and removal of the Work No. 9A(iii) infrastructure, together with the right to install, retain, use, maintain and remove the Work No. 9A(iii) infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 9A(iii) infrastructure, or interfere with or obstruct access from and to the Work No. 9A(iii) infrastructure.</u>
<u>18, 24, 25, 56</u>	<u>For and in connection with the Work No. 7 infrastructure within a corridor of up to 15m in width, the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and repass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 7 infrastructure, together with the right to install, retain, use and maintain the Work No. 7 infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 7</u>

	<u>infrastructure, or interfere with or obstruct access from and to the Work No. 7 infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.</u> <u>For and in connection with the Work No. 7A planting, the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and repass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with improvement, reinstatement, installation, implementation, retention, removal, relocation and maintenance of the Work No. 7A planting, together with the right to protect, retain, maintain, inspect and replant the Work No. 7A planting and existing planting, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 7A planting or existing planting, or interfere with or obstruct access from and to the Work No. 7A planting or existing planting.</u>
<u>27, 27a, 29, 29a, 33, 37, 40, 42, 43, 47, 49, 50, 59</u>	<u>For and in connection with the Work No. 7 infrastructure within a corridor of up to 15m in width, the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and repass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 7 infrastructure, together with the right to install, retain, use and maintain the Work No. 7 infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 7 infrastructure, or interfere with or obstruct access from and to the Work No. 7 infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.</u>
<u>58, 61, 67</u>	<u>For and in connection with the Work No. 7A planting, the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and repass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with improvement, reinstatement, installation, implementation, retention, removal, relocation and maintenance of the Work No. 7A planting,</u>

	<u>together with the right to protect, retain, maintain, inspect and replant the Work No. 7A planting and existing planting, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 7A planting or existing planting, or interfere with or obstruct access from and to the Work No. 7A planting or existing planting.</u>
65	<u>For and in connection with the Work No. 6A infrastructure, the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and repass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 6A infrastructure, together with the right to install, retain, use and maintain the Work No. 6A infrastructure and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 6A infrastructure, or interfere with or obstruct access from and to the Work No. 6A infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.</u> <u>For and in connection with the Work No. 6A planting, the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and repass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with improvement, reinstatement, installation, implementation, retention, removal, relocation and maintenance of the Work No. 6A planting, together with the right to retain, maintain, inspect and replant the Work No. 6A planting, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 6A planting, or interfere with or obstruct access from and to the Work No. 6A planting.</u> <u>For and in connection with the Work No. 6A access road, the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and repass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 6A access road, together with the right to install, retain, use and maintain the Work No. 6A access road and a</u>

	<u>right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 6A access road, or interfere with or obstruct access from and to the Work No. 6A access road, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.</u>
66	<u>For and in connection with the Work No. 6B infrastructure, the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and repass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 6B infrastructure, together with the right to install, retain, use and maintain the Work No. 6B infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 6B infrastructure, or interfere with or obstruct access from and to the Work No. 6B infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.</u> <u>For and in connection with the Work No. 6B planting, the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and repass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with improvement, reinstatement, installation, implementation, retention, removal, relocation and maintenance of the Work No. 6B planting, together with the right to retain, maintain, inspect and replant the Work No. 6B planting, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 6B planting, or interfere with or obstruct access from and to the Work No. 6B planting.</u>

Schedule F

Land of which Only Subsoil More than 9 Metres Beneath Surface may be Acquired

(1)	(2)
Area	Number of land shown on land plan

Schedule G
Land of which Temporary Possession may be Taken

Schedule D
Streets to be Temporarily Stopped Up

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
<i>Area</i>	<i>Street to be temporarily stopped up</i>	<i>Extent of temporary stopping up</i>

Schedule E
Access to Works

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 are to 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 limitation on the scope of paragraph 1, the Land Compensation Act 1973(a) has effect subject to the modifications set out in sub-paragraph (2).

(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 5—

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

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

(2) For section 5A (relevant valuation date) of the 1961 Act, after “if” substitute—

- “(a) the acquiring authority enters on land for the purpose of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act (as modified by paragraph 5(5) of Schedule 9 to the Drax Power (Generating Stations) Order 201*;
- (b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A to the 1965 Act (as substituted by paragraph 5(8) of Schedule 9 to the Drax Power (Generating Stations) Order 201*) to acquire an interest in the land; and
- (c) the acquiring authority enters on and takes possession of that land,

the authority is deemed for the purposes of subsection (3)(a) to have entered on that land where it entered on that land for the purpose of exercising that right.”

Application of Part 1 of the 1965 Act

4.—(1) Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act, as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and modified by article 26 (modification of Part 1 of the 1965 Act)) to the acquisition of land under article 19 (compulsory acquisition of land), applies to the compulsory acquisition of a right by the creation of a new right under article 22 (compulsory acquisition of rights)—

- (a) with the modifications specified in paragraph 5; and
- (b) with such other modifications as may be necessary.

5.—(1) The modifications referred to in paragraph 4(1)(a) are as follows—

(2) References in the 1965 Act to land are, in the appropriate contexts, to be read (according to the requirements of the particular context) as referring to, or as including references to—

(a) 1973 c.26.

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

(3) For section 7 of the 1965 Act (measure of compensation in case of severance) substitute—

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

(4) 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.

(5) Section 11 of the 1965 Act (powers of entry) is modified to secure that, where the acquiring authority has served notice to treat in respect of any right or restriction, as well as the notice of entry required by subsection (1) of that section (as it applied to compulsory acquisition under article 19), 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; and sections 11A (powers of entry: further notices of entry), 11B (counter-notice requiring possession to be taken on specified date), 12 (penalty for unauthorised entry) and 13 (entry on warrant in the event of obstruction) of the 1965 Act are modified correspondingly.

(6) 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.

(7) Section 22 of the 1965 Act (interests omitted from purchase) as modified by article 26(3) is also 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, or enforce the restriction imposed, subject to compliance with that section as respects compensation.

(8) For Schedule 2A to the 1965 Act substitute—

“SCHEDULE 2A

COUNTER-NOTICE REQUIRING PURCHASE OF LAND

Introduction

1.—(1) This Schedule applies where an acquiring authority serve a notice to treat in respect of a right over, or restrictive covenant affecting, the whole or part of a house, building or factory and have not executed a general vesting declaration under section 4 of the 1981 Act as applied by article 24 (application of the Compulsory Purchase (Vesting

Declarations) Act 1981) of the Drax Power (Generating Stations) Order 201* in respect of the land to which the notice to treat relates.

(2) But see article 25 (acquisition of subsoil only) of the Drax Power (Generating Stations) Order 201* which excludes the acquisition of subsoil only from this Schedule.

2. In this Schedule, “house” includes any park or garden belonging to a house.

Counter-notice requiring purchase of land

3. A person who is able to sell the house, building or factory (“the owner”) may serve a counter-notice requiring the authority to purchase the owner’s interest in the house, building or factory.

4. A counter-notice under paragraph 3 must be served within the period of twenty-eight days beginning with the day on which the notice to treat was served.

Response to counter-notice

5. On receiving a counter-notice, the acquiring authority must decide whether to—

- (a) **withdraw the notice to treat;**
- (b) accept the counter-notice; or
- (c) refer the counter-notice to the Upper Tribunal.

6. The authority must serve notice of their decision on the owner within the period of 3 months beginning with the day on which the counter-notice is served (“the decision period”).

7. If the authority decide to refer the counter-notice to the Upper Tribunal they must do so within the decision period.

8. If the authority do not serve notice of a decision within the decision period they are to be treated as if they had served notice of a decision to withdraw the notice to treat at the end of that period.

9. If the authority serve notice of a decision to accept the counter-notice, the compulsory purchase order and the notice to treat are to have effect as if they included the owner’s interest in the house, building or factory.

Determination by Upper Tribunal

10. On a referral under paragraph 7, the Upper Tribunal must determine whether the acquisition of the right or the imposition of the restrictive covenant would—

- (a) in the case of a house, building or factory, cause material detriment to the house, building or factory; or
- (b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

11. In making its determination, the Upper Tribunal must take into account—

- (a) the effect of the acquisition of the right or the imposition of the covenant;
- (b) the use to be made of the right or covenant proposed to be acquired or imposed; and
- (c) if the right or covenant is proposed to be acquired or imposed for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.

12. If the Upper Tribunal determines that the acquisition of the right or the imposition of the covenant would have either of the consequences described in paragraph 10, it must

determine how much of the house, building or factory the authority ought to be required to take.

13. If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in that land.

14.—(1) If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the authority may at any time within the period of 6 weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.

(2) If the acquiring authority withdraws the notice to treat under this paragraph they must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawal of the notice.

(3) Any dispute as to the compensation is to be determined by the Upper Tribunal.”

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKENTable 11

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on land plan</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(4)</i> <i>Relevant part of the Authorised project</i>
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<u>(1)</u> <u>Number of plot shown on the lands plans</u>	<u>(2)</u> <u>Purpose for which temporary possession may be taken</u>
<u>11, 19, 21, 26, 26a, 28, 28a, 30, 30a, 32, 35, 39, 41, 44, 45, 46, 48, 51, 52, 53, 54, 55</u>	<u>Temporary use as laydown, construction compound, construction use and accesses required to facilitate construction of Work No. 7</u> <u>Temporary use for the improvement, reinstatement, and retention of existing planting to facilitate construction of Work No. 7</u>
<u>60</u>	<u>Temporary use as laydown, construction compound, construction use and accesses required to facilitate construction of Work Nos. 6 and 7</u>
<u>64</u>	<u>Temporary use as vehicle, plant and machinery passing place as part of Work No. 14 to facilitate construction of Work Nos. 6 and 7</u>

PROCEDURE FOR DISCHARGEInterpretation of Schedule 111. In this Schedule 11—

“business day” means a day other than a Saturday or Sunday which is not Christmas Day, Good Friday or a bank holiday under section 1 of the Banking and Financial Dealings Act 1971(a);

“relevant authority” means any authority or body named in any of the provisions of this Order and whose consent, agreement or approval is sought; and

“requirement consultee” means any body or authority named in a requirement as a body to be consulted by the relevant planning authority in discharging that requirement.

Applications made under requirements

2.—(1) Where an application has been made to the relevant authority for any consent, agreement or approval required or contemplated by any of the provisions of this Order (including consent, agreement or approval in respect of part of a requirement) the relevant authority must give notice to the undertaker of their decision on the application within—

- (a) a period of nine (9) weeks beginning with the day immediately following that on which the application is received by the authority;
- (b) a period of nine (9) weeks beginning with the day immediately following that on which further information has been supplied by the undertaker under sub-paragraph (2); or
- (c) such period that is longer than the nine (9) week period in sub-paragraph (a) or (b) as may be agreed in writing by the undertaker and the relevant authority before the end of such nine week period.

(2) Subject to sub-paragraph (3), in the event that the relevant authority does not determine an application within the period set out in sub-paragraph (1), the relevant authority is to be taken to have granted all parts of the application (without any condition or qualification) at the end of that period.

(3) Where an application has been made to the relevant authority for any consent, agreement or approval required by a requirement included in this Order, and—

- (a) the relevant authority does not determine the application within the period set out in sub-paragraph (1) and such application is accompanied by a report which states that the subject matter of such application is likely to give rise to any materially new or materially different environmental effects compared to those in the environmental statement; or
- (b) the relevant authority determines during the period set out in sub-paragraph (1) that it considers that the subject matter of such application will give rise to any materially new or materially different environmental effects compared to those in the environmental statement

then the application is to be taken to have been refused by the relevant authority at the end of that period.

(a) 1971 c.80.

Further information and consultation

3.—(1) In relation to any application to which this Schedule applies, the relevant authority may request such reasonable further information from the undertaker as is necessary to enable it to consider the application.

(2) In the event that the relevant authority considers such further information to be necessary and the provision governing or requiring the application does not specify that consultation with a requirement consultee is required the relevant authority must, within fourteen business days of receipt of the application, notify the undertaker in writing specifying the further information required.

(3) If the provision governing or requiring the application specifies that consultation with a requirement consultee is required, the relevant authority must issue the consultation to the requirement consultee within five business days of receipt of the application, and must notify the undertaker in writing specifying any further information requested by the requirement consultee within five business days of receipt of such a request and in any event within fourteen business days of receipt of the application.

(4) In the event that the relevant authority does not give notification as specified in subparagraph (2) or (3) it is to be 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.

(5) Where further information is requested under this paragraph 3 in relation to part only of an application, that part is to be treated as separate from the remainder of the application for the purposes of calculating time periods in paragraph 2(1)(b), paragraph 2(3) and paragraph 3.

Fees

4.—(1) Where an application is made to the relevant planning authority for written consent, agreement or approval in respect of a requirement, the fee contained in regulation 16(1)(b) of the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012(a) (as may be amended or replaced from time to time) is to apply and must be paid to that authority for each application.

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

- (a) the application being rejected as invalidly made; or
- (b) the relevant planning authority failing to determine the application within nine weeks from the date on which it is received unless—
 - (i) within that period the undertaker agrees, in writing, that the fee is to be retained by the relevant planning authority and credited in respect of a future application; or
 - (ii) a longer period of time for determining the application has been agreed pursuant to paragraph 2(1)(c) of this Schedule.

Appeals

5.—(1) The undertaker may appeal in the event that—

- (a) the relevant authority refuses (including a deemed refusal pursuant to paragraph 2(3)) an application for any consent, agreement or approval required by an article or requirement included in this Order or grants it subject to conditions;
- (b) the relevant authority does not give notice of its decision to the undertaker within the decision period specified in paragraph 2;
- (c) on receipt of a request for further information pursuant to paragraph 3 the undertaker considers that either the whole or part of the specified information requested by the relevant authority is not necessary for consideration of the application; or

(a) S.I 2012/2920 as amended by S.I 2013/2153 and S.I 2014/357 and S/I 2014/2026.

(d) on receipt of any further information requested, the relevant authority notifies the undertaker that the information provided is inadequate and requests additional information which the undertaker considers is not necessary for consideration of the application.

(2) The appeal process is to be as follows—

(a) the undertaker must submit the appeal documentation to the Secretary of State and must on the same day provide copies of the appeal documentation to the relevant authority and any consultee required to be consulted pursuant to the article or requirement the subject of the appeal (together with the undertaker, these are the “appeal parties”);

(b) as soon as is practicable after receiving the appeal documentation, the Secretary of State must appoint a person to determine the appeal and must forthwith notify the appeal parties of the identity of the appointed person and the address to which all correspondence for his attention should be sent, the date of such notification being the “start date” for the purposes of this sub-paragraph (2);

(c) the relevant authority and any consultee required to be consulted pursuant to the article or requirement the subject of the appeal must submit written representations to the appointed person in respect of the appeal within ten business days of the start date and must ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;

(d) the appeal parties must make any counter-submissions to the appointed person within ten business days of receipt of written representations pursuant to sub-paragraph (c) above; and

(e) the appointed person must make his decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable and in any event within thirty business days of the deadline for the receipt of counter-submissions pursuant to sub-paragraph (d).

(3) The appointment of the person pursuant to sub-paragraph (2)(b) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(4) In the event that the appointed person considers that further information is necessary to enable him to consider the appeal he must, within five business days of his appointment, notify the appeal parties in writing specifying the further information required and the date by which the information is to be submitted.

(5) Any further information required pursuant to sub-paragraph (4) must be provided by the undertaker to the appointed person, the relevant authority and any consultee required to be consulted pursuant to the article or requirement the subject of the appeal on the date specified by the appointed person (the “specified date”), and the appointed person must notify the appeal parties of the revised timetable for the appeal on or before that day. The revised timetable for the appeal must require submission of written representations to the appointed person within ten business days of the specified date but otherwise is to be in accordance with the process and time limits set out in sub-paragraphs (2)(c) to (2)(e).

(6) On an appeal under this paragraph, the appointed person may—

(a) allow or dismiss the appeal; or

(b) reverse or vary any part of the decision of the relevant 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 him in the first instance.

(7) The appointed person may proceed to a decision on an appeal taking into account only such written representations as have been sent within the relevant time limits.

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

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

(10) If an approval is given by the appointed person pursuant to this Schedule, it is to be deemed to be an approval for the purpose of Schedule 2 (Requirements) as if it had been given by the relevant authority. The relevant 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) is not to be taken to affect or invalidate the effect of the appointed person's determination.

(11) Save where a direction is given pursuant to sub-paragraph (12) requiring the costs of the appointed person to be paid by the relevant authority, the reasonable costs of the appointed person must be met by the undertaker.

(12) On application by the relevant authority or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it is to be made, the appointed person must have regard to Planning Practice Guidance: Appeals (March 2014) or any circular or guidance which may from time to time replace it.

PROTECTIVE PROVISIONSPART 1FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

1. For the protection of the utility undertakers referred to in this part of this Schedule, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the utility undertakers concerned.

2. In this part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable the utility 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 undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989(a)), belonging to or maintained by that utility undertaker;

(b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;

(c) in the case of a water undertaker—

(i) mains, pipes or other apparatus belonging to or maintained by that utility undertaker for the purposes of water supply; and

(ii) any water mains or service pipes (or part of a water main or service pipe) that is the subject of an agreement to adopt made under section 51A of the Water Industry Act 1991(b);

(d) in the case of a sewerage undertaker—

(i) any drain or works vested in the utility undertaker under the Water Industry Act 1991; and

(ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,

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

“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; and

“utility 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(c);

(a) 1989 c.29.

(b) 1991 c.56. Section 51A was inserted by section 92(1) of the Water Act 2003 (c.37), and subsequently amended by section 10(1) and (2) of the Water Act 2014 (c.21).

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

(c) water undertaker within the meaning of the Water Industry Act 1991(a); and
(d) a sewerage 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 utility
undertaker to whom it belongs or by whom it is maintained.

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

4. Regardless of the temporary prohibition or restriction of use of streets under the powers
conferred by article 12 (temporary stopping up of streets and public rights of way), a utility
undertaker is at liberty at all times to take all necessary access across any such street and to
execute and do all such works and things in, upon or under any such street as may be reasonably
necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or
restriction was in that street.

5. 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.

6.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any
interest in any land in which any apparatus is placed or over which access to any apparatus is
enjoyed or requires that the utility undertaker's apparatus is relocated or diverted, that apparatus
must not be removed under this part of this Schedule, and any right of a utility undertaker to
maintain that apparatus in that land and to gain access to it must not be extinguished, until
alternative apparatus has been constructed and is in operation, and access to it has been provided,
to the reasonable satisfaction of the utility undertaker in question in accordance with sub-
paragraphs (2) to (7).

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

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

(4) Any alternative apparatus to be constructed in land of the undertaker under this part of this
Schedule must be constructed in such manner and in such line or situation as may be agreed
between the utility undertaker in question and the undertaker or in default of agreement settled by
arbitration in accordance with article 42 (arbitration).

(5) The utility undertaker in question must, after the alternative apparatus to be provided or
constructed has been agreed or settled by arbitration in accordance with article 42 (arbitration),
and after the grant to the utility undertaker of any such facilities and rights as are referred to in
sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation
the alternative apparatus and subsequently to remove any apparatus required by the undertaker to
be removed under the provisions of this part of this Schedule.

(a) 1991 c.56.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the utility 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 in any land controlled by the undertaker, that work, instead of being executed by the utility undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker.

(7) Nothing in sub-paragraph (6) authorises the undertaker to 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 300 millimetres of the apparatus.

7.—(1) Where, in accordance with the provisions of this part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 42 (arbitration).

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

8.—(1) Not less than twenty-eight days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 6(2), the undertaker must submit to the utility undertaker in question a plan, section and description of the works to be executed.

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

(3) Any requirements made by a utility undertaker under sub-paragraph (2) must be made within a period of twenty-one days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If a utility 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 7 apply as if the removal of the apparatus had been required by the undertaker under paragraph 6(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 twenty-eight days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

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

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

with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 6(2).

(2) There is to be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this part of this Schedule, 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,

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 42 (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 utility undertaker in question by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

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

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the execution of any such works as are referred to in paragraph 6(2); and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a utility undertaker in respect of works by virtue of sub-paragraph (1), 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 utility undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

10.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 6(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any utility undertaker, the undertaker must—

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

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

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

(3) A utility undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

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

PART 2

FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

12.—(1) For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the operator.

(2) In this part of this Schedule—

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

“electronic communications apparatus” has the same meaning as set out in paragraph 5 of the electronic communications code;

“the electronic communications code” has the same meaning as set out in sections 106 to 119 and Schedule 3A of the 2003 Act(b);

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

“network” means—

(a) so much of a network or infrastructure system provided by an operator as is not excluded from the application of the electronic communications code by a direction under section 106(5) of the 2003 Act; and

(b) a network which the Secretary of State is providing or proposing to provide;

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

13. The exercise of the powers of article 30 (statutory undertakers) is subject to Part 10 of Schedule 3A of the 2003 Act.

14.—(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised development or its construction, or of any subsidence resulting from any of those works

(a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works), or other property of an operator; or

(b) there is any interruption in the supply of the service provided by an operator,

the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and make reasonable compensation to that operator for any other expenses, loss, damages, penalty or costs incurred by it, by reason, or in consequence of, any such damage or interruption.

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

(3) The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the

(a) 2003 c.21 as amended by the Digital Economy Act 2017 (c.30).

(b) added by Schedule 1 of the Digital Economy Act 2017 (c.30).

undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Any difference arising between the undertaker and the operator under this part of this Schedule must be referred to and settled by arbitration under article 42 (arbitration).

15. This part of this Schedule does not apply to—

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

16. 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.

PART 3

FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

17.—(1) The following provisions of this Part of this Schedule, unless otherwise agreed in writing between the undertaker and the Agency, have effect.

(2) In this Part of this Schedule—

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

“drainage work” 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 or tidal monitoring;

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

“specified work” means so much of any work or operation authorised by this Order as is in, on, under, over or within 9 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; or
- (b) affect the flow, purity or quality of water in any watercourse or ground water;

“the undertaker” means Drax Power Limited or any other person who for the time being has the benefit of this Order in accordance with articles 6 and 7 of this Order; and

“watercourse” includes all rivers, streams, ditches, drains, culverts, dykes, sluices, sewers and passages through which water flows (whether or not the flow is intermittent) except a public sewer.

18.—(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 27.

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

- (a) must not be unreasonably withheld;
- (b) is deemed to have been given if it is neither given nor refused within 2 months of the submission of the plans for approval 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 undertaker may make for the protection of any drainage work or for the protection of water resources, or for the prevention of flooding or 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).

19. Without limitation on the scope of paragraph 18, 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.

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

(a) without unreasonable delay (to be interpreted in the context of the planned commencement of construction of the specified works) in accordance with the plans approved or deemed to have been approved or settled under 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 7 days after the date on which it is brought into use.

(3) 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 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.

(4) Subject to sub-paragraph (5) and paragraph 23, if within a reasonable period (to be interpreted in the context of the planned commencement of construction of the specified works), being not less than 28 days from the date when a notice under sub-paragraph (3) 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 reasonable expenditure incurred by it in so doing is recoverable from the undertaker.

(5) In the event of any dispute as to whether sub-paragraph (3) 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 (4) until the dispute has been finally determined.

21.—(1) Subject to the provisions of this Part of this Schedule and except to the extent that the Agency or another person is liable to maintain any such work and is not precluded by the exercise of the powers conferred by this Order from so doing, the undertaker must from the commencement of the construction of the specified works (for such period as such construction is ongoing) maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation or on land held by the undertaker for the purposes of or in connection with the specified works but in any event only to the extent such maintenance work or removal of obstruction is caused by reason of the construction of 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 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 (if the work was installed pursuant to this Part of this Schedule) and restore the site to its former condition, to such extent and within such limits as the Agency reasonably requires.

(3) Subject to paragraph 23, 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.

22. Subject to paragraph 23, 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.

23. Nothing in paragraphs 20(4), 21(3) and 22 authorises the Agency to execute works on or affecting the authorised works.

24. 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; and
- (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.

25.—(1) Without affecting the other provisions of this Part of this Schedule, the undertaker must indemnify the Agency from all claims, demands, proceedings, costs, damages, expenses or loss, which may be made or taken against, recovered from, or incurred by, the Agency by reason of—

- (a) any damage to any drainage work so as to impair its efficiency for the purposes of flood defence;
- (b) any raising or lowering of the water table in land adjoining the authorised works or any sewers, drains and watercourses;
- (c) any flooding or increased flooding of any such lands; or
- (d) inadequate water quality in any watercourse or in any groundwater,

which is caused by the construction of any of the specified works or any act or omission of the undertaker, its contractors, agents or employees whilst engaged upon 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.

26. 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 Schedule.

27. 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 42 (arbitration), but otherwise is to be

determined by the Secretary of State for Environment, Food and Rural Affairs and the Secretary of State for Business, Energy and Industrial Strategy acting jointly on a reference to them by the undertaker or the Agency, after notice in writing by one to the other.

PART 4

FOR THE PROTECTION OF NATIONAL GRID ELECTRICITY TRANSMISSION PLC

Application

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

Interpretation

29. In this Part of this Schedule—

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

“apparatus” means electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by National Grid;

“authorised development” has the same meaning as in article 2 (interpretation) of this Order and (unless otherwise specified) for the purposes of this Schedule shall include the use and maintenance of the authorised development;

“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, across, along or upon such land;

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed; and

“National Grid” means National Grid Electricity Transmission PLC (Company No. 2366977) whose registered office is at 1-3 Strand, London, WC2N 5EH.

30. Except for paragraphs 31 (apparatus in streets subject to temporary prohibition or restriction), 36 (retained apparatus: protection of National Grid as Electricity Undertaker), 37 (expenses) and 38 (indemnity) of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of National Grid, this Schedule does not apply to apparatus in respect of which the relations between the undertaker and National Grid are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus of National Grid in streets subject to temporary prohibition or restriction

31.—(1) Without prejudice to the generality of any other protection afforded to National Grid elsewhere in the Order, where any street is stopped up under article 13 (stopping up of public rights of way), if National Grid has any apparatus in the public rights of way or accessed via that public rights of way National Grid will be entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the promoter will grant to National Grid, or will procure the granting to the National Grid of, legal easements reasonably satisfactory to the specified undertaker in respect of such apparatus and access to it prior to the stopping up of any such public rights of way.

(2) Notwithstanding the temporary prohibition or restriction under the powers of article 12 (temporary stopping up of streets and public rights of way), National Grid shall be at liberty at all

times to take all necessary access across any such street and/or to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

Protective works to buildings

32.—(1) The undertaker, in the case of the powers conferred by article 34 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Grid which will not be unreasonably withheld and, if by reason of the exercise of those powers any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) or property of National Grid or any interruption in the supply of electricity by National Grid is caused, the undertaker must bear and pay on demand the cost reasonably incurred by National Grid in making good such damage or restoring the supply; and, subject to sub-paragraph (2), shall—

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

(2) Nothing in this paragraph imposes any liability on the undertaker with respect to any damage or interruption to the extent that such damage or interruption is attributable to the act, neglect or default of National Grid or its contractors or workmen; and National Grid will give to the undertaker reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made by National Grid, save in respect of any payment required under a statutory compensation scheme, without first consulting the undertaker and giving the undertaker an opportunity to make representations as to the claim or demand.

Acquisition of land

33.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order the undertaker must not acquire any land interest or apparatus or override any easement or other interest of National Grid otherwise than by agreement (such agreement not to be unreasonably withheld or delayed).

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

(3) Any agreement or consent granted by National Grid under paragraph 36 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).

Removal of apparatus

34.—(1) If, in the exercise of the agreement reached in accordance with paragraph 33 or in any other authorised manner, 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 National Grid to maintain that apparatus in that land shall not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Grid in accordance with sub-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of executing any works comprised in the authorised development in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid 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 of the powers conferred by this Order National Grid reasonably needs to remove any of its apparatus) the undertaker shall, subject to sub-paragraph (3), afford to National Grid to their satisfaction (taking into account paragraph 35(1) below) the necessary facilities and rights for—

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

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

(4) Any alternative apparatus to be constructed in land of the undertaker under this part of this Schedule shall be constructed in such manner and in such line or situation as may be agreed between National Grid and the undertaker.

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

Facilities and rights for alternative apparatus

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

(2) If the facilities and rights to be afforded by the undertaker and agreed with National Grid under sub-paragraph (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 National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject in the matter shall be referred to arbitration under paragraph 42 and, the arbitrator shall make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case. In respect of the appointment of an arbitrator under this sub-paragraph (2), paragraph 42 shall apply.

Retained apparatus: protection of National Grid as Electricity Undertaker

36.—(1) Not less than 56 days before the commencement of any authorised development authorised by this Order that is near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 34(2) or otherwise, the undertaker must submit to National Grid a plan and seek from National Grid details of the underground extent of their electricity tower foundations.

(2) In relation to works which will be situated on, over, under or within (i) 15 metres measured in any direction of any apparatus, or (ii) involve embankment works within 15 metres of any apparatus, the plan to be submitted to National Grid under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;

- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc.;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;
- (f) intended maintenance regimes; and
- (g) an assessment of risks of rise of earth issues.

(3) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (1) must in addition to the matters set out in sub-paragraph (2) include a method statement describing—

- (a) details of any cable trench design including route, dimensions, clearance to pylon foundations;
- (b) demonstration that pylon foundations will not be affected prior to, during and post construction;
- (c) details of load bearing capacities of trenches;
- (d) details of cable installation methodology including access arrangements, jointing bays and backfill methodology;
- (e) a written management plan for high voltage hazard during construction and on-going maintenance of the cable route;
- (f) written details of the operations and maintenance regime for the cable, including frequency and method of access;
- (g) assessment of earth rise potential if reasonably required by National Grid's engineers;
- (h) evidence that trench bearing capacity is to be designed to 26 tonnes to take the weight of overhead line construction traffic.

(4) The undertaker must not commence any works to which sub-paragraph (1), (2) or (3) applies until National Grid has given written approval of the plan so submitted.

(5) Any approval of National Grid required under sub-paragraph (4)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (6) or (8); and
- (b) must not be unreasonably withheld or delayed.

(6) In relation to a work to which sub-paragraph (1), (2) or (3) applies, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its system against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(7) Works executed under sub-paragraph (1), (2) or (3) must be executed only in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (2), (3) or (6), as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5), (6), (8) and/or (9) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid shall be entitled to watch and inspect the execution of those works.

(8) Where National Grid requires protective works to be carried out either themselves or by the undertaker (whether of a temporary or permanent nature) such protective works shall be carried out to National Grid's satisfaction prior to the commencement of any authorised development (or any relevant part thereof) to which sub-paragraph (1) applies and National Grid must give 56 days' notice of such works from the date of submission of a plan in line with sub-paragraph (1), (2), (3) or (6) (except in an emergency).

(9) If National Grid in accordance with sub-paragraph (6) or (8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 34 and 35 shall apply as if the removal of the apparatus had been required by the undertaker under paragraph 34(2).

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

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

(a) comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances; and

(b) comply with sub-paragraph (12) at all times.

(12) At all times when carrying out any works authorised under the Order comply with National Grid's policies for development near overhead lines ENA TS 43-8 and the Health and Safety Executive's guidance note 6 "Avoidance of Danger from Overhead Lines".

(13) The plans submitted to National Grid by the undertaker pursuant to sub-paragraph (1) must be sent to National Grid Plant Protection at plantprotection@nationalgrid.com or such other address as National Grid may from time to time appoint instead for that purpose and notify to the undertaker in writing.

Expenses

37.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to National Grid on demand all charges, costs and expenses reasonably anticipated or incurred by National Grid in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new apparatus or alternative apparatus which may be required in consequence of the execution of any such works as are referred to in this Schedule including without limitation—

(a) any costs reasonably incurred or compensation properly paid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation in the event that National Grid elects to use compulsory purchase powers to acquire any necessary rights under paragraph 34(3) all costs incurred as a result of such action;

(b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;

(c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;

(d) the approval of plans;

(e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;

(f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Schedule.

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

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

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated, and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or in default of agreement settled by arbitration in accordance with paragraph 42 to be necessary, then, if such placing involves cost in the construction of works under this part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Grid by virtue of sub-paragraph (1) shall be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type of operations, capacity, dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

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

(a) an extension of apparatus to a length greater than the length of existing apparatus shall 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 shall 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 National Grid in respect of works by virtue of sub-paragraph (1) shall, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on National Grid any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

Indemnity

38.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised development by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works (including without limitation works carried out by the undertaker under this Schedule or any subsidence resulting from any of these works), any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of National Grid, or there is any interruption in any service provided, or in the supply of any goods, by National Grid, or National Grid becomes liable to pay any amount to any third party, the undertaker shall—

(a) bear and pay on demand the cost reasonably incurred by National Grid in making good such damage or restoring the supply; and

(b) indemnify National Grid for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Grid, by reason or in consequence of any such damage or interruption or National Grid becoming liable to any third party as aforesaid.

(2) The fact that any act or thing may have been done by National Grid on behalf of the undertaker or in accordance with a plan approved by National Grid or in accordance with any requirement of National Grid as a consequence of the authorised development or under its supervision will not (unless sub-paragraph (3) applies) excuse the undertaker from liability under the provisions of sub-paragraph (1) where the undertaker fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not materially accord with the approved plan or as otherwise agreed between the undertaker and National Grid.

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of

(a) any damage or interruption to the extent that it is attributable to the neglect or default of National Grid, its officers, servants, contractors or agents; and

(b) any authorised development and/or any other works authorised by this Schedule carried out by National Grid pursuant to article 6(2)(a) of the Order or as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the 2008 Act or under article 7 of the Order subject to the proviso that once such works become apparatus (“new apparatus”), any works yet to be executed and not falling within this sub-section (3)(b) shall be subject to the full terms of this Schedule including this paragraph 38 in respect of such new apparatus.

(4) National Grid must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise shall be made, unless payment is required in connection with a statutory compensation scheme without first consulting the undertaker and considering their representations.

(5) National Grid must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 38 applies. If requested to do so by the undertaker, National Grid shall provide an explanation of how the claim has been minimised. The undertaker shall only be liable under this paragraph 38 for claims reasonably incurred by National Grid.

Enactments and agreements

39. Nothing in this part of this Schedule will affect the provisions of any enactment or agreement regulating the relations between the undertaker and National Grid in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

40. National Grid and the undertaker must each use their best endeavours to co-ordinate with the other party on the timing and method of execution of any works carried out under the Order or this Schedule (including, for the avoidance of doubt, pursuant to paragraph 34(2) and paragraph 36) in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of the other party’s operations.

Access

41. If in consequence of the agreement reached in accordance with paragraph 33(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker shall provide such alternative means of access to such apparatus as will enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

42.—(1) Any difference under this Part of this Schedule, unless otherwise provided for, shall be referred to and settled in arbitration by a single arbitrator to be agreed upon by the parties, within 14 days of receipt of the notice of arbitration, or if the parties fail to agree within the time period stipulated, to be appointed on application of either party (after giving written notice to the other) by the Secretary of State.

(2) Should the Secretary of State fail to make an appointment under sub-paragraph (1) within 14 days of a referral, the referring party may refer to the Centre for Effective Dispute Resolution for appointment of an arbitrator.

PART 5

FOR THE PROTECTION OF NATIONAL GRID GAS PLC

Application

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

Interpretation

44. In this Part of this Schedule—

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

“apparatus” means mains, pipes or other apparatus belonging to or maintained by National Grid for the purposes of gas supply;

“authorised development” has the same meaning as in article 2 (interpretation) of this Order and (unless otherwise specified) for the purposes of this Schedule shall include the use and maintenance of the authorised development;

“functions” includes powers and duties;

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

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

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

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

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed; and

“National Grid” means National Grid Gas PLC (Company No. 200600) whose registered office is at 1-3 Strand, London, WC2N 5EH.

45. Except for paragraphs 46 (apparatus in streets subject to temporary prohibition or restriction), 51 (retained apparatus: protection of National Grid as Gas Undertaker), 52 (expenses) and 53 (indemnity) of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of National Grid, this Schedule does not apply to apparatus in respect of which the relations between the undertaker and National Grid are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus of National Grid in streets subject to temporary prohibition or restriction

46.—(1) Without prejudice to the generality of any other protection afforded to National Grid elsewhere in the Order, where any street is stopped up under article 13 (stopping up of public rights of way), if National Grid has any apparatus in the public rights of way or accessed via that public rights of way National Grid will be entitled to the same rights in respect of such apparatus

as it enjoyed immediately before the stopping up and the promoter will grant to National Grid, or will procure the granting to the National Grid of, legal easements reasonably satisfactory to the specified undertaker in respect of such apparatus and access to it prior to the stopping up of any such public rights of way.

(2) Notwithstanding the temporary prohibition or restriction under the powers of article 12 (temporary stopping up of streets and public rights of way), National Grid shall be at liberty at all times to take all necessary access across any such street and/or to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

Protective works to buildings

47.—(1) The undertaker, in the case of the powers conferred by article 34 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Grid which will not be unreasonably withheld and, if by reason of the exercise of those powers any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) or property of National Grid or any interruption in the supply of electricity by National Grid is caused, the undertaker must bear and pay on demand the cost reasonably incurred by National Grid in making good such damage or restoring the supply; and, subject to sub-paragraph (2), shall—

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

(2) Nothing in this paragraph imposes any liability on the undertaker with respect to any damage or interruption to the extent that such damage or interruption is attributable to the act, neglect or default of National Grid or its contractors or workmen; and National Grid will give to the undertaker reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made by National Grid, save in respect of any payment required under a statutory compensation scheme, without first consulting the undertaker and giving the undertaker an opportunity to make representations as to the claim or demand.

Acquisition of land

48.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order the undertaker must not acquire any land interest or apparatus or override any easement or other interest of National Grid otherwise than by agreement (such agreement not to be unreasonably withheld or delayed).

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

(3) Any agreement or consent granted by National Grid under paragraph 51 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under paragraph 48(1)

Removal of apparatus

49.—(1) If, in the exercise of the agreement reached in accordance with paragraph 48 or in any other authorised manner, 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 National Grid to maintain that apparatus in that land shall not be extinguished until alternative

apparatus has been constructed, and is in operation to the reasonable satisfaction of National Grid in accordance with sub-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of executing any works comprised in the authorised development in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid 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 of the powers conferred by this Order National Grid reasonably needs to remove any of its apparatus) the undertaker shall, subject to sub-paragraph (3), afford to National Grid to their satisfaction (taking into account paragraph 50(1) below) the necessary facilities and rights for—

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

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

(4) Any alternative apparatus to be constructed in land of the undertaker under this part of this Schedule shall be constructed in such manner and in such line or situation as may be agreed between National Grid and the undertaker.

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

Facilities and rights for alternative apparatus

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

(2) If the facilities and rights to be afforded by the undertaker and agreed with National Grid under sub-paragraph (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 National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject in the matter shall be referred to arbitration under paragraph 57 and, the arbitrator shall make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case. In respect of the appointment of an arbitrator under this sub-paragraph (2), paragraph 57 shall apply.

Retained apparatus: protection of National Grid as Gas Undertaker

51.—(1) Not less than 56 days before the commencement of any authorised development authorised by this Order that involves activities or works specified in National Grid's "Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22" that are within the proximities

described therein to any apparatus the removal of which has not been required by the undertaker under paragraph 49(2) or otherwise, the undertaker must submit to National Grid a plan.

(2) In relation to works which will be situated on, over, under or within 15 metres measured in any direction of any apparatus to which sub-paragraph (1) applies, or (wherever situated) impose any load directly upon any such apparatus or involve embankment works within 15 metres of any such apparatus, the plan to be submitted to National Grid under sub-paragraph (1) shall show—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc.;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;
- (f) intended maintenance regimes; and
- (g) details of any ground monitoring scheme (if required in accordance with National Grid's "Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22".)

(3) The undertaker must not commence any works to which sub-paragraphs (1) and (2) apply until National Grid has given written approval of the plan so submitted.

(4) Any approval of National Grid required under sub-paragraph (3)—

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

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

(6) Works executed under sub-paragraphs (1) and (2) must be executed only in accordance with the plan, submitted under sub-paragraphs (1) and (2) or as relevant sub-paragraph (4), as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5), (7) and/or (8) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid shall be entitled to watch and inspect the execution of those works.

(7) Where National Grid requires protective works to be carried out either themselves or by the undertaker (whether of a temporary or permanent nature) such protective works shall be carried out to National Grid's satisfaction prior to the commencement of any authorised development (or any relevant part thereof) to which sub-paragraph (1) applies and National Grid must give 56 days' notice of such works from the date of submission of a plan in line with sub-paragraph (1) or (2) (except in an emergency).

(8) If National Grid in accordance with sub-paragraph (5) or (7) 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 49 and 50 shall apply as if the removal of the apparatus had been required by the undertaker under paragraph 49(2).

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

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

- (a) comply with sub-paragraphs (5), (6) and (7) insofar as is reasonably practicable in the circumstances; and
- (b) comply with sub-paragraph (11) at all times.

(11) At all times when carrying out any works authorised under the Order comply with National Grid'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" and the Health and Safety Executive's "HS(~G)47 Avoiding Danger from underground services".

(12) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker shall implement an appropriate ground mitigation scheme save that National Grid retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 53.

(13) The plans submitted to National Grid by the undertaker pursuant to sub-paragraph (1) must be sent to National Grid Plant Protection at plantprotection@nationalgrid.com or such other address as National Grid may from time to time appoint instead for that purpose and notify to the undertaker in writing.

Expenses

52.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to National Grid on demand all charges, costs and expenses reasonably anticipated or incurred by National Grid in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new apparatus or alternative apparatus which may be required in consequence of the execution of any such works as are referred to in this Schedule including without limitation—

- (a) any costs reasonably incurred or compensation properly paid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation in the event that National Grid elects to use compulsory purchase powers to acquire any necessary rights under paragraph 49(3) all costs incurred as a result of such action;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Schedule.

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

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

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or in default of agreement settled by arbitration in accordance with paragraph 57 to be necessary, then, if such

placing involves cost in the construction of works under this part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Grid by virtue of sub-paragraph (1) shall be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type of operations, capacity, dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

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

- (a) an extension of apparatus to a length greater than the length of existing apparatus shall 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 shall 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 National Grid in respect of works by virtue of sub-paragraph (1) shall, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on National Grid any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

Indemnity

53.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised development by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works (including without limitation works carried out by the undertaker under this Schedule or any subsidence resulting from any of these works), any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of National Grid, or there is any interruption in any service provided, or in the supply of any goods, by National Grid, or National Grid becomes liable to pay any amount to any third party, the undertaker shall—

- (a) bear and pay on demand the cost reasonably incurred by National Grid in making good such damage or restoring the supply; and
- (b) indemnify National Grid for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Grid, by reason or in consequence of any such damage or interruption or National Grid becoming liable to any third party as aforesaid.

(2) The fact that any act or thing may have been done by National Grid on behalf of the undertaker or in accordance with a plan approved by National Grid or in accordance with any requirement of National Grid as a consequence of the authorised development or under its supervision will not (unless sub-paragraph (3) applies) excuse the undertaker from liability under the provisions of this sub-paragraph (1) where the undertaker fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not materially accord with the approved plan or as otherwise agreed between the undertaker and National Grid.

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of—

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of National Grid, its officers, servants, contractors or agents; and
- (b) any authorised development and/or any other works authorised by this Schedule carried out by National Grid pursuant to article 6(2)(a) of the Order or as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the 2008 Act or under article 7 of the Order subject to the proviso that once such works

become apparatus (“new apparatus”), any works yet to be executed and not falling within this sub-section 3(b) shall be subject to the full terms of this Schedule including this paragraph 53 in respect of such new apparatus.

(4) National Grid must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise shall be made, unless payment is required in connection with a statutory compensation scheme without first consulting the undertaker and considering their representations.

(5) National Grid must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 53 applies. If requested to do so by the undertaker, National Grid shall provide an explanation of how the claim has been minimised. The undertaker shall only be liable under this paragraph 53 for claims reasonably incurred by National Grid.

Enactments and agreements

54. Nothing in this part of this Schedule will affect the provisions of any enactment or agreement regulating the relations between the undertaker and National Grid in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

55. National Grid and the undertaker must each use their best endeavours to co-ordinate with the other party on the timing and method of execution of any works carried out under the Order or this Schedule (including, for the avoidance of doubt, pursuant to paragraph 49(2) and paragraph 51) in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of the other party’s operations.

Access

56. If in consequence of the agreement reached in accordance with paragraph 48(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker shall provide such alternative means of access to such apparatus as will enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

57.—(1) Any difference under this Part of this Schedule, unless otherwise provided for, shall be referred to and settled in arbitration by a single arbitrator to be agreed upon by the parties, within 14 days of receipt of the notice of arbitration, or if the parties fail to agree within the time period stipulated, to be appointed on application of either party (after giving written notice to the other) by the Secretary of State.

(2) Should the Secretary of State fail to make an appointment under sub-paragraph (1) within 14 days of a referral, the referring party may refer to the Centre for Effective Dispute Resolution for appointment of an arbitrator.

SCHEDULE 13

Requirement 6

DESIGN PARAMETERS

PART 1

TEMPORARY CONSTRUCTION PARAMETERS

Table 12

<u>Component</u>	<u>Work No.</u>	<u>Maximum length (m)</u>	<u>Maximum width (m)</u>	<u>Maximum height (m AGL)</u>	<u>Maximum height (m AOD)</u>
<u>Pedestrian Bridge</u>	<u>9A(iii)</u>	<u>33</u>	<u>10</u>	<u>11.5</u>	<u>17</u>

PART 2

UNIT X PARAMETERS

Table 13

<u>Component</u>	<u>Work No.</u>	<u>Maximum length (m)</u>	<u>Maximum width (m)</u>	<u>Maximum height (m AGL)</u>	<u>Maximum height (m AOD)</u>
<u>Turbine hall building</u>	<u>1A(ii)</u>	<u>87</u>	<u>23</u>	<u>28</u>	<u>34</u>
<u>Heat recovery steam generator building (up to two)</u>	<u>1A(iv)</u>	<u>55</u>	<u>29</u>	<u>49</u>	<u>55</u>
<u>Exhaust gas emission flue stacks (up to two)</u>	<u>1A(iv)</u>	<u>=</u>	<u>=</u>	<u>123</u>	<u>129</u>
<u>Bypass stack (up to two) (excluding supporting structures)</u>	<u>1A(v)</u>	<u>=</u>	<u>=</u>	<u>123</u>	<u>129</u>
<u>Transformers</u>	<u>1A(vi)</u>	<u>36</u>	<u>20</u>	<u>11</u>	<u>17</u>
<u>Gas turbine air inlet filter house</u>	<u>1A(vii)</u>	<u>26</u>	<u>27</u>	<u>35</u>	<u>41</u>
<u>Power control centre</u>	<u>1A(viii)</u>	<u>17</u>	<u>17</u>	<u>6</u>	<u>12</u>
<u>Turbine outage store building (up to two)</u>	<u>1A(xiv)</u>	<u>113</u>	<u>43</u>	<u>28</u>	<u>34</u>

<u>Fuel gas station (up to two)</u>	<u>1A(xvi)</u>	<u>26</u>	<u>19</u>	<u>7</u>	<u>13</u>
<u>Main pipe rack</u>	<u>1B(i)</u>	<u>600</u>	<u>12</u>	<u>25</u>	<u>31</u>
<u>Battery storage facility including any structure (where constructed in its entirety in a single stage being stage 1)</u>	<u>3A</u>	<u>180</u>	<u>60</u>	<u>10</u>	<u>16</u>
<u>Battery storage facility including any structure (where constructed in two stages being stage 1 and stage 2)</u>	<u>3A</u>	<u>90</u>	<u>60</u>	<u>10</u>	<u>16</u>
<u>Gas insulated switchgear banking building</u>	<u>4A</u>	<u>18</u>	<u>12</u>	<u>11</u>	<u>17</u>
<u>Control room building for gas insulated switchgear</u>	<u>4A</u>	<u>26</u>	<u>12</u>	<u>11</u>	<u>17</u>
<u>Gas receiving facility (GRF) Compound</u>	<u>5</u>	<u>85</u>	<u>85</u>	<u>10</u>	<u>16</u>
<u>Pig Trap Facility (Launching) Compound</u>	<u>6B</u>	<u>30</u>	<u>30</u>	<u>5</u>	<u>10</u>
<u>Minimum Offtake Connection</u>	<u>6A</u>	<u>30</u>	<u>30</u>	<u>5</u>	<u>10</u>
<u>Reinstatement of sludge lagoon</u>	<u>12A</u>	<u>82</u>	<u>55</u>	<u>=</u>	<u>=</u>

Table 14

<u>Component</u>	<u>Work No.</u>	<u>Minimum height (m AGL)</u>	<u>Minimum height (m AOD)</u>
<u>Exhaust gas emission flue stacks (up to two)</u>	<u>1A(iv)</u>	<u>122.5</u>	<u>128.5</u>
<u>Bypass Stack (up to two) (excluding supporting structures)</u>	<u>1A(v)</u>	<u>122.5</u>	<u>128.5</u>

PART 3
UNIT Y PARAMETERS

Table 15

<u>Component</u>	<u>Work No.</u>	<u>Maximum length (m)</u>	<u>Maximum width (m)</u>	<u>Maximum height (m AGL)</u>	<u>Maximum height (m AOD)</u>
<u>Turbine hall building</u>	<u>2A(ii)</u>	<u>92</u>	<u>23</u>	<u>28</u>	<u>34</u>
<u>Heat recovery steam generator building (up to two)</u>	<u>2A(iv)</u>	<u>55</u>	<u>29</u>	<u>49</u>	<u>55</u>
<u>Exhaust gas emission flue stacks (up to two)</u>	<u>2A(iv)</u>	<u>=</u>	<u>=</u>	<u>123</u>	<u>129</u>
<u>Bypass stack (up to two)</u>	<u>2A(v)</u>	<u>=</u>	<u>=</u>	<u>123</u>	<u>129</u>
<u>Transformers</u>	<u>2A(vi)</u>	<u>36</u>	<u>20</u>	<u>11</u>	<u>17</u>
<u>Gas turbine air inlet filter house</u>	<u>2A(vii)</u>	<u>26</u>	<u>27</u>	<u>35</u>	<u>41</u>
<u>Power control centre</u>	<u>2A(viii)</u>	<u>17</u>	<u>17</u>	<u>6</u>	<u>12</u>
<u>Fuel gas station (up to two)</u>	<u>2A(xv)</u>	<u>26</u>	<u>19</u>	<u>7</u>	<u>13</u>
<u>Main pipe rack</u>	<u>2B(i)</u>	<u>1100</u>	<u>12</u>	<u>25</u>	<u>31</u>
<u>Battery storage facility including any structure (where constructed in two stages being stage 1 and stage 2)</u>	<u>3B</u>	<u>90</u>	<u>60</u>	<u>10</u>	<u>16</u>
<u>Gas insulated switchgear banking building or extension to 4A building</u>	<u>4B</u>	<u>18</u>	<u>12</u>	<u>11</u>	<u>17</u>
<u>Sludge lagoon (up to two)</u>	<u>12B</u>	<u>82</u>	<u>55</u>	<u>=</u>	<u>=</u>
<u>Cable Sealing End Compound</u>	<u>8B(ii)</u>	<u>35</u>	<u>28</u>	<u>20</u>	<u>26</u>

Table 16

<u>Component</u>	<u>Work No.</u>	<u>Minimum height (m AGL)</u>	<u>Minimum height (m AOD)</u>
<u>Exhaust gas emission flue stack (up to two)</u>	<u>2A(iv)</u>	<u>122.5</u>	<u>128.5</u>
<u>Bypass stack (up to two)</u>	<u>2A(v)</u>	<u>122.5</u>	<u>128.5</u>

DOCUMENTS AND PLANS TO BE CERTIFIEDTable 17

<u>(1)</u> <u>Document name</u>	<u>(2)</u> <u>Document reference</u>	<u>(3)</u> <u>Revision number</u>	<u>(4)</u> <u>Date</u>
the access and rights of way plans	2.4	TBC at end of examination	13.11.2018
the application guide	1.2	009	09.01.2019
the book of reference	4.3A	006	09.01.2019
the CHP statement	5.6	002	22.11.2018
the commitments register	6.4	002	08.11.2018
the environmental statement	environmental statement volume 1: 6.1	001	29.05.2018
	environmental statement volume 2: 6.2		
	appendices 1.1, 1.2, 3.1, 5.3, 5.4, 5.5, 5.6, 5.7, 5.8, 6.1, 6.2, 6.3, 7.1, 7.2, 7.3, 8.1, 8.2, 8.3, 9.1, 9.2, 9.3, 9.4, 9.5, 9.6, 9.7, 9.8, 9.9, 10.1, 10.2, 10.3, 10.4, 10.5, 11.1, 15.1, 16.1, 16.2, 16.3, 16.4, 17.1, 17.2, 17.3	001	29.05.2018
	appendix 9.10	002	08.11.2018
	appendices 5.1 and 5.2	003	13.12.2018
	environmental statement volume 3:	001	29.05.2018
	breeding bird survey: 8.4.2	001	18.10.2018
	reptile survey: 8.4.3	001	18.10.2018
	bat activity survey: 8.4.4	001	08.11.2018
	cover letter in relation to removal of stage 0, the site reconfiguration works, from the application removal of stage 0 mitigation review: 8.5.5	N/A	08.11.2018
	assessment of non-material amendments to proposed scheme: 8.4.8	001	22.11.2018
	errata – environmental	001	18.10.2018

	statement (chapters 7, 8 and 11): 8.3.1 update to the cumulative assessment: 8.4.9	001	22.11.2018
the flood risk assessment	6.8	003	08.11.2018
the land plans	2.2	TBC at end of examination	09.01.2019
the outline construction environmental management plan	6.5	002	13.12.2018
the outline construction traffic management plan	6.2.5.2	003	13.12.2018
the outline construction worker travel plan	6.2.5.1	003	13.12.2018
the outline public right of way management plan	8.4.6	001	08.11.2018
the outline landscape and biodiversity strategy	6.7	002	08.11.2018
the pedestrian bridge plan	2.8	A	29.05.2018
the works plans	2.3A	TBC at end of examination	13.12.2018

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises Drax Power Limited (referred to in this Order as the undertaker) to construct, operate and maintain up to two gas fired electricity generating stations and battery storage energy facilities. The Order would permit the undertaker to acquire, compulsorily or by agreement, land and rights in land and to use land for this purpose.

A copy of the Order plans and the book of reference mentioned in this Order and certified in accordance with article 39 of this Order (certification of plans, etc.) may be inspected free of charge during working hours at Selby District Council Access Selby, Selby District Council, Market Cross Shopping Centre, Selby, YO8 4JS.

Schedule H

Deemed Consent Under Coast Protection Act 1949

[Insert details of deemed consent]

Schedule I

Deemed Licence Under the Food and Environment Protection Act 1985

[Insert details of deemed licence]

Schedule J

Trees Subject to Tree Preservation Orders

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
<i>Type of tree</i>	<i>Number[reference] of tree shown on land plan</i>	<i>Work to be carried out</i>

NOTES

Initial Commencement

Specified date

Specified date: 1 October 2009: see art 1.