

201* No.

Comment [ERR1]:

Warning only Low impact [e00017]
The SI number is invalid. Expecting
'No. ' followed by between 1 and 4
digits

INFRASTRUCTURE PLANNING

The Drax Power (Generating Stations) Order 201*

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

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

Comment [ERR2]:

The offending text for the following
warning is: '****'
Warning only High impact [e00096]
Please ensure the asterisks are
replaced by text / dates
Warning only High impact [e00023]
The format of the Made date
paragraph is incorrect

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The offending text for the following
warning is: '****'
Warning only High impact [e00096]
Please ensure the asterisks are
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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.

(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.

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^(a) 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—

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*.

Comment [ERR4]:
The offending text for the following warning is: '****'
Warning only High impact [e00096]
Please ensure the asterisks are replaced by text / dates

Interpretation

2.—(1) In this Order—

- “the 1961 Act” means the Land Compensation Act 1961^(b);
- “the 1965 Act” means the Compulsory Purchase Act 1965^(c);
- “the 1980 Act” means the Highways Act 1980^(d);
- “the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981^(e);
- “the 1990 Act” means the Town and Country Planning Act 1990^(f);
- “the 1991 Act” means the New Roads and Street Works Act 1991^(g);
- “the 2008 Act” means the Planning Act 2008^(h);
- “the 2009 Regulations” means the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009⁽ⁱ⁾;
- “access and rights of way plans” means the plans of that name identified in Table 15 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;

(a) S.I. 2017/572 amended by S.I. 2018/695, S.I. 2018/834, S.I. 2018/942.

(b) 1961 c.33.

(c) 1965 c.56.

(d) 1980 c.66.

(e) 1981 c.66.

(f) 1990 c.8.

(g) 1991 c.22.

(h) 2008 c.29.

(i) 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.

“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 15 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;

“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;

“the book of reference” means the document of that name identified in Table 15 of Schedule 14 (documents and plans to be certified) and which is certified by the Secretary of State as the book of reference for the purposes of this Order;

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

“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;

“the CHP statement” means the document of that name identified in Table 15 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 numbered work 1A (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 work 1A, are to be construed accordingly;

“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;

“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 15 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 15 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 15 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 remove, reconstruct or replace the whole of, the authorised development provided that any such activities do not give rise to any materially new or materially different environmental effects which are worse than 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 15 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 15 of Schedule 14 (documents and plans to be certified) and which is

(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).

certified by the Secretary of State as the outline construction traffic management plan for the purposes of this Order;

“the outline construction worker travel plan” means the document of that name identified in Table 15 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 15 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 15 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);

“permitted preliminary works” means all or any of (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 (requirements) to this Order and “requirement” means any one of the requirements;

“stage 1” means numbered works 1, 3A, 4A, 5, 6, 7, 8A, 9, 11, 12A, 13 and 14 and as further described in the environmental statement;

“statutory undertaker” means any person falling within section 127(8) 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;

“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 articles 6 and 7;

(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).

“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 plans” means the plans of that name identified in Table 15 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) 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) 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 development and shown on the works plans and access rights of way plans are to be taken to be measured along that work.

(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 and the same principle applies to such numbered works that contain letters.

(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

3.—(1) Subject to the provisions of this Order and to the requirements, the undertaker is granted development consent for the authorised development 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 development

4.—(1) The undertaker may at any time maintain the authorised 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

6.—(1) Subject to paragraph (2) and article 7 (consent to transfer the benefit of the Order), the provisions of this Order have effect solely for the benefit of 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.

Consent to transfer benefit of the Order

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

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

(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

(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) 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.

- (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 statutory provisions

8.—(1) The provisions of the Neighbourhood Planning Act 2017^(a) 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, operation or maintenance of the authorised development—

- (a) section 23 (prohibition of obstructions, etc. in watercourses) of the Land Drainage Act 1991^(b); and
- (b) the provisions of any byelaws made under section 66 (powers to make byelaws) of the Land Drainage Act 1991.

PART 3

STREETS

Street works

9.—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets specified in Schedule 3 (streets subject to street works) and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) drill, tunnel or bore under the street;
- (c) place and keep apparatus in the street;
- (d) maintain apparatus in the street, change its position or remove it;
- (e) construct a bridge over the street; and

^(a) 2017 c.20.

^(b) 1991 c.59 as amended by the Flood and Water Management Act 2010 (c.29) and words substituted by S.I 2009/1307.

(f) execute any works required for or incidental to any works referred to in sub-paragraphs (a) (b) (c) (d) and (e).

(2) The authority given by paragraph (1) is a statutory right for the purposes of sections 48(3) (streets, street works and undertakers), 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) 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) In this article, “bridge” has the same meaning as in section 176(8) of the 1980 Act.

Power to alter layout, etc., of streets

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 Order 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.

Temporary stopping up of streets and public rights of way

12.—(1) The undertaker, during and for the purposes of carrying out and maintaining the authorised 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—

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

(2) The undertaker must provide reasonable access for pedestrians going to or from premises abutting a street or public right of way affected by the temporary stopping up, 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) 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 column (2) of the table in Part 1 of Schedule 6 (streets to be temporarily stopped up) 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 in column (3) of the table in Part 2 of Schedule 6 (public rights of way to be temporarily stopped up).

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

- (a) any street or public right of way specified in paragraph (3) without first consulting the street authority; and
- (b) any other street or public right of way without the consent of the street authority, and the street authority may attach reasonable conditions to any such consent.

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

(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 are 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.

(a) 2004 c.18.

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

Access to works

14. The undertaker may, for the purposes of the authorised development—

- (a) form and lay out the permanent means of access, or improve existing means of access, in the locations specified in Part 1 of Schedule 4 (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) 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 means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

Agreements with street authorities

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

- (a) the construction of any new street including any structure carrying the street over or under any part of the authorised development;
- (b) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;
- (c) the construction and maintenance of the structure of any bridge or tunnel carrying a street (including any footbridge over a street);
- (d) any stopping up, prohibition, restriction, alteration or diversion of a street authorised by this Order;
- (e) the undertaking in the street of any of the works referred to in article 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) 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) make provision for the street authority to carry out any function under this Order which relates to the street in question;
- (b) specify a reasonable time for the completion of the works; and
- (c) contain such terms as to payment and otherwise as the parties consider appropriate.

PART 4

SUPPLEMENTAL POWERS

Discharge of water

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

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

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

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

(5) 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) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters requires a licence pursuant to the Environmental Permitting (England and Wales) Regulations 2016.

(7) In this article—

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

Authority to survey and investigate the land

17.—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised development or upon which entry is required in order to carry out monitoring or surveys in respect of the authorised development and—

- (a) survey or investigate the land;
- (b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and
- (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) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least fourteen days’ notice has been served on every owner and occupier of the land.

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

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

(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.

- (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) No trial holes are to be made under this article—
 - (a) in land located within the highway boundary without the consent of the highway authority; or
 - (b) in a private street without the consent of the street authority.
- (5) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.
- (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

- 18.—**(1) In this article “the specified land” means the Order land.
- (2) Before the undertaker carries out any development or works which will or may disturb any human remains in the specified land it must remove those human remains from the specified land, or cause them to be removed, in accordance with the following provisions of this article.
 - (3) Before any such remains are removed from the specified land the undertaker must give notice of the intended removal, describing the specified land and stating the general effect of the following provisions of this article, by—
 - (a) publishing a notice once in each of two successive weeks in a newspaper circulating in the area of the authorised development; and
 - (b) displaying a notice in a conspicuous place on or near to the specified land.
 - (4) As soon as reasonably practicable after the first publication of a notice under paragraph (3) the undertaker must send a copy of the notice to the relevant planning authority.
 - (5) At any time within 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) Where a person has given notice under paragraph (5), and the remains in question can be identified, that person may cause such remains to be—
 - (a) removed and re-interred in any burial ground or cemetery in which burials may legally take place; or
 - (b) removed to, and cremated in, any crematorium, and that person must, as soon as reasonably practicable after such re-interment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (11).
 - (7) If the undertaker is not satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be, or that the remains in question can be identified, the question 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 is to remove the remains and as to the payment of the costs of the application.
 - (8) The undertaker must pay the reasonable expenses of removing and re-interring or cremating the remains of any deceased person under this article.
 - (9) If—
 - (a) within the period of 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) such notice is given and no application is made under paragraph (7) within 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 fifty-six days; or
- (c) within 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) it is determined that the remains to which any such notice relates cannot be identified,

subject to paragraph (11) the undertaker must remove the remains and cause them to be re-interred in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose; and, so far as possible, remains from individual graves must be re-interred in individual containers which must be identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

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

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

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

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

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

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

PART 5

POWERS OF ACQUISITION

Compulsory acquisition of land

19.—(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised development or to facilitate it, or is incidental to it 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) As from the date on which a compulsory acquisition notice 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) is discharged from all rights, trusts and incidents to which it was previously subject.

(3) This article is subject to 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).

(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.

Statutory authority to override easements and other rights

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) 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

21.—(1) After the end of the period of 5 years beginning on the day on which this Order is made—

- (a) no notice to treat is to be served under Part 1 of the 1965 Act; and
- (b) no declaration is to be executed under section 4 of the 1981 Act (execution of declaration) as applied by article 24 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

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

(2) 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 as are specified in column 2 of the table in that Schedule.

(3) 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 a right over land under paragraph (1) or (2), the undertaker 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

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

- (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;
- (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 earliest.

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

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

(7) Paragraphs (1) to (4) have effect subject to—

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

- (i) the completion of the acquisition of the land or the acquisition of rights over land or the creation of rights over land;
 - (ii) the undertaker's appropriation of it;
 - (iii) the undertaker's entry onto it; or
 - (iv) the undertaker's taking temporary possession of it,
- that any or all of those paragraphs do not apply to any right specified in the notice; and
- (b) any agreement made at any time between the undertaker and the person in or to whom the right or restriction in question is vested or belongs.
- (8) If any such agreement as is referred to in paragraph (7)(b)—
- (a) is made with a person in or to whom the right is vested or belongs; and
 - (b) is expressed to have effect also for the benefit of those deriving title from or under that person,

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

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

- 24.**—(1) The 1981 Act applies as if this Order were a compulsory purchase order.
- (2) The 1981 Act, as applied by paragraph (1), has effect with the following modifications.
- (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.”
- (4) 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).
- (6) In section 5B (extension of time limit during challenge) 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—
- “(1)(b) 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) In section 7 (constructive notice to treat) in subsection (1)(a), “(as modified by section 4 of the Acquisition of Land Act 1981)” is 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) References to the 1965 Act in the 1981 Act are to be construed as references to 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

25.—(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 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) Where the undertaker acquires any part of, or rights in, the subsoil of land under paragraph (1), the undertaker is not to 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) 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.

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 35 (protective works to buildings) of the Drax Power (Generating Stations) Order 201*.”.

Rights under or over streets

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

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

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

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

(4) Subject to paragraph (5), any person who is an owner or occupier of land 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 by the exercise of that power, is to be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

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

Temporary use of land for carrying out the authorised development

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

(a) enter on and take temporary possession of—

- (i) so much of the land specified in column (1) of the table in Schedule 10 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (2) 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) remove any buildings, fences, debris and vegetation from that land;

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

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

- (a) in the case of land specified in paragraph (1)(a)(i) after the end of the period of one year beginning with the date of 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) 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, remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not to be required to replace a building or debris removed under this article.
- (6) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of any power conferred by this article.
- (7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, is to be determined under Part 1 of the 1961 Act.
- (8) Nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).
- (9) 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) creating and acquiring new rights over any part of the Order land identified in Schedule 8 (land in which only new rights etc. may be acquired) under article 22 (compulsory acquisition of rights etc.); or
 - (b) acquiring any right in the subsoil of any part of the Order land under article 25 (acquisition of subsoil only) or article 27 (rights under or over streets).
- (11) Where the undertaker takes possession of land under this article, the undertaker is not to be required to acquire the land or any interest in it.
- (12) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).
- (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 development

- 29.**—(1) Subject to paragraph (2), at any time during the maintenance period relating to any part of the authorised development, the undertaker may—
- (a) enter on and take temporary possession of any land within the Order land if such possession is reasonably required for the purpose of maintaining the authorised development;
 - (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) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.
- (2) Paragraph (1) does not authorise the undertaker to take temporary possession of—
- (a) any house or garden belonging to a house; or

- (b) any building (other than a house) if it is for the time being occupied.
- (3) Not less than twenty-eight days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.
- (4) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised development for which possession of the land was taken.
- (5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.
- (6) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.
- (7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, is to be determined under Part 1 of the 1961 Act.
- (8) Nothing in this article affects any liability to pay compensation under section 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 development, other than loss or damage for which compensation is payable under paragraph (6).
- (9) Where the undertaker takes possession of land under this article, the undertaker is not to be required to acquire the land or any interest in it.
- (10) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).
- (11) In this article "the maintenance period" means the period of 5 years beginning with the date 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.

Statutory undertakers

- 30.** Subject to the provisions of Schedule 12 (protective provisions), the undertaker may—
- (a) acquire compulsorily the land belonging to statutory undertakers within the Order land;
 - (b) extinguish or suspend the rights of or restrictions for the benefit of, and remove or reposition the apparatus belonging to, statutory undertakers on, under or within the Order land; and
 - (c) create and acquire compulsorily the new rights over land belonging to statutory undertakers within the Order land.

Apparatus and rights of statutory undertakers in streets

31. Where a street is 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 undertaker whose apparatus is under, in, on, along or across the street is to have the same powers and rights in respect of that apparatus, subject to Schedule 12 (protective provisions), as if this Order had not been made.

Recovery of costs of new connections

32.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 30 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 30 (statutory undertakers), any person who is—

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

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

(3) This article does not have effect in relation to apparatus to which article 31 (apparatus and rights of statutory undertakers in streets) or Part 3 of the 1991 Act applies.

(4) In this article—

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

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

Compulsory acquisition of land – incorporation of the mineral code

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

- (a) paragraph 8(3) is not incorporated; and
- (b) for “the acquiring authority” substitute “the undertaker”.

PART 6 OPERATIONS

Felling or lopping of trees and removal of hedgerows

34.—(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

35.—(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 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 completion of the authorised development.

(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 must, 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 43 (arbitration).

(7) The undertaker must 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

^(a) S.I. 1997/1160.

- (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 must compensate the owners and occupiers of the building for any loss or damage sustained by them.

(9) Nothing in this article relieves 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) must 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

36. Schedule 12 (protective provisions) has effect.

Application of landlord and tenant law

37.—(1) This article applies to—

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

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

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

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

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

Operational land for purposes of the 1990 Act

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

Defence to proceedings in respect of statutory nuisance

39.—(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 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

40.—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of all documents and plans listed in Table 15 of Schedule 14 (documents and plans to be certified) to this Order for certification that they are true copies of the documents referred to in this Order.

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

Service of notices

41.—(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.

(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.

(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.

(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

42.—(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.

(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.

(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

43. Any difference under any provision of this Order, unless otherwise provided for, 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 Secretary of State.

Guarantees in respect of payment of compensation

44.—(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

	<i>Name</i>
	Department of Business, Energy and Industrial Strategy

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Warning only Low impact [e00120]
The signature date has not yet been completed

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 two generating stations with a combined gross electrical output capacity of up to 2,000 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; 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 – work number not used.

Work No. 3 – battery storage facility including—

- (a) **Work No. 3A**—
 - (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** – work number not used.

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

- (a) **Work No. 4A**—
 - (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** – work number not used.

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 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, 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 connection including—

- (a) **Work No. 8A** – 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** – work number not used.

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 one sludge lagoon and construction of one replacement sludge lagoon including—

- (a) **Work No. 12A**—
 - (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** — work number not used.

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.

SCHEDULE 2

REQUIREMENTS

Article 3

Interpretation

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, 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.

Phasing of the authorised development

3.—(1) No part of the authorised development is to commence until a written scheme setting out the phasing of construction of numbered works 1 and 3 has been submitted to and approved by the 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 numbered work 1A 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.

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 40 (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

7.—(1) In relation to any part of the authorised development comprised in numbered work 1, 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.

(2) 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.

(3) 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.

(4) 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.

(5) 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) In relation to the pedestrian bridge in numbered work 9A, no development of any part of the pedestrian bridge must commence until the undertaker has submitted to the highway authority for approval detailed design and safety drawings of the pedestrian bridge.

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

(8) Numbered works 1, 3A, 4A, 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) The strategy or strategies submitted and approved pursuant to sub-paragraph (1) must include details of all proposed hard and soft landscaping works and ecological mitigation measures (as applicable for the relevant numbered work) and, where applicable,—

- (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) cultivation, importing of materials and other operations to ensure plant establishment;
- (c) hard surfacing materials;
- (d) an implementation timetable;
- (e) annual landscaping and biodiversity management and maintenance;
- (f) 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; and
- (g) an explanation for how the design of the numbered works comprised in the stage, which is the subject of the strategy, has sought to maximise the biodiversity net gain of the authorised development as far as practicable.

(3) 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 relevant planning authority, seriously damaged or diseased, must be replaced in the first available planting seasons with a specimen of the same species and size as that originally planted.

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

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 (permanent stopping up of public rights of way) 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) The scheme or schemes submitted and approved pursuant to sub-paragraph (1) 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.

(3) 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.

(4) The scheme submitted and approved pursuant to sub-paragraph (3) 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.

(5) 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.

(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 the date that is no later than 12 months after the date of Work No. 1A full commissioning.

Means of enclosure

12.—(1) Each of numbered works 5, 6A, 6B, 7 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) 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.

Surface water drainage

13.—(1) Each of numbered works 1, 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.

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

(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, 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) The strategy submitted and approved pursuant to sub-paragraph (1) 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.

(3) 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 (2)(c) and approved pursuant to sub-paragraph (1) must be submitted to and approved by the relevant planning authority.

(4) 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.

(5) 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 (4).

Archaeology

16.—(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.

(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) provide details of the measures to be taken to protect, record or preserve any significant archaeological 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) by a suitably qualified person or organisation approved by the 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 (as applicable for the authorised development) 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) All construction works associated with the authorised development must be carried out in accordance with the approved 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 (as applicable for the authorised development).

(3) Notices must be erected and maintained by the undertaker throughout the period of construction at every entrance to and exit from the construction site, indicating to drivers the approved routes for traffic entering and leaving the construction site.

(4) The plan must be implemented as approved.

Construction worker travel plan

19.—(1) No part of the authorised development must commence, 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.

(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 (as applicable for the authorised development).

(3) The plan must be implemented as approved.

Construction hours

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) are carried out with the prior approval of the relevant planning authority; or
- (c) are associated with an emergency.

(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) carried out with the prior approval of the relevant planning authority.

(5) Sub-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) maintenance at any time of plant and machinery engaged in the construction of the authorised development.

(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 work 1A 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) The schemes submitted under sub-paragraph (2) must be implemented as approved.

Carbon capture readiness reserve space

22. 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 unless otherwise agreed by the majority of the members of the local liaison committee; and
- (c) 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.

Combined heat and power

28.—(1) On the date that is 12 months after the date of Work No. 1A full commissioning (or such other date that is agreed with the environment agency having regard to any condition relating to combined heat and power imposed on any environmental permit issued by the environment agency in relation to the operation of the authorised development), the undertaker must submit to the environment agency for its approval a report (“the CHP review”) updating the CHP statement.

(2) The CHP review submitted and approved must—

- (a) consider the opportunities that reasonably exist within 15 kilometres of the authorised development for the export of heat from numbered work 1A at the time of submission of the CHP review; and
- (b) include a list of actions (if any) that the undertaker is reasonably required to take (without material additional cost to the undertaker) to increase the potential for export of heat from numbered work 1A.

(3) The undertaker must take such actions as are included, within the timescales specified, in the approved CHP review.

(4) On each date during the operation of numbered work 1A that is four years after the date on which it last submitted the CHP review or a revised CHP review to the relevant planning authority (or such shorter timeframe that is agreed with the environment agency having regard to any condition relating to combined heat and power imposed on any environmental permit issued by the environment agency in relation to the operation of the authorised development), the undertaker must submit to the environment agency for its approval a revised CHP review.

(5) Sub-paragraphs (2) and (3) apply in relation to a revised CHP review submitted under sub-paragraph (4) in the same way as they apply in relation to the CHP review submitted under sub-paragraph (1).

SCHEDULE 3

Article 9

STREETS SUBJECT TO STREET WORKS

Table 1

(1) <i>Area</i>	(2) <i>Streets subject to street works</i>	(3) <i>Description of the street works</i>
In the District of Selby	New Road	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
In the District of Selby	New Road	Works for the installation and maintenance of Work Nos. 1C and 1D in the street between the points marked AZ and AY and AJ and AI on sheet 3 of the access rights of way plans
In the District of Selby	New Road	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
In the District of Selby	New Road	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
In the District of Selby	New Road	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
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

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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 4

Article 10

STREETS SUBJECT TO PERMANENT AND TEMPORARY ALTERATION OF LAYOUT

PART 1

PERMANENT ALTERATION OF LAYOUT

Table 2

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Streets subject to alteration of layout</i>	<i>(3)</i> <i>Description of alteration</i>
In the District of Selby	New Road	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
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

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PART 2

TEMPORARY ALTERATION OF LAYOUT

Table 3

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Streets subject to alteration of layout</i>	<i>(3)</i> <i>Description of alteration</i>
In the District of Selby	New Road	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
In the District of Selby	New Road	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

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		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

		(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 Selby	A645 / New Road	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
In the District of East Riding of Yorkshire	Aldam Dock	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
In the District of East Riding of Yorkshire	Normandy Way	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
In the District of East Riding of Yorkshire	Stanhope Street / Coronation Street	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
In the District of East Riding of Yorkshire	Coronation Street / Boothferry Road	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
In the District of East Riding of Yorkshire	Boothferry Road	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
In the District of East Riding of Yorkshire	Boothferry Road/Airmyn Road (A614) / Rawcliffe Road (A614)	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
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	A161 roundabout	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
In the District of East Riding of Yorkshire	A161	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
In the District of East Riding of Yorkshire	A161 roundabout / A614	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
In the District of East Riding of Yorkshire	M62 carriageway	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
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 / M62	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
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 roundabout junction with Glews Services	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
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
In the District of East Riding of Yorkshire	A614 / A645	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

SCHEDULE 5

Article 11

ACCESS

PART 1

THOSE PARTS OF THE ACCESS TO BE MAINTAINED AT THE PUBLIC EXPENSE

Table 4

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street</i>	<i>(3)</i> <i>Description of relevant part of access</i>
In the District of Selby	New Road	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
In the District of Selby	Rusholme Lane	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

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PART 2

THOSE PARTS OF THE ACCESS TO BE MAINTAINED BY THE STREET AUTHORITY

Table 5

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street</i>	<i>(3)</i> <i>Description of relevant part of access</i>
In the District of Selby	New Road	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
In the District of Selby	Rusholme Lane	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

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PART 3

THOSE WORKS TO RESTORE THE TEMPORARY ACCESSSES WHICH WILL BE MAINTAINED BY THE STREET AUTHORITY

Table 6

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street</i>	<i>(3)</i> <i>Description of relevant part of access</i>
In the District of Selby	New Road	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
In the District of Selby	New Road	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
In the District of Selby	Carr Lane / Wren Hall Lane	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
In the District of Selby	Wren Hall Lane	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
In the District of Selby	Wren Hall Lane	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
In the District of Selby	Main Road	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
In the District of Selby	Main Road	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
In the District of Selby	Rusholme Lane	That part of the new construction access on the north side of Rusholme Lane

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		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	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
In the District of Selby	Rusholme Lane	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
In the District of Selby	A645 / New Road	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
In the District of East Riding of Yorkshire	A161 roundabout	That part of 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	That part of 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	That part of 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	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
In the District of East Riding of Yorkshire	A614 / A645	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

SCHEDULE 6

Article 12

STREETS AND PUBLIC RIGHTS OF WAY TO BE TEMPORARILY STOPPED UP

PART 1

STREETS TO BE TEMPORARILY STOPPED UP ETC

Table 7

(1) <i>Area</i>	(2) <i>Street</i>	(3) <i>Description of temporary stopping up</i>
In the District of Selby	New Road	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
In the District of Selby	Wren Hall Lane	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
In the District of Selby	Main Road	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
In the District of Selby	Rusholme Lane	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
In the District of Selby	A645	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
In the District of East Riding of Yorkshire	A645	Temporary closure of that part of the street shown between points AC and BF on sheets 11, 12 and 13 of the access and

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		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

In the District of East Riding of Yorkshire	Boothferry Road	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
In the District of East Riding of Yorkshire	A614 / A161	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

PART 2

PUBLIC RIGHTS OF WAY TO BE TEMPORARILY STOPPED UP ETC

Table 8

(1) <i>Area</i>	(2) <i>Public right of way</i>	(3) <i>Description of temporary stopping up etc</i>
In the District of Selby	Public footpath 35.47/4/1	Between the points marked M and N on sheet 5 of the access and rights of way plans
In the District of Selby	Public footpath 35.47/5/1	Between the points marked O and P on sheet 5 of the access and rights of way plans
In the District of Selby	Public footpath 35.47/9/1	Between the points marked Q and R on sheet 6 of the access and rights of way plans
In the District of Selby	Public footpath 35.49/2/1	Between the points marked S and T on sheet 6 of the access and rights of way plans

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SCHEDULE 7

Article 13

PUBLIC RIGHTS OF WAY TO BE PERMANENTLY STOPPED UP

Table 9

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Public right of way to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>	<i>(4)</i> <i>Replacement public right of way</i>
In the District of Selby	Public footpath 35.47/1/1	Between the points marked J and K on sheet 2 of the access and rights of way plans	Between the points marked J and L on sheet 2 of the access and rights of way plans
In the District of Selby	Public footpath 35.47/6/1	Between the points marked G and H on sheet 2 of the access and rights of way plans	Between the points marked G and I on sheet 2 of the access and rights of way plans

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LAND IN WHICH ONLY NEW RIGHTS ETC MAY BE ACQUIRED

Interpretation**1. In this Schedule—**

“Work Nos. 1C and 1D infrastructure” means any works or development comprised within Work Nos. 1C and 1D in schedule 1, ancillary apparatus and including any other necessary works or development permitted within the area delineated as Work Nos. 1C and 1D 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 No. 8A(vi) in schedule 1, including any other necessary works or development permitted in respect of such landscaping within the area delineated as Work No. 8A 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

(1) <i>Number of plot shown on the land plans</i>	(2) <i>Rights etc. which may be acquired</i>
5	<p>For and in connection with 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 No. 8 infrastructure, together with the right to install, retain, use and maintain 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 No. 8 infrastructure, or interfere with or obstruct access from and to 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.</p> <p>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 re-pass, 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. 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.</p> <p>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.</p>

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8a	<p>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.</p> <p>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.</p>
9a	<p>For and in connection with the Work Nos. 1C and 1D 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 and 1D infrastructure, together with the right to install, retain, use and maintain the Work Nos. 1C and 1D 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 and 1D infrastructure, or interfere with or obstruct access from and to the Work Nos. 1C and 1D 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.</p>
12	<p>For and in connection with the Work Nos. 1C and 1D infrastructure and the Work No. 5</p>

	<p>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 and 1D infrastructure and the Work No. 5 infrastructure, together with the right to install, retain, use and maintain the Work Nos. 1C and 1D 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 and 1D infrastructure and the Work No. 5 infrastructure, or interfere with or obstruct access from and to the Work Nos. 1C and 1D 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.</p> <p>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.</p> <p>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,</p>
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	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.
14	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.
18, 24, 25, 56	<p>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.</p> <p>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,</p>

	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.
27, 27a, 29, 29a, 33, 37, 40, 42, 43, 47, 49, 50, 59	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.
58, 61, 67	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.
65	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

	<p>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.</p> <p>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.</p> <p>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 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.</p>
66	<p>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,</p>

	<p>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.</p> <p>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.</p>
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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. 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(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.”.

SCHEDULE 10

Article 28

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

Table 11

(1) <i>Number of plot shown on the lands plans</i>	(2) <i>Purpose for which temporary possession may be taken</i>
11, 19, 21, 26, 26a, 28, 28a, 30, 30a, 31, 32, 35, 39, 41, 44, 45, 46, 48, 51, 52, 53, 54, 55	Temporary use as laydown, construction compound, construction use and accesses required to facilitate construction of Work No. 7 Temporary use for the improvement, reinstatement, and retention of existing planting to facilitate construction of Work No. 7
60	Temporary use as laydown, construction compound, construction use and accesses required to facilitate construction of Work Nos. 6 and 7
64	Temporary use as vehicle, plant and machinery passing place as part of Work No. 14 to facilitate construction of Work Nos. 6 and 7

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PROCEDURE FOR DISCHARGE

Interpretation of Schedule 11**1. 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 paragraph (3); 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, notify the appeal parties in writing specifying the further information required and the date by which the information is to be submitted and the appointed person must make any notification and set the date for the receipt of such further information having regard to the timescales in sub-paragraph (2).
- (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 PROVISIONS

PART 1

FOR 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 43 (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 43 (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 43 (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 43 (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; and

“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 43 (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 NATIONAL GRID ELECTRICITY TRANSMISSION PLC

Application

17. 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

18. 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 any conduits, cables, lines, towers, ducts, pipes or other apparatus or equipment belonging to or maintained by National Grid for the purposes of electricity transmission, storage and distribution and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised development” has the same meaning as in article 2 (interpretation) of this Order and (unless otherwise specified) for the purposes of this Part of this Schedule shall include the use and maintenance of the authorised development;

“deeds of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary and/or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“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;

“National Grid” means National Grid Electricity Transmission PLC (Company No. 2366977) whose registered office is at 1-3 Strand, London, WC2N 5EH; and

“specified works” means any of the authorised works or activities undertaken in association with the authorised development which—

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the promoter under paragraph 23(2) or otherwise;
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the promoter under paragraph 23(2) or otherwise; and/or
- (c) includes any of the activities that are referred to in development near overhead lines EN43-8 and HSE’s Guidance Note 6 ‘Avoidance of Danger from Overhead Lines’.

19. Except for paragraphs 20 (apparatus in streets subject to temporary prohibition or restriction), 25 (retained apparatus: protection of National Grid as Electricity Undertaker), 26 (expenses) and 27 (indemnity) of this Part 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 Part of 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

20.—(1) Without prejudice to the generality of any other protection afforded to National Grid elsewhere in the Order, where any public right of way is stopped up under article 13 (permanent stopping up of public rights of way), if National Grid has any apparatus in the public right of way or accessed via that public right 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

21.—(1) The undertaker, in the case of the powers conferred by article 35 (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 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 previously described 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

22.—(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) As a condition of agreement between the parties in paragraph 22(1), prior to the carrying out of any part of the authorised development (or in such other timeframe as may be agreed between National Grid and the undertaker) that are subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement and/or other legal or land interest of National Grid and/or affects the provisions of any enactment or agreement regulating the relations between National Grid and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker and National Grid must, as is reasonably required to reconcile any such conflict and/or to avoid any such breach, enter into such deeds of consent upon such terms and conditions as may be agreed between National Grid and the undertaker acting reasonably and which must not be materially less favourable on the whole to National Grid or the undertaker unless otherwise agreed by National Grid and/or the undertaker (as applicable), and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) The undertaker and National Grid agree that where there is any inconsistency or duplication between the provisions set out in this Part of 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 Part of this Schedule shall prevail.

(4) Any agreement or consent granted by National Grid under paragraph 25 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).

Removal of apparatus

23.—(1) If, in the exercise of the agreement reached in accordance with paragraph 22 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 24(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

24.—(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 and maintenance and protection 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 31 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 31 shall apply.

Retained apparatus: protection of National Grid as Electricity Undertaker

25.—(1) Not less than 56 days before the commencement of any specified works, 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);
 - (b) must not be unreasonably withheld or delayed.
- (6) In relation to a work to which sub-paragraphs (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-paragraphs (1), (2) or (3) must be executed only in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraphs (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-paragraphs (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 23 and 24 shall apply as if the removal of the apparatus had been required by the undertaker under paragraph 23(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 the undertaker must 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

26.—(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 Part of 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 this Part of this paragraph 23(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 Part 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 31 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

27.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of 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 Part of 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 previously described.

(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 Part of 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 Part of this Schedule including this paragraph 27 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.

Enactments and agreements

28. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between National Grid and the undertaker, 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

29. 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 Part of this Schedule (including, for the avoidance of doubt, pursuant to paragraph 23(2) and paragraph 25) 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

30. If in consequence of the agreement reached in accordance with paragraph 22(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

31.—(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 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 4

FOR THE PROTECTION OF NATIONAL GRID GAS PLC

Application

32. 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

33. 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 any conduits, cables, lines, towers, ducts, pipes or other apparatus or equipment belonging to or maintained by National Grid for the purposes of gas transmission, storage and distribution and includes any structure in which Apparatus is or will be lodged or which gives or will give access to Apparatus;

“authorised development” has the same meaning as in article 2 (interpretation) of this Order and (unless otherwise specified) for the purposes of this Part of this Schedule shall include the use and maintenance of the authorised development;

“deeds of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary and/or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“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;

“National Grid” means National Grid Gas PLC (Company No. 200600) whose registered office is at 1-3 Strand, London, WC2N 5EH; and

“specified works” means any of the authorised works or activities undertaken in association with the authorised development which—

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the promoter under paragraph 38(2) or otherwise;
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the promoter under paragraph 38(2) or otherwise; and/or
- (c) include any of the activities that are referred to in paragraph 8 of T/SP/SSW/22 (the undertaker’s policies for safe working in proximity to gas apparatus “Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW/22).

34. Except for paragraphs 35 (apparatus in streets subject to temporary prohibition or restriction), 40 (retained apparatus: protection of National Grid as Gas Undertaker), 41 (expenses) and 42 (indemnity) of this Part 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 Part of 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

35.—(1) Without prejudice to the generality of any other protection afforded to National Grid elsewhere in the Order, where any public right of way is stopped up under article 13 (permanent stopping up of public rights of way), if National Grid has any apparatus in the public right of way or accessed via that public right 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

36.—(1) The undertaker, in the case of the powers conferred by article 35 (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 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 gas 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 previously described 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

37.—(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) As a condition of agreement between the parties in paragraph 37(1), prior to the carrying out of any part of the authorised development (or in such other timeframe as may be agreed between National Grid and the undertaker) that are subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement and/or other legal or land interest of National Grid and/or affects the provisions of any enactment or agreement regulating the relations between National Grid and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker and National Grid must, as is reasonably required to reconcile any such conflict and/or to avoid any such breach, enter into such deeds of consent upon such terms and conditions as may be agreed between National Grid and the undertaker acting reasonably and which must not be materially less favourable on the whole to National Grid or the undertaker unless otherwise agreed by National Grid and/or the undertaker (as applicable), and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) The undertaker and National Grid agree that where there is any inconsistency or duplication between the provisions set out in this Part of 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 Part of this Schedule shall prevail.

(4) Any agreement or consent granted by National Grid under paragraph 40 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph 37(1)

Removal of apparatus

38.—(1) If, in the exercise of the agreement reached in accordance with paragraph 37 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 39(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

39.—(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 and maintenance and protection 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 46 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 46 shall apply.

Retained apparatus: protection of National Grid as Gas Undertaker

40.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Grid a plan.

(2) The plan to be submitted to the undertaker pursuant to 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) 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-paragraph (1) and (2) applies 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-paragraph (1) and (2) 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.

(6) Works executed under sub-paragraphs (1) and (2) must be executed only in accordance with the plan, submitted under sub-paragraph (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 38 and 39 shall apply as if the removal of the apparatus had been required by the undertaker under paragraph 38(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-paragraph (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 42.

(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

41.—(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 Part of 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 38(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 Part of 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 Part 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 46 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

42.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of 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 Part of 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 previously described.

(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 Part of 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 Part of this Schedule including this paragraph 42 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.

Enactments and agreements

43. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between National Grid and the undertaker, 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

44. 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 Part of this Schedule (including, for the avoidance of doubt, pursuant to paragraph 38(2) and paragraph 40) 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

45. If in consequence of the agreement reached in accordance with paragraph 37(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

46.—(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 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 NORTHERN POWERGRID (YORKSHIRE) PLC AND NORTHERN POWERGRID LIMITED

47. For the protection of Northern Powergrid (Yorkshire) Plc and Northern Powergrid Limited the following provisions have effect, unless otherwise agreed in writing between the undertaker and Northern Powergrid.

48. In this part of this Schedule—

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

“apparatus” means electric lines or electrical plant (as defined in the Electricity Act 1989(a)), belonging to or maintained by Northern Powergrid;

“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

“Northern Powergrid” means Northern Powergrid (Yorkshire) Plc (Company No. 04112320) whose registered office is at Lloyds Court, 78 Grey Street, Newcastle Upon Tyne, NE1 6AF and Northern Powergrid Limited (Company No. 03271033) whose registered office is at Lloyds Court, 78 Grey Street, Newcastle Upon Tyne, NE1 6AF.

49. 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), Northern Powergrid 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.

50. 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.

51.—(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 Northern Powergrid’s apparatus is relocated or diverted, that apparatus must not be removed under this part of this Schedule, and any right of Northern Powergrid 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 pursuant to a completed easement, all to the reasonable satisfaction of Northern Powergrid in accordance with sub-paragraphs 51(2) to 51(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 Northern Powergrid 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 Northern Powergrid reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph 51(3), afford to Northern Powergrid 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 51(2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, Northern Powergrid must, on receipt of a written notice to that

(a) 1989 c.29.

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 Northern Powergrid and the undertaker or in default of agreement settled by arbitration in accordance with paragraph 63.

(5) Northern Powergrid must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with paragraph 63, and after the grant to Northern Powergrid of any such facilities and rights as are referred to in sub-paragraph 51(2) or 51(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.

(6) Regardless of anything in sub-paragraph 51(5), if the undertaker gives notice in writing to Northern Powergrid 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 Northern Powergrid, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of Northern Powergrid.

(7) Nothing in sub-paragraph 51(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.

52.—(1) Where, in accordance with the provisions of this part of this Schedule, the undertaker affords to Northern Powergrid 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 Northern Powergrid or in default of agreement settled by arbitration in accordance with paragraph 63.

(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 Northern Powergrid 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 Northern Powergrid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

53.—(1) Not less than ninety 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 51(2), the undertaker must submit to Northern Powergrid 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 53(1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph 53(3) by Northern Powergrid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and Northern Powergrid is entitled to watch and inspect the execution of those works.

(3) Any requirements made by Northern Powergrid under sub-paragraph 53(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 53(1) are submitted to it.

(4) If Northern Powergrid in accordance with sub-paragraph 53(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 47 to 52 apply as if the removal of the apparatus had been required by the undertaker under paragraph 51(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 53(1) in a case of emergency but in that case it must give to Northern Powergrid 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 53(2) in so far as is reasonably practicable in the circumstances.

54.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to Northern Powergrid the reasonable expenses incurred by Northern Powergrid—

- (a) 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 51(2); and
- (b) in assessing and preparing a design for its apparatus to address and accommodate the proposals of the undertaker whether or not the undertaker proceeds to implement those proposals or alternative or none at all,

provided that if it so prefers Northern Powergrid may abandon apparatus that the undertaker does not seek to remove in accordance with paragraph 51(1) having first decommissioned such equipment.

(2) There is to be deducted from any sum payable under sub-paragraph 54(1) the value of any apparatus removed under the provisions of this part of this Schedule, that value being calculated after removal and for the avoidance of doubt, if the apparatus removed under the provisions of this part of this Schedule has nil value, no sum will be deducted from the amount payable under sub-paragraph 54(1).

(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 paragraph 63 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 Northern Powergrid by virtue of sub-paragraph 54(1) is to be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph 54(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 51(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 Northern Powergrid in respect of works by virtue of sub-paragraph 54(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 Northern Powergrid 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.

55.—(1) Subject to sub-paragraphs 55(2) and 55(3), if by reason or in consequence of the construction of any of the works referred to in paragraph 51(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 Northern Powergrid, or there is any interruption in any service provided by Northern Powergrid, the undertaker must—

- (a) bear and pay the cost reasonably incurred by Northern Powergrid in making good such damage or restoring the supply; and
- (b) make reasonable compensation to Northern Powergrid for any other expenses, loss, damages, penalty or costs incurred by Northern Powergrid,

by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph 55(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 Northern Powergrid, its officers, servants, contractors or agents.

(3) Northern Powergrid 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.

56. Nothing in this part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Northern Powergrid in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

57. Without prejudice to the generality of the protective provisions in this part of the Schedule, Northern Powergrid must from time to time submit to the undertaker estimates of reasonable costs and expenses it expects to incur in relation to the implementation of any diversions or relocation of apparatus contemplated under this part of the Schedule.

58. Northern Powergrid and the undertaker will use their reasonable endeavours to agree the amount of any estimates submitted by the electricity undertaker under paragraph 57 within 15 working days following receipt of such estimates by the undertaker. The undertaker must confirm its agreement to the amount of such estimates in writing and must not unreasonably withhold or delay such agreement. If the parties are unable to agree the amount of an estimate, it will be dealt with in accordance with paragraph 63.

59. Work in relation to which an estimate is submitted must not be commenced by Northern Powergrid until that estimate is agreed with the undertaker in writing and a purchase order up to the value of the approved estimate has been issued by the undertaker to Northern Powergrid and an easement for the routes of the apparatus has been granted to the electricity undertaker pursuant to paragraph 51(1) for the benefit of its statutory undertaking.

60. If Northern Powergrid at any time becomes aware that an estimate agreed is likely to be exceeded, it must forthwith notify the undertaker and must submit a revised estimate of the relevant costs and expenses to the undertaker for agreement.

61. Northern Powergrid may from time to time and at least monthly from the date of this Order issue to the undertaker invoices for costs and expenses incurred up to the date of the relevant invoice, for the amount of the relevant estimate agreed. Invoices issued to the undertaker for payment must—

- (a) specify the approved purchase order number; and
- (b) be supported by timesheets and narratives that demonstrates that the work invoiced has been completed in accordance with the agreed estimate.

62. The undertaker will not be responsible for meeting costs or expenses in excess of an agreed estimate, other than where agreed under paragraph 60 above.

63. Any difference under the provisions of this part of the Schedule, unless otherwise provided for, 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 an independent electrical engineer by or on behalf of the President for the time being of the Institute of Engineering and Technology.

SCHEDULE 13 DESIGN PARAMETERS

Requirement 6

PART 1 TEMPORARY CONSTRUCTION PARAMETERS

Table 12

<i>Component</i>	<i>Work No.</i>	<i>Maximum length (m)</i>	<i>Maximum width (m)</i>	<i>Maximum height (m AGL)</i>	<i>Maximum height (m AOD)</i>
Pedestrian Bridge	9A(iii)	33	10	11.5	17

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PART 2 UNIT X PARAMETERS

Table 13

<i>Component</i>	<i>Work No.</i>	<i>Maximum length (m)</i>	<i>Maximum width (m)</i>	<i>Maximum height (m AGL)</i>	<i>Maximum height (m AOD)</i>
Turbine hall building	1A(ii)	87	23	28	34
Heat recovery steam generator building (up to two)	1A(iv)	55	29	49	55
Exhaust gas emission flue stacks (up to two)	1A(iv)	–	–	123	129
Bypass stack (up to two) (excluding supporting structures)	1A(v)	–	–	123	129
Transformers	1A(vi)	36	20	11	17
Gas turbine air inlet filter house	1A(vii)	26	27	35	41
Power control centre	1A(viii)	17	17	6	12
Turbine outage store building (up to two)	1A(xiv)	113	43	28	34

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Fuel gas station (up to two)	1A(xvi)	26	19	7	13
Main pipe rack	1B(i)	600	12	25	31
Battery storage facility including any structure	3A	180	60	10	16
Gas insulated switchgear banking building	4A	18	12	11	17
Control room building for gas insulated switchgear	4A	26	12	11	17
Gas receiving facility (GRF) Compound	5	85	85	10	16
Pig Trap Facility (Launching) Compound	6B	30	30	5	10
Minimum Offtake Connection	6A	30	30	5	10
Reinstatement of sludge lagoon	12A	82	55	–	–

Table 14

<i>Component</i>	<i>Work No.</i>	<i>Minimum height (m AGL)</i>	<i>Minimum height (m AOD)</i>
Exhaust gas emission flue stacks (up to two)	1A(iv)	122.5	128.5
Bypass Stack (up to two) (excluding supporting structures)	1A(v)	122.5	128.5

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Table 15 – table not used

Table 16 – table not used

SCHEDULE 14

Article 40

DOCUMENTS AND PLANS TO BE CERTIFIED

Table 15

(1) <i>Document name</i>	(2) <i>Document reference</i>	(3) <i>Revision number</i>	(4) <i>Date</i>
the access and rights of way plans	Key plan: 2.4	01	21.05.2018
	Sheet 2: 2.4	02	07.11.2018
	Sheet 3: 2.4	01	21.05.2018
	Sheet 4: 2.4	01	21.05.2018
	Sheet 5: 2.4	02	06.12.2018
	Sheet 6: 2.4	01	21.05.2018
	Sheet 7: 2.4	01	21.05.2018
	Sheet 8: 2.4	01	21.05.2018
	Sheet 9: 2.4	01	21.05.2018
	Sheet 10: 2.4	01	21.05.2018
	Sheet 11: 2.4	01	21.05.2018
	Sheet 12: 2.4	01	21.05.2018
	Sheet 13: 2.4	01	21.05.2018
	Sheet 14: 2.4	01	21.05.2018
	Sheet 15: 2.4	01	21.05.2018
	Sheet 16: 2.4	01	21.05.2018
	Sheet 17: 2.4	01	21.05.2018
	Sheet 18: 2.4	01	21.05.2018
	Sheet 19: 2.4	01	21.05.2018
	Sheet 20: 2.4	01	21.05.2018
	Sheet 21: 2.4	01	21.05.2018
	Sheet 22: 2.4	01	21.05.2018
	Sheet 23: 2.4	01	21.05.2018
the application guide	1.2	013	28.03.2019
the book of reference	9.4	001	28.03.2019
the CHP statement	5.6	002	22.11.2018
the environmental statement	environmental statement volume 1: 6.1 (excluding chapter 3)	001 (excluding chapter 3)	29.05.2018 (excluding chapter 3)
	environmental statement volume 1: 6.1 (chapter 3)	002	30.01.2019
	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,	001	29.05.2018

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	10.5, 11.1, 15.1, 16.1, 16.2, 16.3, 16.4, 17.1, 17.2, 17.3		
	appendix 9.10	003	30.01.2019
	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	N/A	08.11.2018
	removal of stage 0 mitigation review: 8.5.5	001	08.11.2018
	assessment of non-material amendments to proposed scheme: 8.4.8	001	22.11.2018
	errata – environmental statement (chapters 7, 8 and 11): 8.3.1	001	18.10.2018
	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	Key plan: 2.2	03	06.11.2019
	Sheet 2: 2.2	04	04.01.2019
	Sheet 3: 9.5	01	28.03.2019
	Sheet 5: 2.2	04	04.01.2019
	Sheet 6: 2.2	03	06.11.2018
	Sheet 7: 2.2	02	07.11.2018
	Sheet 8: 2.2	03	06.11.2018
	Sheet 9: 2.2	02	07.11.2018
the outline construction environmental management plan	6.5	005	21.03.2019
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	002	20.02.2019
the outline landscape	6.7	005	28.03.2019

and biodiversity strategy			
the works plans	Sheet 2: 2.3A	02	22.10.2018
	Sheet 3: 2.3A	01	16.05.2018
	Sheet 4: 2.3A	01	16.05.2018
	Sheet 5: 2.3A	02	22.10.2018
	Sheet 6: 2.3A	02	22.10.2018
	Sheet 13: 2.3A	01	16.05.2018
	Sheet 16: 2.3A	01	16.05.2018
	Sheet 18: 2.3A	01	16.05.2018
	Sheet 19: 2.3A	02	22.10.2018
	Sheet 20: 2.3A	01	16.05.2018
	Sheet 21: 2.3A	02	22.10.2018
	Sheet 22: 2.3A	01	16.05.2018
	Sheet 23: 2.3A	01	16.05.2018
	Sheet 24: 2.3A	03	22.10.2018
	Sheet 25: 2.3A	02	22.10.2018
	Sheet 26: 2.3A	02	29.06.2018
	Sheet 28: 2.3A	01	16.05.2018
	Sheet 30: 2.3A	02	22.10.2018
	Sheet 31: 2.3A	02	22.10.2018
	Sheet 32: 2.3A	02	22.10.2018
	Sheet 33: 2.3A	01	16.05.2018
	Sheet 34: 2.3A	01	16.05.2018
	Sheet 35: 2.3A	01	09.05.2018
	Sheet 36: 2.3A	01	16.05.2018
	Sheet 37: 2.3A	02	22.10.2018
	Sheet 39: 2.3A	01	16.05.2018
	Sheet 41: 2.3A	01	16.05.2018
	Sheet 42: 2.3A	01	16.05.2018

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 a gas fired electricity generating station and battery storage energy facility. 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 40 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.