

SUNNICA ENERGY FARM

EN010106

Volume 3

8.122 Without Prejudice Alternative Development Consent Order

APFP Regulation 5(2)(b)

Planning Act 2008

Infrastructure Planning (Applications: Prescribed Forms and
Procedure) Regulations 2009



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**The Infrastructure Planning
(Applications: Prescribed Forms and
Procedure) Regulations 2009**

Sunnica Energy Farm

8.122 Alternative Without Prejudice Development Consent Order

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INFRASTRUCTURE PLANNING

The Sunnica Energy Farm Order 202*

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An application has been made to the Secretary of State for an order granting development consent under section 37 of the Planning Act 2008 (“the 2008 Act”)(a) in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(b).

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 Infrastructure Planning (Examination Procedure) Rules 2010(c).

The Examining Authority, having considered the application together with the documents that accompanied it, and the representations made and not withdrawn, has, in accordance with section 74(2)(d) of the 2008 Act made a report and recommendation to the Secretary of State;

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(e) and has had regard to the documents and matters referred to in section 105(2)(f) 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 the terms that in the opinion of the Secretary of State are not materially different from those proposed in the application.

The Secretary of State, in exercise of the powers conferred by sections 114(g), 115(h), 120(i), 122(j) and 123(k) of the 2008 Act, makes the following Order—

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Sunnica Energy Farm Order and comes into force on [X].

Interpretation

- 2.—(1) In this Order—

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

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

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

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- (a) 2008 c. 29. Section 37 was amended by section 137(5) of, and paragraph 5 of Schedule 13 to the Localism Act 2011 (c. 20).
- (b) 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, S.I. 2014/469, S.I. 2014/2381, S.I. 2015/377, S.I. 2015/1682, S.I. 2017/524, S.I. 2017/572 and S.I. 2018/378.
- (c) S.I. 2010/103.
- (d) As amended by paragraph 29(1) and (3) of Part 1 of Schedule 13 to the Localism Act 2011 (c. 20).
- (e) S.I. 2017/572.
- (f) Section 105(2) was amended by paragraph 50 of Schedule 13 to the Localism Act 2011.
- (g) As amended by paragraph 55 of Part 1 of Schedule 13 to the Localism Act 2011.
- (h) As amended by section 160 of the Housing and Planning Act 2016 (c. 22) and section 43 of the Wales Act 2017 (c. 4).
- (i) As amended by section 140 and paragraph 60 of Part 1 of Schedule 13 to the Localism Act 2011.
- (j) As amended by paragraph 62 of Part 1 of Schedule 13 to the Localism Act 2011.
- (k) Ibid.
- (l) 1961 c. 33.
- (m) 1965 c. 56.
- (n) 1980 c. 66.

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

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

“the 1989 Act” means the Electricity Act 1989(c);

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

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

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

“access and rights of way plans” means the plans of that name identified in the table at Schedule 10 (documents and plans to be certified) and which are 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;

“apparatus” has the same meaning as in Part 3 (street works in England and Wales) of the 1991 Act except that, unless otherwise provided, it further includes pipelines (and parts of them), aerial markers, cathodic protection test posts, field boundary markers, transformer rectifier kiosks, electricity cables (but excluding the electrical cables as defined in this article), telecommunications equipment and electricity cabinets;

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

“arboricultural impact assessment” means the document of that name identified in the table at Schedule 10 (documents and plans to be certified) and which is certified by the Secretary of State as the arboricultural impact assessment for the purposes of this Order;

“book of reference” means the document of that name identified in the table at Schedule 10 (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;

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

“commence” means beginning to carry out 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 permitted preliminary works (except where stated to the contrary) and “commencement”, “commenced” and cognate expressions are to be construed accordingly;

“commercial use” means the export of electricity from any phase, and the import of electricity to any phase, by the authorised development on a commercial basis, following the date of final commissioning of any phase of the authorised development;

“crash site exclusion area” means the area of land shown on the plan of that name identified in the table at Schedule 10 (documents and plans to be certified) and which is certified by the Secretary of State as the crash site exclusion area plan for the purposes of this Order;

“date of final commissioning” means in respect of each phase of the authorised development as approved under requirement 3 of Schedule 2 (requirements) the date on which each phase of the authorised development commences operation by generating electricity on a commercial basis but excluding the generation of electricity during commissioning and testing;

“Deed of Obligation” means the agreement between (1) Sunnica Limited (company number 08826077) (2) Cambridgeshire County Council and (3) Suffolk County Council dated [XXX

(a) 1981 c. 66.

(b) 1984 c. 27.

(c) 1989 c. 29.

(d) 1990 c. 8.

(e) 1991 c. 22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c. 26). Sections 78(4), 80(4), and 83(4) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).

(f) 2008 c. 29.

March 2023], and which is certified by the Secretary of State as the Deed of Obligation and any modifications to the agreement under article 46 from time to time;

“design principles” means the document of that name identified in the table at Schedule 10 (documents and plans to be certified) and which is certified by the Secretary of State as the design principles for the purposes of this Order;

“detailed archaeology mitigation strategy” means the document of that name identified in the table at Schedule 10 (documents and plans to be certified) and which is certified by the Secretary of State as the detailed archaeology mitigation strategy for the purposes of this Order;

“drainage technical note” means the document of that name identified in the table at Schedule 10 (documents and plans to be certified) and which is certified by the Secretary of State as the drainage technical note for the purposes of this Order;

“electrical cables” means—

- (a) with respect to Work Nos. 1, 2 and 3, 33 kilovolt cables, low voltage cables, earthing cables and optical fibre cables;
- (b) with respect to Work No. 4, 33 kilovolt cables, 400 kilovolt cables, earthing cables and optical fibre cables;
- (c) data cables and auxiliary cables in respect of the above cables; and
- (d) works associated with laying the above cables including jointing bays, fibre bays, cable ducts, cable protection, joint protection, manholes, kiosks, marker posts, underground cable marker, tiles and tape, send and receive pits for horizontal directional drilling, trenching, lighting, and a pit or container to capture fluids associated with drilling;

“electronic transmission” means a communication transmitted—

- (a) by means of an electronic communications network; or
- (b) by other means but while in electronic form;

“environmental statement” means the document of that name identified in Schedule 10 (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;

“flood risk assessment” means the document of that name identified in the table at Schedule 10 (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;

“framework construction environmental management plan” means the document of that name identified in the table at Schedule 10 (documents and plans to be certified) and which is certified by the Secretary of State as the framework construction environmental management plan for the purposes of this Order;

“framework construction traffic management plan and travel plan” means the document of that name identified in the table at Schedule 10 (documents and plans to be certified) and which is certified by the Secretary of State as the framework construction traffic management plan and travel plan for the purposes of this Order;

“framework decommissioning environmental management plan” means the plan of that name identified in the table at Schedule 10 (documents and plans to be certified) and which is certified by the Secretary of State as the framework decommissioning environmental management plan for the purposes of this Order;

“framework operational environmental management plan” means the document of that name identified in the table at Schedule 10 (documents and plans to be certified) and which is certified by the Secretary of State as the framework operational environmental management plan for the purposes of this Order;

“highway” and “highway authority” have the same meaning as in the 1980 Act^(a);

“holding company” has the same meaning as in section 1159 of the Companies Act 2006^(b);

“land and Crown land plans” means the plans of that name identified in the table at Schedule 10 (documents and plans to be certified) and which are certified by the Secretary of State as the land and Crown land plans for the purposes of this Order;

“limits of deviation” means the limits of deviation shown for each numbered work 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 and “maintenance” and “maintaining” are to be construed accordingly;

“NGET” means National Grid Electricity Transmission Plc (company number 2366977) whose registered office is at 1 to 3 Strand, London WC2N 5EH;

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

“Order limits” means the limits shown on the land and Crown land plans and works plans within which the authorised development may be carried out and land acquired or used;

“outline battery fire safety management plan” means the plan of that name identified in the table at Schedule 10 (documents and plans to be certified) and which is certified by the Secretary of State as the outline battery fire safety management plan for the purposes of this Order and which sets out the battery safety management principles to be included in the battery fire safety management plan pursuant to requirement 7 of Schedule 2 (requirements);

“outline landscape and ecology management plan” means the document of that name identified in the table at Schedule 10 (documents and plans to be certified) and which is certified by the Secretary of State as the outline landscape and ecology management plan for the purposes of this Order;

“outline skills, supply chain and employment plan” means the plan of that name identified in the table at Schedule 10 (documents and plans to be certified) and which is certified by the Secretary of State as the outline skills, supply chain and employment plan for the purposes of this Order;

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

“permitted preliminary works” means all or any of—

- (a) environmental surveys, geotechnical surveys, intrusive archaeological surveys and other investigations for the purpose of assessing ground conditions;
- (b) above ground site preparation for temporary facilities for the use of contractors;
- (c) remedial work in respect of any contamination or other adverse ground conditions;
- (d) diversion and laying of apparatus;
- (e) the provision of temporary means of enclosure and site security for construction;
- (f) the temporary display of site notices or advertisements;
- (g) removal of plant and machinery; or
- (h) site clearance (including vegetation removal and demolition of buildings);

“permitted preliminary works traffic management and access plan” means the traffic management plan of that name to be submitted and approved pursuant to requirement 16(4) in relation to the permitted preliminary works referred to in that requirement;

(a) “highway” is defined in section 328(1). For “highway authority” see section 1.
 (b) 2006 c. 46.
 (c) 1981 c. 67.

“plot” means any plot as may be identified by reference to a number and which is listed in the book of reference and shown on the land and Crown land plans;

“potential expanded crash site exclusion area” means the area of land shown on the plan of that name identified in the table at Schedule 10 (documents and plans to be certified) and which is certified by the Secretary of State as the potential expanded crash site exclusion area plan for the purposes of this Order;

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

“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) and “requirement” means any one of the requirements;

“restoration overlap plan” means the plan showing the overlap between the Order limits and the limits of the Worlington Quarry planning permission identified in the table at Schedule 10 (documents and plans to be certified) and which is certified by the Secretary of State as the restoration overlap plan for the purposes of this Order;

“statutory undertaker” means any person falling within section 127(8) (statutory undertakers’ land) of the 2008 Act and includes a public communications provider defined by section 151(1) (interpretation of chapter 1) of the Communications Act 2003(a);

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

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

“street works” means the works listed in article 8(1) (street works);

“subsidiary” has the same meaning as in section 1159 of the Companies Act 2006(c);

“traffic authority” has the same meaning as in section 121A(d) (traffic authorities) of the 1984 Act;

“traffic regulation measures plans – temporary measures” means the plans of that name identified in the table at Schedule 10 (documents and plans to be certified) and which is certified by the Secretary of State as the traffic regulation measures plans – temporary measures for the purposes of this Order;

“traffic regulation measures plans – temporary road closures” means the plans of that name identified in the table at Schedule 10 (documents and plans to be certified) and which is certified by the Secretary of State as the traffic regulation measures plans – temporary road closures for the purposes of this Order;

“tree preservation order trees location plan” means the plan of that description as referenced in Schedule 10 (documents and plans to be certified) and which is certified by the Secretary of State as the tree preservation order trees location plan for the purposes of this Order;

“undertaker” means Sunnica Limited (company number 08826077);

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

“watercourse” includes every river, stream, creek, ditch, drain, canal, cut, culvert, dyke, sluice, sewer and passage through which water flows except a public sewer or drain;

(a) 2003 c. 21.

(b) “street authority” is defined in section 49, which was amended by paragraph 117 of Schedule 1 to the Infrastructure Act (c. 7).

(c) 2006 c. 46.

(d) Section 121A was inserted by paragraph 70 of Schedule 8 to the 1991 Act, and subsequently amended by section 271 of the Greater London Authority Act 1999 (c. 29); section 1(6) of, and paragraphs 70 and 95 of Schedule 1 to the Infrastructure Act 2015; and S.I. 1999/1920 and S.I. 2001/1400.

“works plans” means the plans of that name identified in the table at Schedule 10 (documents and plans to be certified) and which is certified by the Secretary of State as the works plans for the purposes of this Order; and

“Worlington Quarry planning permission” means planning permission F/04/022 granted by Suffolk County Council on 9 August 2004 as subsequently varied by application reference F/15/1386 (approved on 2 October 2015) and SCC/0273/16F6 (approved on 24 February 2017).

(2) References in this Order to rights over land include references to rights to do or restrain or to place and maintain anything in, on or under land or in the airspace 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 imposition of restrictive covenants are references to the creation of rights over land 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, capacities and lengths referred to in this Order are approximate and distances between lines or points on a numbered work comprised in the authorised development and shown on the works plans and access and 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) 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, is a reference to the work so designated in that Schedule and a reference to “Work No. 1” or “numbered work 1” means numbered works 1A to 1C inclusive and the same principle applies to such numbered works that contain letters.

(5) In this Order, the expression “includes” is to be construed without limitation.

(6) In this Order, references to any statutory body include that body’s successor bodies.

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

PART 2

PRINCIPAL POWERS

Development consent etc. granted by this Order

3.—(1) Subject to the provisions of this Order and the requirements detailed in Schedule 2, the undertaker is granted development consent for the authorised development to be carried out within the Order limits.

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

Operation of generating station

4.—(1) The undertaker is authorised to use and operate the generating station comprised in the authorised development.

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

Power to maintain the authorised development

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

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

(3) This article does not authorise the carrying out of any works which are likely to give rise to any materially new or materially different effects that have not been assessed in the environmental statement.

Disapplication of legislation, etc.

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

- (a) Section 23 (prohibition of obstructions, etc. in watercourses) of the Land Drainage Act 1991(a);
- (b) section 32 (variation of awards)(b) of the Land Drainage Act 1991;
- (c) the provisions of any byelaws made under section 66 (powers to make byelaws)(c) of the Land Drainage Act 1991;
- (d) the provisions of any byelaws made under, or having effect as if made under, paragraphs 5, 6 or 6A of Schedule 25 (byelaw-making powers of the authority) to the Water Resources Act 1991(d);
- (e) regulation 12 (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016(e) in respect of a flood risk activity only;
- (f) the legislation listed in Schedule 3 (legislation to be disapplied) in so far as the provisions still in force are incompatible with the powers contained within this Order; and
- (g) the provisions of the Neighbourhood Planning Act 2017(f) insofar as they relate to temporary possession of land under articles 27 (temporary use of land for constructing the authorised development) and 28 (temporary use of land for maintaining the authorised development) of this Order.

(2) For the purposes of section 9 (requirement of licence for felling) of the Forestry Act 1967(g), any felling comprised in the carrying out of any work or operation required for the purposes of, or in connection with, the construction of the authorised development is deemed to be immediately required for the purpose of carrying out development authorised by planning permission granted under the 1990 Act.

(3) As from the date on which the permitted preliminary works are carried out or the authorised development is commenced, whichever is the earlier, any conditions of the Worlington Quarry planning permission that relate to the land coloured yellow on the restoration overlap plan cease to have effect to the extent that they are inconsistent with the authorised development or with anything done or approved under Schedule 2 (requirements).

Defence to proceedings in respect of statutory nuisance

7.—(1) Where proceedings are brought under section 82(1) (summary proceedings by a person aggrieved by statutory nuisance) of the Environmental Protection Act 1990(h) in relation to a nuisance falling within paragraph (g) of section 79(1) (noise emitted from premises so as to be

(a) 1991 c. 59. Section 23 was amended by paragraph 192(2) of Schedule 22 to the Environment Act 1995 (c. 25), paragraphs 25 and 32 of Schedule 2 to the Flood and Water Management Act 2010 (c. 29) and S.I. 2013/755.

(b) Section 32 was amended by S.I. 2013/755.

(c) Section 66 was amended by paragraphs 25 and 38 of Schedule 2 to the Flood and Water Management Act 2010 and section 86 of the Water Act 2014 (c. 21).

(d) 1991 c. 57. Paragraph 5 was amended by section 100 of the Natural Environment and Rural Communities Act 2006 (c. 16), section 84 of, and paragraph 3 of Schedule 11 to the 2009 Act and S.I. 2013/755. Paragraph 6 was amended by section 105 of, and paragraph 26 of Schedule 15 to, the Environment Act 1995, sections 224, 233 and 321 of and paragraphs 20 and 24 of Schedule 16 and Part 5(B) of Schedule 22 to the 2009 Act and S.I. 2013/755. Paragraph 6A was inserted by section 103(3) of the Environment Act 1995.

(e) S.I. 2016/1154. Regulation 12 was amended by S.I. 2018/110.

(f) 2017 c. 20.

(g) Section 9 was amended by section 4 of, and paragraph 141 of, Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11) and S.I. 2013/755. There are other amendments to section 9 that are not relevant to this Order.

(h) 1990 c. 43.

prejudicial to health or a nuisance) of that Act no order may be made, and no fine may be imposed, under section 82(2) of that Act if—

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

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

PART 3

STREETS

Street Works

8.—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets specified in Schedule 4 (streets subject to street works) 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 under the street;
- (d) maintain apparatus under the street, change its position or remove it;
- (e) repair, replace or otherwise alter the surface or structure of the street; and
- (f) execute any works required for or incidental to any works referred to in sub-paragraphs (a) to (e).

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

(3) In this article “apparatus” has the same meaning as in Part 3 of the 1991 Act.

(4) Where the undertaker is not the street authority, the provisions of sections 54 (notice of certain works) to 106 (index of defined expressions) of the 1991 Act apply to any street works carried out until paragraph (1).

Power to alter layout, etc., of streets

9.—(1) The undertaker may for the purposes of the authorised development alter the layout of or carry out any works in the street—

(a) 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 the Order.

- (a) in the case of the streets specified in column 2 of the table in Part 1 (permanent alteration of layout) of Schedule 5 (alteration of streets) permanently in the manner specified in relation to that street in column 3; and
- (b) in the case of the streets specified in column 2 of the table in Part 2 (temporary alteration of layout) of Schedule 5 temporarily 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 places.

(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 altered streets

10.—(1) The permanent alterations to each of the streets specified in Part 1 (permanent alteration of layout) of Schedule 5 (alteration of streets) to this Order must be completed to the reasonable satisfaction of the highway authority and, unless otherwise agreed by the highway authority, the alterations must be maintained by and at the expense of the undertaker for a period of 12 months from their completion and from the expiry of that period by and at the expense of the highway authority.

(2) Subject to paragraph (3), the temporary alterations to each of the streets specified in Part 2 (temporary alteration of layout) of Schedule 5 must be completed to the reasonable satisfaction of the street authority and the temporary alterations must be maintained by and at the expense of the undertaker.

(3) Those restoration works carried out pursuant to article 9(3) (power to alter layout, etc., of streets) must be completed to the reasonable satisfaction of the street authority and must be maintained by the undertaker for a period of 12 months from their completion and from the expiry of that period 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.

Temporary stopping up of public rights of way

11.—(1) The undertaker, during and for the purposes of constructing or maintaining the authorised development, may temporarily stop up, prohibit the use of, authorise the use of, alter or divert any public right of way and may for any reasonable time—

- (a) divert the traffic or a class of traffic from the public right of way;
- (b) authorise for the purpose of crossing only the use of motor vehicles on classes of public rights of way where, notwithstanding the provisions of this article, there is otherwise no public right to use motor vehicles; and
- (c) subject to paragraph (2), prevent all persons from passing along the public right of way.

(2) The undertaker must provide reasonable access for pedestrians going to or from premises abutting a public right of way affected by the temporary stopping up, prohibition, restriction, alteration or diversion of a 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, authorise the use of, restrict the use of, alter or divert—

- (a) the public rights of way specified in column 2 of the table in Part 1 (public rights of way to be temporarily stopped up) of Schedule 6 (public rights of way) to the extent specified in column 3 of that table; and
- (b) the public rights of way specified in column 2 of the table in Part 2 (temporary use of motor vehicles on public rights of way) of Schedule 6 to the extent specified in column 3 of that table.

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

- (a) any public right of way specified in paragraph (3) without first consulting the street authority during a period of not less than 28 days; and
- (b) any other 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 (determination of questions of disputed compensation) of the 1961 Act.

(6) Without prejudice to the scope of paragraph (1), the undertaker may use any 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) In this article expressions used in this article and in the 1984 Act have the same meaning.

(8) The undertaker must restore any public right of way that has been temporarily altered under this Order to the reasonable satisfaction of the street authority.

Access to works

12. 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 (permanent means of access to works) of Schedule 7 (access to works);

- (b) form and lay out the temporary means of access in the location specified in Part 2 (temporary means of access to works) of Schedule 7; 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

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

- (a) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;
- (b) any stopping up, prohibition, restriction, alteration or diversion of a street authorised by this Order;
- (c) the undertaking in the street of any of the works referred to in article 8 (street works) article 9 (power to alter layout, etc., of streets) and article 10(1) (construction and maintenance of new or altered means of access); or
- (d) the adoption by a street authority which is the highway authority of works—
 - (i) undertaken on a street which is existing public maintainable highway; or
 - (ii) which the undertaker and highway authority agree to be adopted as public 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

14.—(1) Subject to paragraphs (3), (4) and (8) the undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the construction 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 under paragraph (1) is to be determined as if it were a dispute under section 106 (right to communicate with public sewers) of the Water Industry Act 1991^(a).

(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, whose consent may be given subject to terms and conditions as that person may reasonably impose.

(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; and
- (b) where that person has been given the opportunity to supervise the making of the opening.

(a) 1991 c. 56.

(5) Where the undertaker discharges water into, or makes any opening into, a watercourse, public sewer or drain belonging to or under the control of the Swaffham Internal Drainage Board, the provisions of Part 8 of Schedule 12 (protective provisions) apply in substitution for the provisions of paragraphs (3) and (4).

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

(7) 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(a).

(8) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to Homes England, the Environment Agency, 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.

Removal of human remains

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

(2) Subject to paragraph (11), before any such remains are removed from the Order land the undertaker must give notice of the intended removal, describing the Order 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 the Order land.

(3) As soon as reasonably practicable after the first publication of a notice under paragraph (2) the undertaker must send a copy of the notice to the relevant planning authority.

(4) At any time within 56 days after the first publication of a notice under paragraph (2) any person who is a personal representative or relative of any deceased person whose remains are interred in the Order land may give notice in writing to the undertaker of that person’s intention to undertake the removal of the remains.

(5) Where a person has given notice under paragraph (4), and the remains in question can be identified, that person may cause such remains to be—

- (a) removed and reinterred 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 reinterment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (10).

(6) If the undertaker is not satisfied that any person giving notice under paragraph (4) 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.

(a) S.I. 2016/1154.

(7) The undertaker must pay the reasonable expenses of removing and reintering or cremating the remains of any deceased person under this article.

(8) If—

- (a) within the period of 56 days referred to in paragraph (4) no notice under that paragraph has been given to the undertaker in respect of any remains in the Order land; or
- (b) such notice is given and no application is made under paragraph (6) within 56 days after the giving of the notice but the person who gave the notice fails to remove the remains within a further period of 56 days; or
- (c) within 56 days after any order is made by the county court under paragraph (6) any person, other than the undertaker, specified in the order fails to remove the remains; or
- (d) it is determined that the remains to which any such notice relates cannot be identified,

subject to paragraph (10) the undertaker must remove the remains and cause them to be reinterred 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 reinterred 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.

(9) If the undertaker is satisfied that any person giving notice under paragraph (4) 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 reinterment or cremation of the remains.

(10) On the reinterment or cremation of any remains under this article—

- (a) a certificate of reinterment or cremation must be sent by the undertaker to the Registrar General by the undertaker giving the date of reinterment or cremation and identifying the place from which the remains were removed and the place in which they were reinterred or cremated; and
- (b) a copy of the certificate of reinterment or cremation and the record mentioned in paragraph (8) must be sent by the undertaker to the relevant planning authority mentioned in paragraph (3).

(11) No notice is required under paragraph (2) before the removal of any human remains where the undertaker is satisfied—

- (a) that the remains were interred more than 100 years ago; and
- (b) that no relative or personal representative of the deceased is likely to object to the remains being removed in accordance with this article.

(12) In the case of remains in relation to which paragraph (11) applies, the undertaker—

- (a) may remove the remains;
- (b) must apply for direction from the Secretary of State under paragraph (14) as to their subsequent treatment; and
- (c) must deal with the remains in such manner, and subject to such conditions, as the Secretary of State directs.

(13) In this article—

- (a) references to personal representative of the deceased are to a person or persons who—
 - (i) is the lawful executor of the estate of the deceased; or
 - (ii) is the lawful administrator of the estate of the deceased.

(14) The removal and subsequent treatment 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.

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

(16) Section 25 (offence of removal of body from burial ground) of the Burial Act 1857^(a) is not to apply to a removal carried out in accordance with this article.

Protective works to buildings

16.—(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 construction of any part of the authorised development in the vicinity of the building; 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 the date of final commissioning.

(3) For the purpose of determining how the powers 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 14 days' notice of its intention to exercise that right and, in a case falling within sub-paragraph (a), (c) or (d), 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 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 39 (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
- (b) within the period of five years beginning with the date of final commissioning it appears protective works are inadequate to protect the building against damage caused by the construction 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.

^(a) 1857 c. 81.

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

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

(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 construction, 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 construction, maintenance or use of the authorised development.

(12) In this article “building” includes any structure or erection or any part of a building, structure or erection.

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 including making trial trenches in such positions on the land as the undertaker thinks fit to carry out archaeological and site investigations; and
- (d) place on, leave on and remove from the land apparatus and welfare facilities for use in connection with the survey and investigation of land and making of trial holes and trial trenches.

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

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

- (a) must, if so required before entering the land, produce written evidence of their authority to do so; and
- (b) may take with them such vehicles and equipment as are necessary to carry out the survey 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) Following completion of any survey, monitoring or investigation works the undertaker must remove all equipment, apparatus and welfare facilities placed on the land in connection with such survey, monitoring or investigations.

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

(7) 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.

PART 5

POWERS OF ACQUISITION

Compulsory acquisition of land

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

(2) This article is subject to paragraph (2) of article 20 (compulsory acquisition of rights), article 27 (temporary use of land for constructing the authorised development) and article 45 (Crown rights).

Time limit for exercise of authority to acquire land compulsorily

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

- (a) no notice to treat is to be served under Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act; and
- (b) no declaration is to be executed under section 4 (execution of declaration) of the 1981 Act as applied by article 22 (application of the 1981 Act).

(2) The authority conferred by article 27 (temporary use of land for constructing the authorised development) ceases at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

Compulsory acquisition of rights

20.—(1) Subject to paragraph (2), the undertaker may acquire compulsorily such rights over the Order land or impose such restrictive covenants over the Order land as may be required for any purpose for which that land may be acquired under article 18 (compulsory acquisition of land), by creating them as well as by acquiring rights already in existence.

(2) Subject to the provisions of this paragraph, article 21 (private rights) and article 29 (statutory undertakers), in the case of the Order land specified in column 1 of Schedule 8 (land in which only new rights etc. may be acquired) the undertaker's powers of compulsory acquisition are limited to the acquisition of such new rights and the imposition of restrictive covenants for the purpose specified in relation to that land in column 2 of that Schedule.

(3) Subject to section 8 (other provisions as to divided land) and Schedule 2A (counter-notice requiring purchase of land) of the 1965 Act (as substituted by paragraph 5(8) of Schedule 9 (modification of compensation and compulsory purchase enactments for the creation of new rights and imposition of new restrictive covenants)), where the undertaker creates or acquires an existing right over land or the benefit of a restrictive covenant 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 the creation of new rights and imposition of new restrictive covenants) has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of restrictive covenants.

(5) In any case where the acquisition of new rights or imposition of a restriction under paragraph (1) or (2) is required for the purpose of diverting, replacing or protecting apparatus of a statutory undertaker, the undertaker may, with the consent of the Secretary of State, transfer the power to 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) This article is subject to article 45 (Crown rights).

Private Rights

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

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

whichever is the earliest.

(2) Subject to the provisions of this article, all private rights or restrictive covenants over land subject to the compulsory acquisition of rights or the imposition of restrictive covenants under article 20 (compulsory acquisition of rights) cease to have effect in so far as their continuance would be inconsistent with the exercise of the right or compliance with the restrictive covenant—

- (a) as from the date of the acquisition of the right or imposition of the restrictive covenant by the undertaker (whether the rights is acquired compulsorily, by agreement or through the grant of a lease of the land by agreement); or
- (b) on the date of entry on the land by the undertaker under section 11(1) (power of entry) of the 1965 Act in pursuance of the right,

whichever is the earliest.

(3) Subject to the provisions of this article, all private rights or restrictive covenants over land of which the undertaker takes temporary possession under this Order are suspended and unenforceable, in so far as their continuance would be inconsistent with the purpose for which temporary possession is taken, for as long as the undertaker remains in lawful possession of the land.

(4) Any person who suffers loss by the extinguishment or suspension of any private right or restrictive covenant under this article is entitled to compensation in accordance with the terms of section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) This article does not apply in relation to any right to which section 138 (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) of the 2008 Act or article 29 (statutory undertakers) applies.

(6) Paragraphs (1) to (3) 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 or the imposition of restrictive covenants over or affecting the land;
 - (ii) the undertaker's appropriation of the land;
 - (iii) the undertaker's entry onto the land; or
 - (iv) the undertaker's taking temporary possession of the land,that any or all of those paragraphs do not apply to any right specified in the notice; or
- (b) any agreement made at any time between the undertaker and the person in or to whom the right in question is vested or belongs.

(7) If an agreement referred to in paragraph (6)(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,

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

(8) References in this article to private rights over land include any right of way, trust, incident, restrictive covenant, easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support; and include restrictions as to the user of land arising by virtue of a contract, agreement or undertaking having that effect.

Application of the 1981 Act

22.—(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 the Act), for subsection 2 substitute—

“(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) Section 5A (time limit for general vesting declaration) is omitted(a).

(6) In section 5B(1) (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 (legal challenges relating to applications for orders granting development consent) of the 2008 Act, the five year period mentioned in article 19 (time limit for exercise of authority to acquire land compulsorily) of the Sunnica Energy Farm Order 202*”.

(7) In section 6 (notices after extension of declaration), in subsection (1)(b) for “section 15 of, or paragraph 6 of Schedule 1 to, the Acquisition of Land Act 1981” substitute “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) omit the words “(as modified by section 4 of the Acquisition of Land Act 1981)”.

(9) In Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration), for paragraph 1(2) substitute—

“(2) But see article 23(3) (acquisition of subsoil only) of the Sunnica Energy Farm Order 202*, which excludes the acquisition of subsoil only from this Schedule.”.

(10) References to the 1965 Act in the 1981 Act must be construed as references to the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and as modified by article 25 (modification of Part 1 of the Compulsory Purchase Act 1965)) to the compulsory acquisition of land under this Order.

Acquisition of subsoil only

23.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in paragraph (1) of article 18 (compulsory acquisition of land) or article 20 (compulsory acquisition of rights) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(2) Where the undertaker acquires any part of, or rights in, the subsoil of land, the undertaker is not 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;

(a) Section 5A to the 1981 Act was inserted by section 182(2) of the Housing and Planning Act 2016 (c. 22).

- (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.

Power to override easements and other rights

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

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

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

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

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

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

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

(5) Where a person deriving title under the undertaker by whom the land in question was acquired—

- (a) is liable to pay compensation by virtue of paragraph (4); and
- (b) fails to discharge that liability,

the liability is enforceable against the undertaker.

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

Modification of Part 1 of the Compulsory Purchase Act 1965

25.—(1) Part 1 of the 1965 Act (compulsory acquisition under Acquisition of Land Act 1946), 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) 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 (legal challenges relating to applications for orders granting development consent) of the 2008 Act, the five year period mentioned in article 19 (time limit for exercise of authority to acquire land compulsorily) of the Sunnica Energy Farm Order 202*”.

(3) In section 11A (powers of entry: further notice 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 19 (time limit for exercise of authority to acquire land compulsorily) of the Sunnica Energy Farm Order 202*”.

(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 23(3) (acquisition of subsoil only) of the Sunnica Energy Farm Order 202*, which excludes the acquisition of subsoil only from this Schedule.”; and

- (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 16 (protective works to buildings), article 27 (temporary use of land for constructing the authorised development) or article 28 (temporary use of land for maintaining the authorised development) of the Sunnica Energy Farm Order 202*.”.

Rights under or over streets

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

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

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

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

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

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

Temporary use of land for constructing the authorised development

27.—(1) The undertaker may, in connection with the construction of the authorised development—

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

- (i) the land shown coloured green on sheet 21 of the land and Crown land plans and labelled plot 21-04 and described in the book of reference, for the purposes of carrying out works to enable the passage of abnormal indivisible loads and for the passage of such loads;

- (ii) any other Order land in respect of which no notice of entry has been served under section 11 (powers of entry) of the 1965 Act and no declaration has been made under section 4 (powers of entry) of the 1981 Act (execution of declaration);
 - (b) remove any buildings, agricultural plant and apparatus, drainage, fences, debris and vegetation from that land;
 - (c) construct temporary works, haul roads, security fencing, bridges, structures and buildings on that land;
 - (d) use that land for the purposes of a temporary working site with access to the working site in connection with the authorised development;
 - (e) construct any works, on that land as are mentioned in Schedule 1 (authorised development); and
 - (f) carry out mitigation works required under the requirements in Schedule 2 (requirements) on that land.
- (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 14 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.
- (4) The undertaker must not remain in possession of any land under this article for longer than reasonably necessary and in any event must not, without the agreement of the owners of the land, remain in possession of any land under this article after the end of the period of one year beginning with the date of final commissioning of the part of the authorised development for which temporary possession of the land was taken unless the undertaker has, before the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act in relation to that land.
- (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 otherwise acquired the land or rights over 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 works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not required to—
- (a) replace any building, structure, drain or electric line removed under this article;
 - (b) remove any drainage works installed by the undertaker under this article;
 - (c) remove any new road surface or other improvements carried out under this article to any street specified in Schedule 4 (streets subject to street works); or
 - (d) restore the land on which any works have been carried out under paragraph (1)(f) insofar as the works relate to mitigation works identified in the environmental statement or required pursuant to the requirements in Schedule 2 (requirements).
- (6) The undertaker must not exercise the powers conferred by this Order to compulsorily acquire, or compulsorily acquire rights over, the land referred to in paragraph (1)(a)(i).
- (7) The undertaker must pay compensation to the owners and occupiers of land 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.
- (8) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, must be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.
- (9) 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 (6).

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

(11) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use 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.

(12) Nothing in this article prevents the taking of temporary possession more than once in relation to any land that the undertaker takes temporary possession of under this article.

(13) When entering on and taking temporary possession of land for the removal of vegetation authorised by sub-paragraph (1)(b) the undertaker must take steps to avoid a breach of the provisions of the Wildlife and Countryside Act 1981^(a) and the Conservation of Habitats and Species Regulations 2017^(b) or any successor acts and regulations.

Temporary use of land for maintaining the authorised development

28.—(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 28 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(4) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised development for which possession of the land was taken.

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

(6) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, must be determined under Part 1 (determination of questions of disputed compensation) 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 maintenance of the authorised development, other than loss or damage for which compensation is payable under paragraph (6).

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

^(a) 1981 c. 69.

^(b) S.I. 2017/1012.

(10) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use 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.

(11) In this article “the maintenance period” means the period of five years beginning with the date of final commissioning of the part of the authorised development for which temporary possession is required under this article except in relation to landscaping where “the maintenance period” means such period as set out in the landscape and ecological management plan 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

29. Subject to the provisions of Schedule 12 (protective provisions) the undertaker may—

- (a) acquire compulsorily, or acquire new rights or impose restrictive covenants over, the land belonging to statutory undertakers shown on the land and Crown land plans within the Order land and described in the book of reference; and
- (b) extinguish the rights of, remove, relocate the rights of or reposition the apparatus belonging to statutory undertakers over or within the Order land and described in the book of reference.

Apparatus and rights of statutory undertakers in stopped up streets

30. Where a street is altered or diverted or its use is temporarily prohibited or restricted under article 8 (street works), article 9 (power to alter layout, etc., of streets), article 10 (construction and maintenance of new or altered means of access) or article 11 (temporary stopping up of streets and public rights of way) any statutory undertaker whose apparatus is under, in, on, along or across the street has 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

31.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 29 (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 29 (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 sewage disposal plant.

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

(4) In this article—

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

(a) 2003 c. 21.

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

PART 6

MISCELLANEOUS AND GENERAL

Benefit of the Order

32. Subject to article 33 (consent to transfer the benefit of the Order), the provisions of this Order have effect solely for the benefit of the undertaker.

Consent to transfer the benefit of the Order

33.—(1) Subject to the powers of this Order, the undertaker may—

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order and such related statutory rights as may be agreed between the undertaker and the transferee; and
- (b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order and such related statutory rights as may be so agreed.

(2) Where a transfer or grant has been made references in this Order to the undertaker, except in paragraph (8), are to include references to the transferee or lessee.

(3) 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 the holder of a licence under section 6 (licences authorising supplies etc.) of the 1989 Act; or
- (b) the time limits for 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 claim has been made and has been compromised or withdrawn;
 - (iii) compensation has been paid in full and final settlement of any such claim;
 - (iv) payment of compensation into court has taken place in lieu of settlement of any such claim; or
 - (v) it has been determined by a tribunal or court of competent jurisdiction in respect of any such claim that no compensation is payable.

(4) Where the consent of the Secretary of State is not required, the undertaker must notify the Secretary of State in writing before transferring or granting a benefit referred to in paragraph (1).

(5) The notification referred to in paragraph (4) must state—

- (a) the name and contact details the person to whom the benefit of the powers will be transferred or granted;
- (b) subject to paragraph (6), the date on which the transfer will take effect;
- (c) the powers to be transferred or granted;
- (d) pursuant to paragraph (8), 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.

(6) The date specified under paragraph (5)(b) must not be earlier than the expiry of fourteen days from the date of the receipt of the notification.

(7) The notification given 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 notification.

(8) Where the undertaker has transferred any benefit, or for the duration of any period during which the undertaker has granted any benefit—

- (a) the benefit transferred or granted (“the transferred benefit”) must include any rights that are conferred, and any obligations that are imposed, by virtue of the provisions to which the benefit relates;
- (b) the transferred benefit will reside exclusively with the transferee or, as the case may be, the lessee and the transferred benefit will not be enforceable against the undertaker; and
- (c) the exercise by a person of any benefits or rights conferred in accordance with any transfer or grant 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.

(9) The undertaker must notify both Cambridgeshire County Council and Suffolk County Council in writing 14 days before and 14 days after transferring or granting a benefit referred to in paragraph (1).

(10) The obligations of the undertaker under the Deed of Obligation are enforceable in accordance with article 46 (Enforcement, modification and discharge of the Deed of Obligation) against any person to whom the power to construct or operate numbered works 1 and 2 has been transferred or granted under this article for so long as that person benefits from the power to construct or operate any of numbered works 1 and 2, and such transferee or lessee must be treated for all purposes as the undertaker who entered into the Deed of Obligation with the other parties to it.

(11) The obligations of parties to the Deed of Obligation other than the undertaker are enforceable by any person to whom the power to construct or operate numbered works 1 and 2 has been transferred or granted under this article for so long as that person benefits from the power to construct or operate any of numbered works 1 or 2, and such parties must be treated for all purposes as parties who entered into the Deed of Obligation with the transferee or lessee.

Application of landlord and tenant law

34.—(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

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

Felling or lopping of trees and removal of hedgerows

36.—(1) Subject to article 37 (trees subject to tree preservation orders), 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 from—

- (a) obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development;
- (b) constituting a danger to persons using the authorised development; or
- (c) 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) or (4) the undertaker must—

- (a) do no unnecessary damage to any tree or shrub;
- (b) ensure all works are carried out to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards or other more suitable recognised codes of good practice provided these meet or exceed the appropriate British Standards;
- (c) pay compensation to any person for any loss or damage arising from such activity; and
- (d) take steps to avoid a breach of the provisions of the Wildlife and Countryside Act 1981^(a) and the Conservation of Habitats and Species Regulations 2017^(b) or any successor acts and regulations.

(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 and subject to paragraph (2), remove any hedgerows within the Order limits that may be required for the purposes of constructing 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 publicly maintainable highway without the prior consent of the highway authority.

(6) In this article “hedgerow” has the same meaning as in the Hedgerows Regulations 1997^(c).

Trees subject to tree preservation orders

37.—(1) The undertaker may fell or lop any tree described in Schedule 15 (trees subject to tree preservation orders) and shown on the tree preservation order trees location plan or cut back its roots, if it reasonably believes it to be necessary to do so in order to prevent the tree from obstructing or interfering with the construction of the authorised development or any apparatus used in connection with the authorised development.

(2) In carrying out any activity authorised by paragraph (1)—

- (a) the undertaker must do no unnecessary damage to any tree and must pay compensation to any person for any loss or damage arising from such activity; and
- (b) the duty contained in section 206(1) (replacement of trees) of the 1990 Act does not apply.

(3) The authority given by paragraph (1) constitutes a deemed consent under the relevant tree preservation order.

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

(a) 1981 c.69.
(b) S.I. 2017/1012.
(c) S.I. 1997/1160.

Certification of plans and documents, etc.

38.—(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 the table at Schedule 10 (documents and plans to be certified) for certification that they are true copies of the documents referred to in this Order.

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

Arbitration

39. Any difference under any provision of this Order, unless otherwise provided for, is to be referred to and settled in arbitration in accordance with the rules set out in Schedule 11 (arbitration rules) of this Order, 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.

Protective Provisions

40. Schedule 12 (protective provisions) has effect.

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.

(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 (references to service by post) of the Interpretation Act 1978^(a) 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 a 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 purpose of this Order a notice or other document is required or authorised to be served on a person as having an interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person by the description of “owner”, or as the case may be “occupier” of the land (describing it); and
- (b) either leaving it in the hands of the person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(a) 1978 c. 30.

(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) the notice or document is 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.

(2) Subject to paragraph (4), Schedule 13 (procedure for discharge) has effect in relation to all consents, agreements or approvals granted, refused or withheld in relation to any provision of this Order.

(3) Schedule 13 (procedure for discharge) does not apply in respect of any consents, agreements or approvals contemplated by the provisions of Schedule 12 (protective provisions) or any dispute under article 16(6) (protective work to buildings) to which paragraph (4) applies.

(4) Subject to any other provision in this Order, any difference or dispute arising under any provision of Schedule 12 (protective provisions) or article 16(6) (protective work to buildings) must, unless otherwise agreed in writing between the undertaker and the party in question, 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.

Guarantees in respect of payment of compensation

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

- (a) a guarantee, the form and amount of which has been 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, the form and amount of which has been 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 18 (compulsory acquisition of land);
- (b) article 20 (compulsory acquisition of rights);
- (c) article 21 (private rights);
- (d) article 23 (acquisition of subsoil only);
- (e) article 24 (power to override easements and other rights);
- (f) article 26 (rights under or over streets);
- (g) article 27 (temporary use of land for constructing the authorised development);
- (h) article 28 (temporary use of land for maintaining the authorised development); and
- (i) article 29 (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.

Traffic regulation measures

44.—(1) Subject to the provisions of this article, and the consent of the traffic authority in whose area the road is situated in, the undertaker may, for the purposes of construction, maintenance and decommissioning of the authorised development—

- (a) make provision, in respect of those lengths of road specified in column 2 of Part 1 of Schedule 14 (traffic regulation measures) imposing the temporary speed limit mentioned in column 3 of that Part of that Schedule;
- (b) make provision, in respect of those lengths of road specified in column 2 of Part 2 of Schedule 14 (traffic regulation measures), as to the direction of travel of vehicular traffic as specified in column 3 of that Part of that Schedule;
- (c) make provision, in respect of those lengths of road specified in column 2 of Part 3 of Schedule 14 (traffic regulation measures) temporarily closing that road to the classes of road user specified in column 3 of that Part of that Schedule; and
- (d) make provision temporarily suspending in whole or in part any order made, or having effect as if made, under the 1984 Act in so far as it is inconsistent with any prohibition, restriction or other provision made by the undertaker under this paragraph.

(2) Subject to the provisions of this article, and the consent of the traffic authority in whose area the road is situated, the undertaker may for the purposes of construction, maintenance and decommissioning of the authorised development, temporarily place traffic signs and signals in the extents of the road specified in column 2 of Part 4 of Schedule 14 (traffic regulation measures) and, subject to the consent of the traffic authority in whose area the road is situated, the placing of those traffic signs and signals is deemed to have been permitted by the traffic authority for the purposes of section 65 of the 1984 Act and the Traffic Signs Regulations and General Directions 2016^(a).

(3) Subject to the provisions of this article and without limitation to the exercise of the powers conferred by paragraph (1), the undertaker may make temporary provision for the purposes of the construction, maintenance or decommissioning of the authorised development—

(a) S.I. 2016/362.

- (a) as to the speed at which vehicles may proceed along any road;
- (b) permitting, prohibiting or restricting the stopping, waiting, loading or unloading of vehicles on any road;
- (c) as to prescribed routes for vehicular traffic or the direction or priority of vehicular traffic on any road;
- (d) permitting, prohibiting or restricting the use by vehicular traffic or non-vehicular traffic of any road; and
- (e) suspending or amending in whole or in part any order made, or having effect as if made, under the 1984 Act.

(4) No speed limit imposed by or under this Order applies to vehicles falling within regulation 3(4) of the Road Traffic Exemptions (Special Forces) (Variation and Amendment) Regulations 2011^(a) when used in accordance with regulation 3(5) of those regulations.

(5) Prior to any application for the consent of the traffic authority under paragraphs (1) and (2), the undertaker must carry out 21 days consultation with affected highway users by means of site notices and local newspaper advertisement circulating in the area in which the traffic regulation measures are proposed and must include a consultation report presenting the results of that consultation as part of its application for consent.

(6) Before exercising the power conferred by paragraph (3) the undertaker must—

- (a) consult the chief officer of police in whose area the road is situated; and
- (b) obtain the written consent of the traffic authority.

(7) The undertaker must not exercise the powers conferred by paragraphs (1), (2) or (3) unless the undertaker has—

- (a) given not less than 4 weeks' notice in writing to the chief officer of police in whose area the road is situated and to the traffic authority; and
- (b) not less than 7 days before the provision is to take effect, published the undertaker's intention to make the provision in one or more newspapers circulating in the area in which any road to which the provision relates is situated.

(8) Any provision made under the powers conferred by paragraphs (1) or (3) of this article may be suspended, varied or revoked by the undertaker from time to time by subsequent exercise of the powers conferred by paragraph (1) or (3).

(9) Any provision made by the undertaker under paragraphs (1) or (3)—

- (a) must be made by written instrument in such form as the undertaker considers appropriate;
- (b) 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 may specify savings and exemptions to which the provision is subject; and
- (c) is deemed to be a traffic order for the purposes of Schedule 7 (road traffic contraventions subject to civil enforcement) to the 2004 Act.

Crown Rights

45.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular, nothing in this Order authorises the undertaker to take, use, enter upon or in any manner interfere with any land or rights of any description—

- (a) belonging to Her Majesty in right of the Crown and forming part of The Crown Estate without the consent in writing of the Crown Estate Commissioners;
- (b) belonging to Her Majesty in right of the Crown and not forming part of The Crown Estate without the consent in writing of the government department having the management of that land; or

(a) S.I. 2011/935.

- (c) belonging to a government department or held in trust for Her Majesty for the purposes of a government department without the consent in writing of that government department.

(2) Paragraph (1) does not apply to the exercise of any right under this Order for the compulsory acquisition of an interest in any Crown land (as defined in the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown.

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

Enforcement, modification and discharge of the Deed of Obligation

46.—(1) The terms of the Deed of Obligation are enforceable by injunction.

(2) An obligation in the Deed of Obligation may not be modified or discharged except—

- (a) by agreement between the undertaker and the beneficiary of the obligation, executed as a deed; or
- (b) further to a determination by the Secretary of State under this article.

(3) The undertaker may, at any time after the expiry of the period of five years beginning with the date on which the Deed of Obligation was first entered into, apply to the Secretary of State for the obligation—

- (a) to have effect subject to such modifications as may be specified in the application; or
- (b) to be discharged, and must notify Suffolk County Council and Cambridgeshire County Council as soon as any such application is made.

(4) An application under paragraph (3) for the modification of an obligation in the Deed of Obligation may not specify a modification imposing an obligation on any other person against whom the Deed of Obligation is enforceable.

(5) Where an application is made to the Secretary of State under paragraph (3), the Secretary of State must consult Suffolk County Council and Cambridgeshire County Council and, taking into account their responses, may determine—

- (a) that the obligation must continue to have effect without modification;
- (b) if the obligation no longer serves a useful purpose, that it must be discharged; or
- (c) if the obligation continues to serve a useful purpose, but would serve that purpose equally well if it had effect subject to the modifications specified in the application, that it must have effect subject to those modifications,

and must give notice of their determination to the undertaker, Suffolk County Council and Cambridgeshire County Council within three months of the application and provide full reasons for the decision.

(6) Where the Secretary of State determines under this article that an obligation has effect subject to modifications specified in the application, the obligation as modified must be enforceable as if it had been entered into on the date on which notice of the determination was given to the undertaker, Suffolk County Council and Cambridgeshire County Council or such other date as the Secretary of State may determine.

(7) An application to the Secretary of State under paragraph (3) must include the following information—

- (a) the name and address of the undertaker;
- (b) sufficient information to enable identification of the obligation which the undertaker wishes to have modified or discharged;
- (c) the undertaker's reasons for applying for the modification or discharge of that obligation; and
- (d) such other information as the Secretary of State considers necessary to enable them to determine the application.

(8) Where it is proposed that Suffolk County Council or Cambridgeshire County Council is not to be a party to any deed entered into under paragraph (3)(a), the body not proposed to be a party must be provided with the information set out in paragraphs (7)(a) to (c), and be given not less than 21 days to make representations.

(9) Section 84 of the Law of Property Act 1925 (power to discharge or modify restrictive covenants affecting land) does not apply to an obligation in the Deed of Obligation.

(10) In this article “undertaker” means the undertaker authorised to construct or operate numbered works 1 and 2, being the undertaker bound by the Deed of Obligation.

Signed by authority of the Secretary of State

Address
Date

Signature
Title
Department

SCHEDULES

SCHEDULE 1

Article 2

AUTHORISED DEVELOPMENT

1. In this Schedule—

“battery stations” means a station comprising transformers, switchgear, power conversion system (PCS) or inverter, and other ancillary equipment with each component for each battery station either—

- (a) located outside, with a concrete foundation slab or concrete piling for each of the inverters and transformers and a levelling layer of thick sand with a concrete perimeter pavement for the switchgear; or
- (b) housed together within a container sitting on a concrete foundation slab or concrete piling;

“East A Site” means land that forms part of the authorised development located south of Isleham in Cambridgeshire and Suffolk as shown on the works plans;

“East B Site” means land that forms part of the authorised development located between Worlington and Freckenham in Suffolk as shown on the works plans;

“energy storage” means equipment used for the storage of electrical energy;

“existing substation” means the existing substation at Burwell, Weirs Drove, Burwell, Cambridge CB25 0BP, owned and operated by NGET;

“inverter” means electrical equipment required to convert direct current power generated to alternating current;

“mounting structure” means a frame or rack made of galvanised steel or other material designed to support the solar modules and mounted on piles driven into the ground by one of the following methods: piles rammed into a pre-drilled hole, a pillar attaching to a steel ground screw, pillars fixed to a concrete foundation, or a pillar set in concrete in a pre-made hole in the ground (micro piled);

“permissive paths” means new access tracks providing restricted public access within the Order limits along the route shown in Annex A to the outline landscape and ecology management plan;

“solar module” means a solar photovoltaic panel designed to convert solar irradiance to electrical energy fitted to mounting structures;

“solar stations” means a station comprising inverters, transformers and switchgear with each component for each solar station either—

- (a) located outside, with a concrete foundation slab for each of the inverters, transformers and switchgear and a levelling layer of thick sand with a concrete perimeter pavement; or
- (b) housed together within a container sitting on a concrete foundation slab and a levelling layer of thick sand with a concrete perimeter pavement;

“substation” means a compound, containing electrical equipment required to switch, transform, convert electricity and provide reactive power compensation mounted on a reinforced foundation slab or piling;

“switchgear” means a combination of electrical disconnect switches, fuses or circuit breakers used to control, protect and isolate electrical equipment;

“transformer” means a structure containing an electrical device to transform electricity by increasing or reducing the voltage; and

“West A Site” means the land that forms part of authorised development located within the southern fields of the Chippenham Park Estate bordering the A11 and A14 corridor in Cambridgeshire as shown on the works plans.

2. In the Districts of West Suffolk and East Cambridgeshire in the Counties of Cambridgeshire and Suffolk a nationally significant infrastructure project as defined in sections 14 and 15 of the 2008 Act and associated development under section 115(1)(b) of the 2008 Act.

The nationally significant infrastructure project comprises up to one generating station with a gross electrical output capacity of over 50 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— a ground mounted solar photovoltaic generating station with a gross electrical output capacity of over 50 megawatts including—

- (a) **Work No. 1A**— works on the East A Site comprising—
 - (i) solar modules;
 - (ii) solar stations;
 - (iii) electrical cables including electrical cables connecting to Work No. 3A;
 - (iv) monitoring and control systems housed within a control room building or container; and
 - (v) weather stations and direct current (DC) electrical boxes,
- (b) **Work No. 1B**— works on the East B Site comprising—
 - (i) solar modules;
 - (ii) solar stations;
 - (iii) electrical cables including electrical cables connecting to Work No. 3B;
 - (iv) monitoring and control systems housed within a control room building or container; and
 - (v) weather stations and DC electrical boxes, and
- (c) **Work No. 1C**— works on the West A Site comprising—
 - (i) solar modules;
 - (ii) solar stations;
 - (iii) electrical cables including electrical cables connecting to Work No. 3C;
 - (iv) monitoring and control systems housed within a control room building or container; and
 - (v) weather stations and DC electrical boxes.

and associated development within the meaning of section 115(2) of the 2008 Act including—

Work No. 2— an energy storage facility of up to 500 megawatts of power at the point of grid connection including—

- (a) **Work No. 2A**— a battery energy storage compound on the East A Site comprising—
 - (i) battery energy storage cells;
 - (ii) a structure protecting the battery energy storage cells comprised in Work No. 2A(i) and ancillary equipment, being either one container or multiple containers joined to each other, mounted on a reinforced concrete foundation slab or concrete piling;
 - (iii) heating, ventilation and air conditioning (HVAC) or liquid cooling systems either housed within the containers comprised in Work No. 2A(ii), attached to the side or top of each of the containers, or located separate from but near to each of the containers;
 - (iv) battery stations;

- (v) monitoring and control systems housed within a container with the HVAC or liquid cooling systems in Work No. 2A(iii) or located separately in its own container or control room;
 - (vi) electrical cables including electrical cables connecting to Work No. 3A;
 - (vii) fire safety infrastructure comprising fire suppression system; and
 - (viii) a water storage structure for the purposes of firefighting comprising fire water tanks and fire water containment.
- (b) **Work No. 2B**— a battery energy storage compound on the East B Site comprising—
- (i) battery energy storage cells;
 - (ii) a structure protecting the battery energy storage cells comprised in Work No. 2B(i) and ancillary equipment, being either one container or multiple containers joined to each other, mounted on a reinforced concrete foundation slab or concrete piling;
 - (iii) heating, ventilation and air conditioning (HVAC) or liquid cooling systems either housed within the containers comprised in Work No. 2B(ii), attached to the side or top of each of the containers, or located separate from but near to each of the containers;
 - (iv) battery stations;
 - (v) monitoring and control systems housed within a container with the HVAC or liquid cooling systems in Work No. 2B(iii) or located separately in its own container or control room;
 - (vi) electrical cables including electrical cables connecting to Work No. 3B;
 - (vii) fire safety infrastructure comprising fire suppression system; and
 - (viii) a water storage structure for the purposes of firefighting comprising fire water tanks and fire water containment.
- (c) **[Work No. 2C**— a battery energy storage compound on the West A Site comprising—
- (i) battery energy storage cells;
 - (ii) a structure protecting the battery energy storage cells comprised in Work No. 2C(i) and ancillary equipment, being either one container or multiple containers joined to each other, mounted on a reinforced concrete foundation slab or concrete piling;
 - (iii) heating, ventilation and air conditioning (HVAC) or liquid cooling systems either housed within the containers comprised in Work No. 2C(ii), attached to the side or top of each of the containers, or located separate from but near to each of the containers;
 - (iv) battery stations;
 - (v) monitoring and control systems housed within a container with the HVAC or liquid cooling systems in Work No. 2C(iii) or located separately in its own container or control room;
 - (vi) electrical cables including electrical cables connecting to Work No. 3C;
 - (vii) fire safety infrastructure comprising fire suppression system; and
 - (viii) a water storage structure for the purposes of firefighting comprising fire water tanks and fire water containment.]

Work No. 3— onsite substations including—

- (a) **Work No. 3A**— works on the East A Site comprising—
- (i) substation;
 - (ii) control building or container;
 - (iii) welfare facilities;
 - (iv) hardstanding areas; and
 - (v) electrical cables including electrical cables connecting to Work Nos. 1A, 2A and 4;

- (b) **Work No. 3B**— works on the East B Site comprising—
 - (i) substation;
 - (ii) shunt reactor;
 - (iii) control building or container;
 - (iv) welfare facilities;
 - (v) hardstanding areas; and
 - (vi) electrical cables including electrical cables connecting to Work Nos. 1B, 2B and 4; and
- (c) **Work No. 3C**— works on the West A Site comprising—
 - (i) substation;
 - (ii) control building or container;
 - (iii) welfare facilities;
 - (iv) hardstanding and parking areas; and
 - (v) electrical cables including electrical cables connecting to Work Nos. 1C, 2C and 4.

Work No. 4— works to lay electrical cables and temporary construction laydown areas for the electrical cables including—

- (a) electrical cables connecting Work No. 3A to Work No. 3B;
- (b) electrical cables connecting Work No. 3B to Work No. 3C;
- (c) electrical cables connecting Work No. 3C to the existing substation; and
- (d) up to 15 temporary construction laydown areas comprising—
 - (i) areas of hardstanding, compacted ground or track matting;
 - (ii) car parking;
 - (iii) area to store materials and equipment;
 - (iv) site and welfare offices and workshops;
 - (v) security infrastructure, including cameras, perimeter fencing and lighting;
 - (vi) safety infrastructure to warn and manage traffic when crossing roads or other obstacles;
 - (vii) site drainage and waste management infrastructure (including sewerage); and
 - (viii) electricity, water, waste water and telecommunications connections.

Work No. 5— Not Used.

Work No. 6— works to create, enhance and maintain green infrastructure, including—

- (a) **Work No. 6A**— works on the East A Site comprising—
 - (i) soft landscaping including planting;
 - (ii) landscape and biodiversity enhancement measures;
 - (iii) earth works;
 - (iv) permissive paths;
 - (v) hard standing and hard landscaping;
 - (vi) drainage and irrigation infrastructure and improvements or extensions to existing irrigation systems;
 - (vii) fencing, gates, boundary treatment and other means of enclosure; and
 - (viii) improvement, maintenance and use of existing private tracks;
- (b) **Work No. 6B**—works on the East B Site comprising—
 - (i) soft landscaping including planting;

- (ii) landscape and biodiversity enhancement measures;
- (iii) earth works;
- (iv) permissive paths;
- (v) hard standing and hard landscaping;
- (vi) drainage and irrigation infrastructure and improvements or extensions to existing irrigation systems;
- (vii) fencing, gates, boundary treatment and other means of enclosure; and
- (viii) improvement, maintenance and use of existing private tracks; and
- (c) **Work No. 6C**— works on the West A Site comprising—
 - (i) soft landscaping including planting;
 - (ii) landscape and biodiversity enhancement measures;
 - (iii) earth works;
 - (iv) hard standing and hard landscaping;
 - (v) drainage and irrigation infrastructure and improvements or extensions to existing irrigation systems;
 - (vi) fencing, gates, boundary treatment and other means of enclosure; and
 - (vii) improvement, maintenance and use of existing private tracks.

Work No. 7— temporary construction laydown areas including—

- (a) **Work No. 7A**— a temporary construction laydown area on the East Site A comprising—
 - (i) areas of hardstanding;
 - (ii) car parking;
 - (iii) site and welfare offices and workshops;
 - (iv) security infrastructure, including cameras, perimeter fencing and lighting;
 - (v) site drainage and waste management infrastructure (including sewerage); and
 - (vi) electricity, water, waste water and telecommunications connections;
- (b) **Work No. 7B**— up to [five] temporary construction laydown areas on the East Site B comprising—
 - (i) areas of hardstanding;
 - (ii) car parking;
 - (iii) site and welfare offices and workshops;
 - (iv) security infrastructure, including cameras, perimeter fencing and lighting;
 - (v) site drainage and waste management infrastructure (including sewerage); and
 - (vi) electricity, water, waste water and telecommunications connections; and
- (c) **Work No. 7C**— up to [three] temporary construction laydown areas on the West Site A comprising—
 - (i) areas of hardstanding;
 - (ii) car parking;
 - (iii) security infrastructure, including cameras, perimeter fencing and lighting;
 - (iv) site drainage and waste management infrastructure (including sewerage); and
 - (v) electricity, water, waste water and telecommunications connections.

Work No. 8— warehouse buildings and permanent compounds comprising—

- (a) **Work No. 8A**— warehouse building and a permanent compound on the East Site A comprising—
 - (i) a warehouse building for the storage for spare parts and office and welfare facilities;

- (ii) a canteen either located within the warehouse building within Work No. 8A(i) or in a separate container or building;
- (iii) waste skips;
- (iv) parking areas; and
- (v) a permanent compound area; and
- (b) **Work No. 8B**— warehouse building and a permanent compound area on the East Site B comprising—
 - (i) a warehouse building for the storage of spare parts and office and welfare facilities;
 - (ii) a canteen either located within the warehouse building within Work No. 8B(i) or in a separate container or building;
 - (iii) waste skips;
 - (iv) parking areas; and
 - (v) a permanent compound area.

Work No. 9— works to existing streets to facilitate access to Work Nos. 1 to 8.

[Work No. 10— works to create and maintain stone curlew reserve.]

In connection with and in addition to Work Nos. 1 to 10 further associated development comprising such other works or operations as may be necessary or expedient for the purposes of or in connection with the authorised development, and which are within the Order limits and fall within the scope of the work assessed by the environmental statement, including—

- (a) works within highways, including—
 - (i) alteration of the layout of any street permanently or temporarily, including increasing or reducing the width of the carriageway of any street by increasing or reducing the width of any kerb, footway, cycleway, or verge within the street including removal of any vegetation; and altering the level or increasing the width of any such kerb, footway, cycleway or verge within the street including removal of any vegetation; and works for the strengthening, improvement, repair, maintenance or reconstruction of any street;
 - (ii) street works, including breaking up or opening a street, or any sewer, drain or tunnel under it, and tunnelling or boring under a street;
 - (iii) relocation, removal or provision of new road traffic signs, signals, street lighting, road restraints and carriageway lane markings;
 - (iv) works to place, alter, remove or maintain street furniture or apparatus (including statutory undertakers' apparatus) in, under or above a street, including mains, sewers, drains, pipes, cables, cofferdams, lights, fencing and other boundary treatments; and
 - (v) works to facilitate traffic management and to deliver information relating to the authorised development; and
- (b) other works and development including—
 - (i) works for the provision of fencing and security measures such as CCTV, columns, lighting and communication boxes;
 - (ii) laying down of internal access tracks, ramps, means of access, footpaths, roads and cycle routes;
 - (iii) bunds, embankments, trenching and swales;
 - (iv) boundary treatments, including means of enclosure;
 - (v) glint and glare boarding;
 - (vi) laying out and surfacing of permissive paths, including the laying and construction of drainage infrastructure, signage and information boards;
 - (vii) foundations for structures or buildings being piles driven into the ground, piles rammed into a pre-drilled hole, a pillar attaching to a steel ground screw, pillars

fixed to a concrete foundation, or a pillar set in concrete in a pre-made hole in the ground (micro piled);

- (viii) works to the existing irrigation system and works to alter the position and extent of such irrigation system;
- (ix) 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;
- (x) works to alter the course of, or otherwise interfere with, non-navigable rivers, streams or watercourses;
- (xi) surface water drainage systems, storm water attenuation systems including storage basins, oil water separators, including channelling and culverting and works to existing drainage systems;
- (xii) 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;
- (xiii) tunnelling, boring and drilling works; and
- (xiv) landscaping and mitigation works.

SCHEDULE 2 REQUIREMENTS

Article 3

Interpretation

1. In this Schedule—

“both relevant county authorities” means Cambridgeshire County Council and Suffolk County Council each being the relevant county authority for part of the authorised development;

“both relevant planning authorities” means East Cambridgeshire District Council and West Suffolk Council each being the relevant planning authority for part of the authorised development; and

“the offsetting habitat provision for stone curlews specification” means the specification of that name in annex F to the outline landscape and ecology management plan.

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 and date of final commissioning

3.—(1) No part of the authorised development may commence until a written scheme setting out the phase or phases of construction of the authorised development has been submitted to and approved by both relevant planning authorities.

(2) The scheme submitted pursuant to sub-paragraph (1) must include a timetable for the construction of the phase or phases of the authorised development.

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

- (a) Work No. 2A may not be brought into commercial use without Work No. 1A also being brought into commercial use;
- (b) Work No. 2B may not be brought into commercial use without Work No. 1B also being brought into commercial use; and
- (c) [Work No. 2C may not be brought into commercial use without Work No. 1C also being brought into commercial use.]

(4) In respect of the phase or phases, the undertaker must give notice to both relevant planning authorities within seven days of the date of final commissioning that final commissioning of the phase or, where there is more than one phase, each phase has taken place.

Requirement for written approval

4. Where under any of the requirements the approval, agreement or confirmation of both relevant county authorities or both relevant planning authorities or the relevant county authority or relevant planning authority or the Secretary of State (as applicable) or another person is required, that approval, agreement or confirmation must be provided in writing.

Approved details and amendments to them

5.—(1) With respect to the documents certified under article 38 (certification of plans and documents, etc.) and any plans, details or schemes which have been approved pursuant to any requirement (together the “Approved Documents, Plans, Details or Schemes”), the undertaker may submit to the relevant county authority or relevant planning authority or both relevant county

authorities or both relevant planning authorities (as applicable) for approval any amendments to any of the Approved Documents, Plans, Details or Schemes and, following approval by the relevant county authority or relevant planning authority or both relevant county authorities or both relevant planning authorities (as applicable), the relevant Approved Documents, Plans, Details or Schemes is to be taken to include the amendments as so approved pursuant to this paragraph.

(2) Approval under sub-paragraph (1) for the amendments to any of the Approved Documents, Plans, Details or Schemes must not be given except where it has been demonstrated to the satisfaction of the relevant county authority, the relevant planning authority or both relevant county authorities or both relevant planning authorities (as applicable) 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

6.—(1) No phase of the authorised development may commence until details of—

- (a) the layout;
- (b) scale;
- (c) proposed finished ground levels;
- (d) external appearance, including for Work No. 2, Work No. 3 and Work No. 8 how the appearance has sought to take account of the local landscape, or where this has not been possible, an explanation of why this has not been able to be possible; but nothing in this sub-paragraph requires the undertaker to require products not currently available on the commercial market to be specifically produced for the authorised development;
- (e) hard surfacing materials;
- (f) vehicular and pedestrian access, parking and circulation areas;
- (g) refuse or other storage units, signs and lighting;
- (h) drainage, water, power and communications cables and pipelines;
- (i) how the design of that phase has taken account of either—
 - (i) the arboricultural impact assessment, save for those aspects of the arboricultural impact assessment which relate to development proposals that do not form part of the authorised development; or
 - (ii) for those trees that have not already been assessed in the arboricultural impact assessment, updated tree surveys for locations within that phase where arboricultural impacts are likely, such surveys to be carried out prior to the submission of these details and to be submitted as part of these details; and
- (j) programme for landscaping works,

relating to that phase have been submitted and approved in writing by the relevant planning authority for that phase or, where the phase falls within the administrative areas of both the District of West Suffolk and the District of East Cambridgeshire, both relevant planning authorities.

(2) The details submitted must accord with-

- (a) the design principles, save for those aspects of the design principles which relate to development proposals that do not form part of the authorised development;
- (b) the landscape and ecology management plan for the relevant phase approved under requirement 8; and
- (c) the flood risk assessment, save for those aspects of the flood risk assessment which relate to development proposals that do not form part of the authorised development.

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

(4) The details for Work No. 2 must accord with the approved battery fire safety management plan under requirement 7 and appendix 16D of the environmental statement.

Fire safety management

7.—(1) Work No. 2 must not commence until a battery fire safety management plan (“BFSMP”) has been submitted to and approved by both relevant county authorities.

(2) The BFSMP must prescribe measures to facilitate safety during the construction, operation and decommissioning of Work No. 2 including the transportation of new, used and replacement battery cells both to and from the authorised development.

(3) The BFSMP submitted under paragraph (1) must be substantially in accordance with the outline battery fire safety management plan save that—

- (a) it does not need to include battery fire safety measures for any elements of the outline battery fire safety management plan which relate to development proposals that do not form part of the authorised development; and
- (b) other changes can be proposed to the battery fire safety measures set out in the outline battery fire safety management plan to reflect the removal of development proposals that do not form part of the authorised development, provided that the battery safety management plan submitted under paragraph (1) demonstrates that such changes do not lead to effects materially worse than those assessed in the environmental statement.

(4) Both relevant county authorities must consult with the Cambridgeshire Fire and Rescue Service, the Suffolk Fire and Rescue Service and the Environment Agency before determining an application for approval of the BFSMP.

(5) The BFSMP must be implemented as approved and maintained throughout the construction and operation of the authorised development.

Landscape and ecology management plan

8.—(1) No phase of the authorised development may commence, and no part of the permitted preliminary works for that phase comprising vegetation removal may start, until a written landscape and ecology management plan has been submitted to and approved by the relevant planning authority for that phase or, where the phase falls within the administrative areas of both the District of West Suffolk and the District of East Cambridgeshire, both relevant planning authorities, such approval to be in consultation with Natural England and Historic England.

(2) The written landscape and ecology management plan submitted under paragraph **Error! Reference source not found.** must be substantially in accordance with the outline landscape and ecology management plan save that—

- (a) it does not need to include mitigation or monitoring measures for any elements of the outline landscape and ecology management plan which relate to development proposals that do not form part of the authorised development; and
- (b) other changes can be proposed to the mitigation and monitoring measures set out in the outline landscape and ecology management plan to reflect the removal of development proposals that do not form part of the authorised development, provided that the written landscape and ecology management plan submitted under paragraph (1) demonstrates that such changes do not lead to effects materially worse than those assessed in the environmental statement.

(3) The landscape and ecological management plan must include details of—

- (a) how the plan will secure a minimum of 10% biodiversity net gain during the operation of the authorised development; and
- (b) how the landscaping and ecological measures will be managed and maintained during the operational life of the authorised development to the date on which the decommissioning environmental management plan is implemented pursuant to requirement 22 (decommissioning and restoration).

(4) The landscape and ecology management plan must be implemented as approved and maintained throughout the construction and operation of the authorised development.

Implementation and maintenance of landscaping

9. All landscaping works must be carried out in accordance with the landscape and ecological management plan approved under requirement 8 (landscape and ecology management plan).

[Stone curlew

10.—(1) No part of Work No. 10 may commence until an update of the offsetting habitat provision for stone curlews specification has been submitted to and approved by both relevant planning authorities, such approval to be in consultation with Natural England.

(2) The specification submitted and approved pursuant to sub-paragraph (1) must be substantially in accordance with the offsetting habitat provision for stone curlew specification.

(3) No part of Work Nos. 1A, 1B, 2A, 2B, 3A, 3B, 6A, 6B, 7A, 7B, 8A and 8B may commence until the undertaker has provided the offsetting habitat provision for stone curlews in accordance with the update of the offsetting habitat provision for stone curlews specification.

(4) The undertaker must maintain the offsetting habitat provision for stone curlews in accordance with the update of the offsetting habitat provision for stone curlews specification approved pursuant to sub-paragraph (1) throughout the construction and operation of the authorised development and during the carrying out of decommissioning works.]

Fencing and other means of enclosure

11.—(1) No phase of the authorised development may commence until written details of all proposed temporary fences, walls or other means of enclosure, including those set out in the framework construction environmental management plan (save for the fencing proposals within the framework construction environmental management plan which relate to development proposals that do not form part of the authorised development), for that phase have been submitted to and approved by the relevant planning authority or, where the phase falls within the administrative areas of both the District of West Suffolk and the District of East Cambridgeshire, both relevant planning authorities.

(2) No phase of the authorised development may commence until written details of all permanent fences, walls or other means of enclosure for that phase have been submitted to and approved by the relevant planning authority or, where the phase falls within the administrative areas of both the District of West Suffolk and the District of East Cambridgeshire, both relevant planning authorities.

(3) For the purposes of requirement 11(1), “commence” includes any permitted preliminary works.

(4) Any construction site must remain securely fenced in accordance with the approved details under paragraph 11(1) at all times during construction of the authorised development.

(5) Any temporary fencing must be removed on completion of the phase of construction of the authorised development for which it was used.

(6) Prior to the date of final commissioning of any phase, any permanent fencing, walls or other means of enclosure for that phase approved pursuant to sub-paragraph (2) must be completed and properly maintained for the operational lifetime of the part of the authorised development enclosed by the permanent fencing, walls or other means of enclosure.

Surface and foul water drainage

12.—(1) No phase of the authorised development may commence until details of the surface water drainage strategy (including the results of the infiltration testing) and (if any) foul water drainage system (including means of pollution control) for that phase have been submitted to and approved by the relevant county authority for that phase or, where the phase falls within the administrative areas of both the county of Suffolk and the county of Cambridgeshire, both relevant county authorities such approval to be in consultation with both relevant planning authorities or

the relevant planning authority (as applicable), the relevant internal drainage board and Anglian Water (in respect of its sewerage undertaker functions).

(2) The surface water drainage strategy must be substantially in accordance with the drainage technical note and include details of bunded lagoons as required by the battery fire safety management plan approved pursuant to requirement 7 save that—

- (a) it does not need to include details for any elements of the drainage technical note which relate to development proposals that do not form part of the authorised development; and
- (b) other changes can be proposed to the mitigation and monitoring measures set out in the drainage technical note to reflect the removal of development proposals that do not form part of the authorised development, provided that the surface water drainage strategy and details of any foul water drainage system submitted under paragraph (1) demonstrates that such changes do not lead to effects materially worse than those assessed in the environmental statement.

(3) Any strategy approved pursuant to sub-paragraph (1) must be implemented as approved and maintained throughout the construction and operation of the authorised development.

Archaeology

13. The authorised development must be carried out in accordance with the detailed archaeological mitigation strategy save for those aspects of the detailed archaeological mitigation which relate to development proposals that do not form part of the authorised development..

Construction environmental management plan

14.—(1) No phase of the authorised development may commence until a construction environmental management plan for that phase has been submitted to and approved by the relevant planning authority for that phase or, where the phase falls within the administrative areas of both the District of West Suffolk and the District of East Cambridgeshire, both relevant planning authorities, such approval to be in consultation with the relevant highway authority, Natural England and the Environment Agency.

(2) The construction environmental management plan submitted under paragraph (1) must be substantially in accordance with the framework construction environmental management plan save that—

- (a) it does not need to include mitigation or monitoring measures for any elements of the framework construction environmental management plan which relate to development proposals that do not form part of the authorised development; and
- (b) other changes can be proposed to the mitigation and monitoring measures set out in the framework construction environmental management plan to reflect the removal of development proposals that do not form part of the authorised development, provided that the construction environmental management plan submitted under paragraph (1) demonstrates that such changes do not lead to effects materially worse than those assessed in the environmental statement.

(3) The plan submitted and approved pursuant to sub-paragraph (1) must include a construction resource management plan that includes details of proposals to minimise the use of natural resources and unnecessary materials.

(4) For the purposes of requirement 14(1), “commence” includes any permitted preliminary works comprising above ground site preparation for temporary facilities for the use of contractors and site clearance (including vegetation removal, demolition of existing buildings and structures).

(5) All construction works associated with the authorised development must be carried out in accordance with the approved construction environmental management plan.

Operational environmental management plan

15.—(1) Prior to the date of final commissioning for any phase, an operational environmental management plan for that phase must be submitted to and approved by the relevant planning authority for that phase or, where the phase falls within the administrative areas of both the District of West Suffolk and the District of East Cambridgeshire, both relevant planning authorities, such approval to be in consultation with the relevant highway authority, Natural England and the Environment Agency.

(2) The operational environmental management plan submitted under paragraph (1) must be substantially in accordance with the framework operational environmental management plan save that—

- (a) it does not need to include mitigation or monitoring measures for any elements of the framework operational environmental management plan which relate to development proposals that do not form part of the authorised development; and
- (b) other changes can be proposed to the mitigation and monitoring measures set out in the framework operational environmental management plan to reflect the removal of development proposals that do not form part of the authorised development, provided that the operational environmental management plan submitted under paragraph (1) demonstrates that such changes do not lead to effects materially worse than those assessed in the environmental statement.

(3)

(4) The operation of the authorised development must be carried out in accordance with the approved operational environmental management plan.

Construction traffic management plan and travel plan

16.—(1) No phase of the authorised development may commence until a construction traffic management plan and travel plan for that phase has been submitted to and approved by the relevant county authority for that phase or, where the phase falls within the administrative areas of both the county of Suffolk and the county of Cambridgeshire, both relevant county authorities.

(2) The construction traffic management plan and travel plan submitted under paragraph (1) must be substantially in accordance with the framework construction traffic management plan and travel plan save that—

- (a) it does not need to include mitigation or monitoring measures for any elements of the framework construction traffic management plan which relate to development proposals that do not form part of the authorised development; and
- (b) other changes can be proposed to the mitigation and monitoring measures set out in the framework construction traffic management plan and travel plan to reflect the removal of development proposals that do not form part of the authorised development, provided that the construction traffic management plan and travel plan submitted under paragraph (1) demonstrates that such changes do not lead to effects materially worse than those assessed in the environmental statement.

(3) The construction traffic management plan and travel plan must be implemented as approved and maintained until the date of final commissioning.

(4) No part of the permitted preliminary works for each phase may start until a permitted preliminary works traffic management and access plan for the permitted preliminary works for that phase has been submitted to and approved by the relevant county authority for that phase or, where the phase falls within the administrative areas of both the county of Suffolk and the county of Cambridgeshire, both relevant county authorities.

(5) The permitted preliminary works traffic management and access plan must be implemented as approved during construction.

Operational noise

17.—(1) No phase of the authorised development may commence until an operational noise assessment containing details of how the design of the authorised development has incorporated mitigation to ensure the operational noise rating levels as set out in the environmental statement are to be complied with for that phase has been submitted to and approved by the relevant planning authority for that phase or, where the phase falls within the administrative areas of both the District of West Suffolk and the District of East Cambridgeshire, both relevant planning authorities.

(2) The design as described in the operational noise assessment must be implemented as approved throughout construction and maintained during the operation of the authorised development.

Ground conditions

18.—(1) No phase of the authorised development may commence, and no part of the permitted preliminary works for that phase comprising demolition of existing structures, environmental surveys, geotechnical surveys and other investigations for the purpose of assessing ground conditions only may start, until a written strategy in relation to the identification and remediation of any risks associated with contamination for that phase has been submitted to and approved by the relevant planning authority or, where the phase falls within the administrative areas of both the District of West Suffolk and the District of East Cambridgeshire, both relevant planning authorities. The written strategy must include geo-environmental investigations which must be designed with due consideration of the requirements of BS 10175:2011: +A2 2017: Investigation of Potentially Contaminated Sites – Codes of Practice (BSI).

(2) If, during the carrying out of the authorised development, contamination not previously identified is found to be present no further development (unless otherwise agreed in writing with the relevant planning authority) may be carried out on the areas 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.

(3) The strategy submitted pursuant to sub-paragraphs (1) and (2) must—

- (a) include a site investigation scheme, based on the preliminary risk assessment set out in chapter 16 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 paragraph (a) will be reported, and provide for the submission and approval by the relevant planning authority or both relevant planning authorities 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 paragraph (b) have been completed and are effective, and any requirement for long term monitoring of pollutant linkages, maintenance or arrangements for contingency action.

(4) The authorised development must be carried out in accordance with the strategies approved pursuant to sub-paragraph (1) and any remediation strategy approved pursuant to sub-paragraph (2).

Water management plan

19.—(1) No phase of the authorised development may commence until a water management plan for the construction of that phase has been submitted to and approved by the relevant county authority for that phase or, where the phase falls within the administrative areas of both the county of Suffolk and the county of Cambridgeshire, both relevant county authorities such approval to be

in consultation with both relevant planning authorities or the relevant planning authority (as applicable) and the relevant internal drainage board. The water management plan must include—

- (a) details as to the management of water use and discharge during construction;
- (b) measures to manage surface water runoff during construction;
- (c) details as to the drainage system during construction;
- (d) details of water quality monitoring during construction;
- (e) a spill plan and details for pollution prevention including details on the training and tool box talks; and
- (f) roles and responsibilities.

(2) The water management plan must be implemented as approved and maintained throughout the construction of the authorised development.

Skills, supply chain and employment

20.—(1) No phase of the authorised development may commence until a skills, supply chain and employment plan in relation to that phase has been submitted to and approved by the relevant planning authority for that phase or, where the phase falls within the administrative areas of both the District of West Suffolk and the District of East Cambridgeshire, both relevant planning authorities.

(2) The skills, supply chain and employment plan submitted under paragraph (1) must be substantially in accordance with the outline skills, supply chain and employment plan save that—

- (a) it does not need to include mitigation or monitoring measures for any elements of the outline skills, supply chain and employment plan which relate to development proposals that do not form part of the authorised development; and
- (b) other changes can be proposed to the mitigation and monitoring measures set out in the outline skills, supply chain and employment plan to reflect the removal of development proposals that do not form part of the authorised development, provided that the skills, supply chain and employment plan submitted under paragraph (1) demonstrates that such changes do not lead to effects materially worse than those assessed in the environmental statement.

(3)

(4) The skills, supply chain and employment plan must identify opportunities for individuals and businesses to access employment and supply chain opportunities associated with the construction, operation and maintenance of the authorised development, and the means for publicising such opportunities.

(5) The skills, supply chain and employment plan must be implemented as approved and maintained throughout the construction and operation of the authorised development and during the carrying out of decommissioning works.

Permissive paths

21.—(1) Prior to the construction of the permissive paths, the undertaker must submit the permissive path details to the relevant planning authority for approval, such details to cover—

- (a) final routing of each permissive path to be provided, such routing to be substantially in accordance with the routing as shown on the plans contained within the outline landscape and ecological management plan save for where that routing is contained within development areas that do not form part of the authorised development;
- (b) the specification of each permissive path; and
- (c) the maintenance regime for each permissive path.

(2) Where a phase of the authorised development includes a permissive path or paths, the permissive path or paths must be provided and open to the public prior to the date of final commissioning in respect of that phase.

(3) The permissive paths must be provided and maintained by the undertaker in accordance with the permissive path details and retained until the part of the authorised development in which the permissive path is located is decommissioned pursuant to requirement 22.

Decommissioning and restoration

22.—(1) Within 12 months of the date that the undertaker decides to decommission any part of the authorised development, or no later than 6 months before the 40th anniversary of the date of final commissioning, whichever is the earlier, the undertaker must submit to the relevant planning authority for that part (or both relevant planning authorities where that part falls within the administrative areas of both the District of West Suffolk and the District of East Cambridgeshire) for approval a decommissioning environmental management plan for that part. Decommissioning will commence no later than 40 years following the date of final commissioning.

(2) The plan submitted and approved pursuant to sub-paragraph (1) must be substantially in accordance with the relevant part of the framework decommissioning environmental management plan save that-

- (a) it does not need to include decommissioning measures for any elements of the framework decommissioning environmental management plan which relate to development proposals that do not form part of the authorised development; and
- (b) other changes can be proposed to the decommissioning measures set out in the framework decommissioning environmental management plan to reflect the removal of development proposals that do not form part of the authorised development, provided that the decommissioning environmental management plan submitted under paragraph (1) demonstrates that such changes do not lead to effects materially worse than those assessed in the environmental statement.

(3) The plan submitted and approved pursuant to sub-paragraph (1) must include a resource management plan that includes details of proposals to minimise the use of natural resources and unnecessary materials.

(4) No decommissioning works must be carried out until the relevant planning authority or both relevant planning authorities (as applicable) has or have approved the plan submitted under sub-paragraph (1) in relation to such works.

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

(6) Within 28 days of ceasing operations at any part of the authorised development the undertaker must notify the relevant planning authority (or both relevant planning authorities where that part falls within the administrative areas of both the District of West Suffolk and the District of East Cambridgeshire) in writing of the date it ceased operations for that part.

(7) This requirement is without prejudice to any other consents or permissions which may be required to decommission any part of the authorised development.

[Crash site exclusion area

23.—(1) No part of the authorised development may take place within the crash site exclusion area.

(2) Work No. 1A must not commence until the undertaker has confirmed to Cambridgeshire County Council that either—

- (a) a licence under the Protection of Military Remains Act 1986 has been obtained in respect of the carrying out of Work No. 1A within the potential expanded crash site exclusion area; or
- (b) a licence under the Protection of Military Remains Act 1986 has not been obtained in respect of the carrying out of Work No. 1A and that therefore no part of the authorised development will take place within the potential expanded crash site exclusion area.

(3) If the undertaker makes a confirmation under sub-paragraph (2)(b) then no part of the authorised development is to take place within the potential expanded crash site exclusion area.

(4) The date of final commissioning of Work No. 1A must not take place until a bomber crash site interpretation scheme has been submitted to and approved by Cambridgeshire County Council, in consultation with Isleham Parish Council, and the undertaker has carried out the bomber crash site interpretation scheme.

(5) For the purposes of this paragraph ‘bomber crash site interpretation scheme’ means a scheme which—

- (a) sets out the location, design and content of an interpretation board and commemorative plaque relating to the history of the bomber crash that took place within the limits of deviation of Work No. 1A in October 1949; and
- (b) includes an explanation of how the scheme will work with and be consistent with the detailed landscape and ecology management plan that has been approved pursuant to requirement 8 in respect of a phase of the authorised development that includes Work No. 1A.]

Public rights of way

24.—(1) The undertaker must not exercise the power conferred by article 11(1) and 11(3) of this Order in relation to a public right of way until the scope of the pre-commencement condition surveys for the extents of that public right of way have been submitted to and approved by the relevant county authority, or where the extents of the relevant public right of way falls within the administrative areas of both the county of Suffolk and the county of Cambridgeshire, both relevant county authorities.

(2) The condition survey must be carried out substantially in accordance with the scope approved pursuant to sub-paragraph (1) and the outcomes of the survey must be submitted to the relevant county authority, or where the relevant public right of way falls within the administrative areas of both the county of Suffolk and the county of Cambridgeshire, both relevant county authorities.

(3) The undertaker must not exercise the powers conferred by article 11(1) and 11(3) of this Order until a scope of the reinstatement plan for the extents of the public rights of way in relation to which the undertaker proposes to exercise the powers conferred by article 11(1) or 11(3) within the pre-commencement surveys approved pursuant to sub-paragraph (1) and a timeline for the reinstatement works has been submitted to and approved by the relevant county authority, or where the extents of the relevant public right of way in relation to which the undertaker proposes to exercise the powers conferred by article 11(1) or 11(3) falls within the administrative areas of both the county of Suffolk and the county of Cambridgeshire, both relevant county authorities.

LEGISLATION TO BE DISAPPLIED

1. The following provisions do not apply in so far as they relate to the construction of any numbered work or the carrying out of any operation required for the purpose of, or in connection with, the construction, operation, maintenance or decommissioning of the authorised development—

- (a) Bedford Level Act 1663(a);
- (b) Hundred Foot River and Ouse: Bedford Level Act 1756(b);
- (c) Bedford Level: Drainage Act 1757(c);
- (d) Isle of Ely, Suffolk, Norfolk Drainage Act 1759(d);
- (e) Bedford Level Act 1789(e);
- (f) Bedford Level (Cam, Ouse and Mildenhall Rivers) Drainage Act 1800(f);
- (g) Bedford Level (Mildenhall River) Drainage Act 1807(g);
- (h) Isle of Ely (Mildenhall River) Drainage Act 1807(h);
- (i) Bedford Level Drainage and Ouse Navigation Act 1819(i);
- (j) Fen Drainage Act 1823(j);
- (k) Bedford Level Drainage Act 1827(k);
- (l) Norfolk Drainage Act 1834(l);
- (m) Burwell Drainage and Lodes Navigation Act 1841(m);
- (n) Fen Lands Drainage Act 1843(n);

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- (a) 1663 c. 17. Section 31 of the River Nene and Wisbech River 1836 (c. xcii). Section 38 of the Nene and Wisbech Rivers Improvement Act 1848 (c. cxliii). Sections 91 and 150 of the Repair Act 1837 (c. lxxxi). Section 170 of the Cottenham, Rampton and Willingham Drainage Act 1842 (c. xxiii). Section 109 of the Cottenham Inclosure Act 1842 (c. 3). Section 228 of the Willingham Inclosure and Drainage Act 1846 (c. ix). Section 90 of the Whittlesea St Mary and Whittlesea St. Andrew Inclosures Act 1840 (c. 6). Section 83 of the Wicken Inclosure Act 1840 (c. 14). Section 41 of the Wimblington and Upwell Drainage and Inclosure Act 1810 (c. lxxviii). Section 65 of the Stilton Drainage Act 1810 (c. lxxx). Section 29 of the Ramsey Inclosure Act 1818 (c. xlix). Section 24 of the Lakenheath Allotments Act 1818 (c. 25). Section 76 of the Sutton (Isle of Ely) Inclosure Act 1838 (c. 2). Section 91 of the Swavesey Inclosure Act 1838 (c. 6). Section 77 of the Rampton Inclosure Act 1839 (c. 15). Section 114 of the Norfolk Estuary Act 1846 (c. ccclxxxviii).
 - (b) 1756 c. 22.
 - (c) 1757 c. 18.
 - (d) 1759 c. 32.
 - (e) 1789 c. 22.
 - (f) 1800 c. xc.
 - (g) 1807 c. 1. Extended in part by section 1 of the Fen Lands Drainage Act 1843 (c. lxvi). Repealed in part by sections 3 and 70 of the Fen Lands Drainage Act 1843 (c. lxvi).
 - (h) 1807 c. lxxxiii. Extended in part by section 33 of the Fen Drainage Act 1823 (c. ciii). Section 7 repealed by section 1 of the Fen Drainage Act 1823 (c. ciii). Section 25 repealed by section 9 of the Burnt Fen District Act 1879 (c. xiii). Section 4 repealed by section 4 of the Fen Drainage Act 1823 (c. ciii). Sections 64 and 69 repealed by section 2 and 3 of the Fen Drainage Act 1823 (c. ciii).
 - (i) 1819 c. lxxix. Repealed, excluding sections 3 and 5, by section 7 of the Bedford Level Drainage and Ouse Navigation Act 1821 (c. lxiv), sections 11 and 58 of the King's Lynn, Eau Brink Cut Act 1831 (c. lxiii) and section 4 of the Ouse Outfall Act 1860 (c. lxxxviii).
 - (j) 1823 c. ciii. Repealed in part by section 3 of the Fen Lands Drainage Act 1843 (c. lxvi). Incorporated by section 2 of the Burnt Fen District Act 1879 (c. xiii). Applied with modifications by section 5 of the Burnt Fen District Act 1879 (c. xiii).
 - (k) 1827 c. xlvii. Saved in part by section 120 of the Cottenham Inclosure Act 1842 (c. 3). Saved by section 170 of the Cottenham, Rampton and Willingham Drainage Act 1842 (c. xxiii) and section 228 of the Willingham Inclosure and Drainage Act 1846 (c. ix). Sections 17 and 18 repealed by the South Level Act 1893 (c. xii), section 20. Section 21 amended by section 22 of the South Level Act 1893 (c. xii). Section 89 saved by schedule paragraph 1, table A part 1(i) (South Level Navigation) of River Cam, & c. Order of the Canal Tolls and Charges Order Confirmation (No.8) Act 1894 (c. cci). Section 108 applied by section 25 of the South Level 1893 Act (c. xii). Section 109 repealed by section 26(3) of the South Level Act 1893 (c. xii).
 - (l) 1843 c. lxiii.
 - (m) 1841 c. lviii.
 - (n) 1843 c. lxvi.

- (o) South Level and Eau Brink Act 1893**(a)**;
- (p) Canal Tolls and Charges (Burwell Fen &c.) Order Confirmation Act 1896**(b)**;
- (q) River Great Ouse (Flood Protection) Act 1949**(c)**;
- (r) Ely Ouse-Essex Water Act 1968**(d)**;
- (s) Anglian Water Authority Act 1977**(e)**; and
- (t) Swaffham Internal Drainage Board Byelaws.

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- (a)** 1893 c. xii. Section 16 saved by article 1 of the River Cam Order and the Canal Tolls and Charges (No.8) Act 1894 (c. cci).
 - (b)** 1896 c. lxxx.
 - (c)** 1949 c. lx. Repealed in part by section 3 of the Great Ouse River Bed (Revival of Powers, &c.) Act 1953 (c. xxiv). Section 25 amended by section 4(1) of the Great Ouse River Bed (Revival of Powers, &c.) Act 1953 (c. xxiv).
 - (d)** 1968 c. xxvi. Section 17 amended by article 2(2) of S.I. 1990/33 and article 2(2) of S.I. 1990/2068. Section 32 repealed by section 4(2) of the Essex River Authority Act 1972 (c. xxxix), section 42(1)(a) of, and part 1 of schedule 8 to, the Anglian Water Authority Act 1977 (c. i). Section 34 repealed by section 42(1)(a) of, and part 1 of schedule 8 to, the Anglian Water Authority Act 1977 (c. i). Section 36 repealed in part by section 39(2) of the Essex River and South Essex Water Act 1969 (c. xlix). Section 39 repealed in part by section 37(2) of the Essex River and South Essex Water Act 1969 (c. xlix). Section 41, in part, and section 42 repealed by section 42(1)(b) of, and part 2 of schedule 8 to, the Anglian Water Authority Act 1977 (c. i). Re-enacted as amended by section 42(2) of, and part 3 of schedule 8 to, the Anglian Water Authority Act 1977 (c. i).
 - (e)** 1977 c. i.

SCHEDULE 4

Article 8

STREETS SUBJECT TO STREET WORKS

Interpretation

1. In this Schedule “cable works” means works to place, retain and maintain underground electrical and communications apparatus.

<i>(1)</i> <i>District</i>	<i>(2)</i> <i>Street</i>	<i>(3)</i> <i>Description of the street works</i>
West Suffolk District	Beck Road	Cable works beneath the width of the highway for the length shown in purple on sheet 4 of the access and rights of way plans, reference SW-1.
West Suffolk District	Ferry Lane	Cable works beneath the width of the highway for the length shown in purple on sheet 4 of the access and rights of way plans, reference SW-2.
West Suffolk District	Freckenham Road	Cable works beneath the width of the highway for the length shown in purple on sheets 4 and 5 of the access and rights of way plans, reference SW-3.
West Suffolk District	U6006	Cable works beneath the width of the highway for the length shown in purple on sheet 5 of the access and rights of way plans, reference SW-4.
West Suffolk District	U6006	Cable works beneath the width of the highway for the length shown in purple on sheet 5 of the access and rights of way plans, reference SW-5.
West Suffolk District	Newmarket Road	Cable works beneath the width of the highway for the length shown in purple on sheet 6 of the access and rights of way plans, reference SW-6.
West Suffolk District	Elms Road	Cable works beneath the width of the highway for the length shown in purple on sheet 7 of the access and rights of way plans, reference SW-7.
West Suffolk District	W-257/003/0	Cable works beneath the width of the highway for the length shown in purple on sheet 8 of the access and rights of way plans, reference SW-8.
East Cambridgeshire District	49/7	Cable works beneath the width of the highway for the length shown in purple on sheet 8 of the access and rights of way

		plans, reference SW-9.
East Cambridgeshire District	B1085	Cable works beneath the width of the highway for the length shown in purple on sheet 9 of the access and rights of way plans, reference SW-10.
East Cambridgeshire District	A11	Cable works beneath the width of the highway for the length shown in purple on sheet 10 of the access and rights of way plans, reference SW-13.
East Cambridgeshire District	A11	Cable works beneath the width of the highway for the length shown in purple on sheets 10 and 11 of the access and rights of way plans, reference SW-14.
East Cambridgeshire District	La Hogue Road	Cable works beneath the width of the highway for the length shown in purple on sheets 10 and 11 of the access and rights of way plans, reference SW-12.
East Cambridgeshire District	La Hogue Road	Cable works beneath the width of the highway for the length shown in purple on sheet 11 of the access and rights of way plans, reference SW-11.
East Cambridgeshire District	Chippenham Road	Cable works beneath the width of the highway for the length shown in purple on sheet 14 of the access and rights of way plans, reference SW-15.
East Cambridgeshire District	204/1	Cable works beneath the width of the highway for the length shown in purple on sheet 15 of the access and rights of way plans, reference SW-16.
East Cambridgeshire District	Newmarket Road	Cable works beneath the width of the highway for the length shown in purple on sheet 16 of the access and rights of way plans, reference SW-17.
East Cambridgeshire District	A142	Cable works beneath the width of the highway within Order limits, including its roundabout junction with Newmarket Road, for the length shown in purple on sheet 16 of the access and rights of way plans, reference SW-18.
East Cambridgeshire District	92/19	Cable works beneath the width of the highway for the length shown in purple on sheet 16 of the access and rights of way

		plans, reference SW-19.
East Cambridgeshire District	92/19	Cable works beneath the width of the highway for the length shown in purple on sheet 16 of the access and rights of way plans, reference SW-20.
East Cambridgeshire District	Ness Road	Cable works beneath the width of the highway for the length shown in purple on sheets 17 and 18 of the access and rights of way plans, reference SW-21.
East Cambridgeshire District	Broads Road	Cable works beneath the width of the highway for the length shown in purple on sheet 18 of the access and rights of way plans, reference SW-22.
East Cambridgeshire District	First Drove and 35/10	Cable works beneath the width of the boundary the highway for the length shown in purple on sheet 18 of the access and rights of way plans, reference SW-23.
East Cambridgeshire District	35/11	Cable works beneath the width of the highway for the length shown in purple on sheet 18 of the access and rights of way plans, reference SW-24.
East Cambridgeshire District	Little Fen Drove	Cable works beneath the width of the highway for the length shown in purple on sheet 19 of the access and rights of way plans, reference SW-25.
East Cambridgeshire District	35/6	Cable works beneath the width of the highway for the length shown in purple on sheet 19 of the access and rights of way plans, reference SW-26.
East Cambridgeshire District	35/7	Cable works beneath the width of the highway for the length shown in purple on sheets 19 and 20 of the access and rights of way plans, reference SW-27.
East Cambridgeshire District	Newnham Drove	Cable works beneath the width of the highway for the length shown in purple on sheet 20 of the access and rights of way plans, reference SW-28.
East Cambridgeshire District	Weirs Drove	Cable works beneath the width of the highway for the length shown in purple on sheet 20 of the access and rights of plans, reference SW-29.

SCHEDULE 5

Article 9

ALTERATION OF STREETS

PART 1

PERMANENT ALTERATION OF LAYOUT

<i>(1)</i> <i>District</i>	<i>(2)</i> <i>Street name and maintenance</i>	<i>(3)</i> <i>Description of alteration</i>
West Suffolk District	C603 Freckenham Road (part publicly maintained part privately maintained)	Works for the provision of a permanent means of access to the authorised development within the area shown hatched orange on sheets 1 and 4 of the access and rights of way plans, reference AS-4.
West Suffolk District and East Cambridgeshire District	Beck Road (publicly maintained)	Works for the provision of a permanent means of access to the authorised development within the area shown hatched orange on sheets 2 and 3 of the access and rights of way plans, reference AS-1.
West Suffolk District	Beck Road (publicly maintained)	Works for the provision of a permanent means of access to the authorised development within the area shown hatched orange on sheets 2 and 3 of the access and rights of way plans, reference AS-2.
West Suffolk District	Beck Road (publicly maintained)	Works for the provision of a permanent means of access to the authorised development within the area shown hatched orange on sheets 3 and 4 of the access and rights of way plans, reference AS-3.
West Suffolk District	U6006 (publicly maintained)	Works for the provision of a permanent crossing of the U6006 within the area shown hatched orange on the sheet 5 of the access and rights of way plans, reference AS-8.
West Suffolk District	U6006 (publicly maintained)	Works for the provision of a permanent crossing of the U6006 within the area shown hatched orange on sheet 5 of the access and rights of way plans, reference AS-9
West Suffolk District	Newmarket Road (publicly maintained)	Works for the provision of a permanent means of access to the authorised development within the area shown hatched

		orange on sheet 6 of the access and rights of way plans, reference AS-10
West Suffolk District	Elms Road (part publicly maintained part privately maintained)	Works for the provision of two permanent means of access to the authorised development and for the widening of Elms Road within the area shown hatched orange on sheet 7 of the access and rights of way plans, reference AS-13.
West Suffolk District	Elms Road (part publicly maintained part privately maintained)	Works for the provision of a permanent means of access to the authorised development and for the widening of Elms Road within the area shown hatched orange on sheet 7 of the access and rights of way plans, reference AS-14.
East Cambridgeshire District	Dane Hill Road (part publicly maintained part privately maintained)	Works for the provision of a permanent means of access to the authorised development within the area shown hatched orange on sheet 10 of the access and rights of way plans, reference AS-17.
East Cambridgeshire District	La Hogue Road (part publicly maintained part privately maintained)	Works for the provision of a permanent means of access to the authorised development within the area shown hatched orange on sheets 11 and 12 of the access and rights of way plans, reference AS-19.
East Cambridgeshire District	Chippenham Road (publicly maintained)	Works for the provision of a permanent means of access to the authorised development within the area shown hatched orange on sheet 14 of the access and rights of way plans, reference AS-21.
East Cambridgeshire District	Newnham Drove (publicly maintained)	Works for the provision of a permanent means of access to the authorised development within the area shown hatched orange on sheet 20 of the access and rights of way plans, reference AS-34.
East Cambridgeshire District	Weirs Drove (publicly maintained)	Works for the provision of a permanent means of access to the authorised development within the area shown hatched orange on sheet 20 of the access and rights of way plans, reference AS-35.

PART 2

TEMPORARY ALTERATION OF LAYOUT

<i>(1)</i> <i>District</i>	<i>(2)</i> <i>Street</i>	<i>(3)</i> <i>Description of alteration</i>
West Suffolk District	Junction of Freckenham Road and Beck Road (publicly maintained)	Works to enable the passage to the authorised development of abnormal indivisible loads, including the temporary removal of street signs and street furniture, within the area shown hatched orange on sheet 4 of the access and rights of way plans, reference AS-5.
West Suffolk District	Isleham Road (publicly maintained)	Works for the provision of a temporary means of access to the authorised development within the area shown hatched orange on sheet 4 of the access and rights of way plans, reference AS-6.
West Suffolk District	B1102 Freckenham Road (publicly maintained)	Works for the provision of two temporary means of access to the authorised development within the area shown hatched orange on sheets 4 and 5 of the access and rights of way plans, reference AS-7.
West Suffolk District	Newmarket Road (publicly maintained)	Works for the provision of a temporary means of access to the authorised development within the area shown hatched orange on sheet 6 of the access and rights of way plans, reference AS-10.
West Suffolk District	Newmarket Road (part publicly maintained part privately maintained)	Works for the provision of a temporary means of access to the authorised development within the area shown hatched orange on sheet 6 of the access and rights of way plans, reference AS-11.
West Suffolk District	A11 (publicly maintained)	Works to enable the passage to the authorised development of abnormal indivisible loads, including the temporary removal of street signs and street furniture, within the area shown hatched orange on sheet 6 of the rights of way and access plans, reference AS-12.
West Suffolk District	Junction of A11 and Elms Road (publicly maintained)	Works to enable the passage to the authorised development of abnormal indivisible loads, including the temporary removal of streets signs and

		street furniture, within the area shown hatched orange on sheet 7 of the access and rights of way plans, reference AS-15.
East Cambridgeshire District	B1085 (part publicly maintained part privately maintained)	Works for the provision of two temporary means of access to the authorised development within the area shown hatched orange on sheet 9 of the access and rights of way plans, reference AS-16.
East Cambridgeshire District	La Hogue Road (publicly maintained)	Works for the provision of a temporary means of access to the authorised development within the area shown hatched orange on sheet 11 of the access and rights of way plans, reference AS-18.
East Cambridgeshire District	A11 (publicly maintained)	Works to enable the passage to the authorised development of abnormal indivisible loads, including the temporary removal of streets signs and street furniture, within the area shown hatched orange on sheet 10 of the access and rights of way plans, reference AS-20.
East Cambridgeshire District	Chippenham Road (part publicly maintained part privately maintained)	Works for the provision of two temporary means of access to the authorised development within the area shown hatched orange on sheet 14 of the access and rights of way plans, reference AS-22.
East Cambridgeshire District	Newmarket Road (publicly maintained)	Works for the provision of a temporary means of access to the authorised development within the area shown hatched orange on sheet 16 of the access and rights of way plans, reference AS-25.
East Cambridgeshire District	A142 (publicly maintained)	Works for the provision of a temporary means of access to the authorised development within the area shown hatched orange on sheet 16 of the access and rights of way plans, reference AS-26.
East Cambridgeshire District and West Suffolk District	Private access (privately maintained)	Works for the provision of access to, and within, the authorised development within the area shown hatched orange on sheets 16 and 17 of the access and rights of way plans, reference AS-27.
East Cambridgeshire District	Ness Road (publicly	Works for the provision of a

	maintained)	temporary means of access to the authorised development within the area shown hatched orange on sheets 17 and 18 of the access and rights of way plans, reference AS-28.
East Cambridgeshire District	Ness Road (publicly maintained)	Works for the provision of a temporary means of access to the authorised development within the area shown hatched orange on sheets 17 and 18 of the access and rights of way plans, reference AS-29.
East Cambridgeshire District	Broads Road (publicly maintained)	Works for the provision of a temporary means of access to the authorised development within the area shown hatched orange on sheet 18 of the access and rights of way plans, reference AS-30.
East Cambridgeshire District	First Drove (privately maintained)	Works for the provision of a temporary means of access to the authorised development within the area shown hatched orange on sheet 18 of the access and rights of way plans, reference AS-31.
East Cambridgeshire District	Little Fen Drove (publicly maintained)	Works for the provision of two temporary means of access to the authorised development within the area shown hatched orange on sheet 19 of the access and rights of way plans, reference AS-32.
East Cambridgeshire District	Weirs Drove (privately maintained)	Works for the provision of a temporary means of access to the authorised development within the area shown hatched orange on sheets 19 and 20 of the access and rights of way plans, reference AS-33.
West Suffolk District	Junction of B1102 and Church Lane (publicly maintained)	Works to enable the passage to the authorised development of abnormal indivisible loads, including the temporary removal of street signs and street furniture, within the area shown hatched orange on sheet 21 of the access and rights of way plans, reference AS-36.
West Suffolk District	Junction of B1102 Mildenhall Road and Ferry Lane (part publicly maintained part privately maintained)	Works to enable the passage to the authorised development of abnormal indivisible loads, including the temporary removal of streets signs and street furniture, within the area

		shown hatched orange on sheet 21 of the access and rights of way plans, reference AS-37.
East Cambridgeshire District	Junction of B1085 High Street and B1104 (publicly maintained)	Works to enable the passage to the authorised development of abnormal indivisible loads including the temporary removal of street signs and street furniture, within the area shown hatched orange on sheet 22 of the access and rights of way plans, reference AS-38.

SCHEDULE 6
PUBLIC RIGHTS OF WAY

Article 11

PART 1

PUBLIC RIGHTS OF WAY TO BE TEMPORARILY STOPPED UP

<i>(1)</i> <i>District</i>	<i>(2)</i> <i>Public right of way</i>	<i>(3)</i> <i>Measure</i>
East Cambridgeshire District	35/10 From the point shown as reference PRoWC1A on sheet 3 of the traffic regulation measures plans – temporary road closures, for a distance of 90 metres in a generally north-westerly direction to the point shown as reference PRoWC1B on sheet 3 of the traffic regulation measures plans – temporary road closures.	Temporarily closed to all traffic save for traffic under the direction of the undertaker.
East Cambridgeshire District	92/19 From the point shown as reference PRoWC2A on sheet 4 of the traffic regulation measures plans – temporary road closures, for a distance of 215 metres in a generally southerly direction to the point shown as reference PRoWC2B on sheet 4 of the traffic regulation measures plans – temporary road closures.	Temporarily closed to all traffic save for traffic under the direction of the undertaker.
East Cambridgeshire District	204/1 From the point shown as reference PRoWC3A on sheet 5 of the traffic regulation measures plans – temporary road closures, for a distance of 125 metres in a generally north-easterly direction to the point shown as reference PRoWC3B on sheet 5 of the traffic regulation measures plans – temporary road closures.	Temporarily closed to all traffic save for traffic under the direction of the undertaker.
East Cambridgeshire District	49/7 From the point shown as reference PRoWC4A on sheet 11 of the traffic regulation measures plans – temporary road closures, for a distance of 115 metres in a generally	Temporarily closed to all traffic save for traffic under the direction of the undertaker.

	north-westerly direction to the point shown as reference PRowC4B on sheet 11 of the traffic regulation measures plans – temporary road closures.	
West Suffolk District	W-257/003/0 From the point shown as reference PRowC5A on sheet 12 of the traffic regulation measures plans – temporary road closures, for a distance of 115 metres in a generally north-westerly direction to the point shown as reference PRowC5B, on sheet 12 of the traffic regulation measures plans – temporary road closures.	Temporarily closed to all traffic save for traffic under the direction of the undertaker.
East Cambridgeshire District	W-257/007/0, W-257/002/X, W-257/002/0 From the point shown as reference PRowC6A on sheet 20 of the traffic regulation measures plans – temporary road closures, for a distance of 505 metres in a generally southerly direction to the point shown as reference PRowC6B on sheet 20 of the traffic regulation measures plans – temporary road closures.	Temporarily closed to all traffic save for traffic under the direction of the undertaker.

PART 2

TEMPORARY USE OF MOTOR VEHICLES ON PUBLIC RIGHTS OF WAY

<i>(1)</i> <i>District</i>	<i>(2)</i> <i>Road name, number and length</i>	<i>(3)</i> <i>Measure</i>
West Suffolk District	W-257/007/0 Between the points marked MV1A- and MV2-A on sheets 2 and 3 of the access and rights of way plans.	Motor vehicles under the direction of the undertaker may cross the public right of way.
West Suffolk District	W-257/002/X Between the points marked MV2-A and MV2-B on sheets 2 and 3 of the access and rights of way plans.	Motor vehicles under the direction of the undertaker may cross the public right of way.
West Suffolk District	W-257/003/0 Between the points marked MV3-A and MV3-B on sheet 8 of the access and rights of way plans.	Motor vehicles under the direction of the undertaker may cross the public right of way.
East Cambridgeshire District	49/7	Motor vehicles under the

	Between the points marked MV-4A and MV4-B on sheet 8 of the access and rights of way plans.	direction of the undertaker may cross the public right of way.
East Cambridgeshire District	204/1 Between the points marked MV5-A and MV5-B on sheet 15 of the access and rights of way plans.	Motor vehicles under the direction of the undertaker may cross the public right of way.
East Cambridgeshire District	92/19 Between the points marked MV6-A and MV6-B on sheet 16 of the access and rights of way plans.	Motor vehicles under the direction of the undertaker may cross the public right of way.
East Cambridgeshire District	35/10 Between the points marked MV7-A and MV7-B on sheet 18 of the access and rights of way plans.	Motor vehicles under the direction of the undertaker may cross the public right of way.
East Cambridgeshire District	35/11 Between the points marked MV8-A and MV8-B on sheet 18 of the access and rights of way plans.	Motor vehicles under the direction of the undertaker may cross the public right of way.
East Cambridgeshire District	35/6 Between the points marked MV9-A and MV9-B on sheets 19 and 20 of the access and rights of way plans.	Motor vehicles under the direction of the undertaker may cross the public right of way.
East Cambridgeshire District	35/7 Between the points marked MV10-A and MV10-B on sheets 19 and 20 of the access and rights of way plans.	Motor vehicles under the direction of the undertaker may cross the public right of way.

SCHEDULE 7
ACCESS TO WORKS

Article 12

PART 1

PERMANENT MEANS OF ACCESS TO WORKS

<i>(1)</i> <i>District</i>	<i>(2)</i> <i>Street</i>	<i>(3)</i> <i>Description of means of access</i>
West Suffolk District	Ferry Lane	The provision of a permanent means of access to the authorised development from the western side of Ferry Lane between the points marked SE-E1 and SE-E2 on sheets 1 and 2 of the access and rights of way plans.
West Suffolk District and East Cambridgeshire District	Beck Road	The provision of a permanent means of access to the authorised development from the northern side of Beck Road between the points marked SE-F1 and SE-F2 on sheets 2 and 3 of the access and rights of way plans.
West Suffolk District	Beck Road	The provision of a permanent means of access to the authorised development from the southern side of Beck Road between the points marked SE-G1 and SE-G2 on sheets 2 and 3 of the access and rights of way plans.
West Suffolk District	Beck Road	The provision of a permanent means of access to the authorised development from the northern side of Beck Road between the points marked SE-K1 and SE-K2 on sheets 3 and 4 of the access and rights of way plans.
West Suffolk District	Newmarket Road	The provision of a permanent means of access to the authorised development from the western side of Newmarket Road between the points marked SE-D1 and SE-D2 on sheet 6 of the access and rights of way plans.
West Suffolk District	Golf Links Road	The provision of a permanent means of access to the authorised development from the southern side of Golf Links

		Road between the points marked SE-J1 and SE-J2 on sheet 6 of the access and rights of way plans.
West Suffolk District	Elms Road	The provision of a permanent means of access to the authorised development from the northern side of Elms Road between the points marked SE-C1 and SE-C2 on sheet 7 of the access and rights of way plans.
West Suffolk District	Elms Road	The provision of a permanent means of access to the authorised development from the southern side of Elms Road between the points marked SE-B1 and SE-B2 on sheet 7 of the access and rights of way plans.
West Suffolk District	Elms Road	The provision of a permanent means of access to the authorised development from the northern side of Elms Road between the points marked SE-A1 and SE-A2 on sheet 7 of the access and rights of way plans.
East Cambridgeshire District	Dane Hill Road	The provision of a permanent means of access to the authorised development from the southern side of Dane Hill Road between the points marked SW-C1 and SW-C2 on sheet 10 of the access and rights of way plans.
East Cambridgeshire District	La Hogue Road	The provision of a permanent means of access to the authorised development from the western side of La Hogue Road between the points marked SW-A1 and SW-A2 on sheet 11 of the access and rights of way plans.
East Cambridgeshire District	Chippenham Road	The provision of a permanent means of access to the authorised development from the southern side of Chippenham between the points marked SW-B1 and SW-B2 on sheet 14 of the access and rights of way plans.
East Cambridgeshire District	Weirs Drove	The provision of a permanent means of access to the authorised development from the northern side of Weirs

		Drove between the points marked CR-A1 and CR-A2 on sheet 20 of the access and rights of way plans.
East Cambridgeshire District	Newnham Drove	The provision of a permanent means of access to the authorised development from the northern side of Newnham Drove between the points marked CR-B1 and CR-B2 on sheet 20 of the access and rights of way plans.

PART 2

TEMPORARY MEANS OF ACCESS TO WORKS

<i>(1)</i> <i>District</i>	<i>(2)</i> <i>Street</i>	<i>(3)</i> <i>Description of means of access</i>
West Suffolk District	Isleham Road	The provision of a temporary means of access to the authorised development from the southern side of Isleham Road between the points marked CR-T1 and CR-T2 on sheet 4 of the access and rights of way plans.
West Suffolk District	B1102	The provision of a temporary means of access to the authorised development from the northern side of B1102 between the points marked CR-S1 and CR-S2 on sheets 4 and 5 of the access and rights of way plans.
West Suffolk District	B1102	The provision of a temporary means of access to the authorised development from the southern side of B1102 between the points marked CR-R1 and CR-R2 on sheets 4 and 5 of the access and rights of way plans.
West Suffolk District	Newmarket Road	The provision of a temporary means of access to the authorised development from the eastern side of Newmarket Road between the points marked SE-H1 and SE-H2 on sheet 6 of the access and rights of way plans.
West Suffolk District	Newmarket Road	The provision of a temporary means of access to the authorised development from the western side of Newmarket Road between the points

		marked SE-I1 and SE-I2 on sheet 6 of the access and rights of way plans.
East Cambridgeshire District	B1085	The provision of a temporary means of access to the authorised development from the southern side of B1085 between the points marked CR-P1 and CR-P2 on sheets 9 and 11 of the access and rights of way plans.
East Cambridgeshire District	B1085	The provision of a temporary means of access to the authorised development from the northern side of B1085 between the points of marked CR-Q1 and CR-Q2 on sheet 9 of the access and rights of way plans.
East Cambridgeshire District	La Hogue Road	The provision of a temporary means of access to the authorised development from the eastern side of La Hogue Road between the points marked CR-O1 and CR-O2 on sheet 11 of the access and rights of way plans.
East Cambridgeshire District	Chippenham Road	The provision of a temporary means of access to the authorised development from the northern side of the Chippenham Road between the points marked CR-M1 and CR-M2 on sheet 14 of the access and rights of way plans.
East Cambridgeshire District	Chippenham Road	The provision of a temporary means of access to the authorised development from the southern side of Chippenham Road between the points marked CR-N1 and CR-N2 on sheet 14 of the access and rights of way plans.
East Cambridgeshire District	A142	The provision of a temporary means of access to the authorised development from the northern side of A142 between the points marked CR-J1 and CR-J2 on sheet 16 of the access and rights of way plans.
East Cambridgeshire District	Newmarket Road	The provision of a temporary means of access to the authorised development from the eastern side of Newmarket Road between the points

		marked CR-K1 and CR-K2 on sheet 16 of the access and rights of way plans.
East Cambridgeshire District	Ness Road	The provision of a temporary means of access to the authorised development from the western side of Ness Road between the points marked CR-I1 and CR-I2 on sheets 17 and 18 of the access and rights of way plans.
East Cambridgeshire District	Ness Road	The provision of a temporary means of access to the authorised development from the eastern side of Ness Road between the points marked CR-H1 and CR-H2 on sheets 17 and 18 of the access and rights of way plans.
East Cambridgeshire District	Broads Road	The provision of a temporary means of access to the authorised development from the southern side of Broads Road between the points marked CR-G1 and CR-G2 on sheet 18 of the access and rights of way plans.
East Cambridgeshire District	First Drove	The provision of a temporary means of access to the authorised development from the western side of First Drove between the points marked CR-F1 and CR-F2 on sheet 18 of the access and rights of way plans.
East Cambridgeshire District	Weirs Drove	The provision of a temporary means of access to the authorised development from the western side of Weirs Drove between the points marked CR-C1 and CR-C2 on sheets 19 and 20 of the access and rights of way plans.
East Cambridgeshire District	Little Fen Drove	The provision of a temporary means of access to the authorised development from the southern side of Little Fen Drove between the points marked CR-D1 and CR-D2 on sheet 19 of the access and rights of way plans.
East Cambridgeshire District	Little Fen Drove	The provision of a temporary means of access to the authorised development from the northern side of Little Fen Drove between the points

		marked CR-E1 and CR-E2 on sheet 19 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—**

“access rights” means rights over land to—

- (a) alter, improve, form, maintain, retain, use (with or without vehicles, plant and machinery), remove, reinstate means of access to the authorised development including visibility splays and to remove impediments to such access; and
- (b) pass and repass on foot, with or without vehicles, plant and machinery (including rights to lay and use any temporary surface) for all purposes in connection with the authorised development;

“cable rights” means rights over land to—

- (a) install, use, support, protect, inspect, alter, remove, replace, retain, renew, improve and maintain electrical cables, earthing cables, optical fibre cables, data cables, telecommunications cables and other services, works associated with such cables including bays, ducts, protection and safety measures and equipment, and other apparatus and structures;
- (b) remain, pass and repass on foot, with or without vehicles, plant and machinery (including rights to lay and use any temporary surface or form a temporary compound) for all purposes in connection with the authorised development; and
- (c) restrict and remove the erection of buildings or structures, restrict the altering of ground levels, restrict and remove the planting of trees or carrying out operations or actions (including but not limited to blasting and piling) which may obstruct, interrupt or interfere with the exercise of the rights or damage the authorised development;

“substation connection rights” means rights over land to—

- (a) install, use, support, protect, inspect, alter, remove, replace, retain, renew, improve and maintain electrical cables, earthing cables, optical fibre cables, data cables, telecommunications cables and other services, works associated with such cables including bays, ducts, protection and safety measures and equipment, and other apparatus and structures and to connect such cables and services to the National Grid Burwell substation;
- (b) install, use, support, protect, inspect, alter, remove, replace, retain, renew, improve and maintain watercourses, public sewers and drains and drainage apparatus and equipment;
- (c) remain, pass and repass on foot, with or without vehicles, plant and machinery (including rights to lay and use any temporary surface or form a temporary compound) for all purposes in connection with Work Nos. 4;
- (d) restrict and remove the erection of buildings or structures, restrict the altering of ground levels, restrict and remove the planting of trees or carrying out operations or actions (including but not limited to blasting and piling) which may obstruct, interrupt or interfere with the exercise of the rights or damage the authorised development; and
- (e) install, use, support, protect, inspect, alter, remove, replace, retain, renew, improve and maintain soft landscaping and biodiversity measures; and

“crane rights” means rights over land to pass and repass on foot, with or without vehicles, plant and machinery (including rights to lay and use any temporary surface) and to temporarily remove impediments to such passage for all purposes in connection with the authorised development.

[illegible]

MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR THE CREATION OF NEW RIGHTS AND IMPOSITION OF NEW RESTRICTIVE COVENANTS

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 or the imposition of a restrictive covenant 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 (measure of compensation in case of severance) of the 1965 Act as substituted by paragraph 5—

- (a) for the words “land is acquired or taken from” substitute “a right or restrictive covenant over land is purchased from or imposed on”; and
- (b) for the words “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 1961 Act has effect subject to the modification set out in sub-paragraph (2).

(2) In section 5A(5A) (relevant valuation date), omit the words after “if—” and 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 Sunnica Energy Farm Order 202*);
- (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 Sunnica Energy Farm Order 202*) 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 to the acquisition of land under article 18 (compulsory acquisition of land) and as modified by article 25 (modification of Part 1 of the Compulsory Purchase Act 1965)), applies to the compulsory acquisition of a right by the creation of a new right under article 20 (compulsory acquisition of rights)—

- (a) with the modifications specified in paragraph 5; and
- (b) with such other modifications as may be necessary.

(a) 1973 c. 26.

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) 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 (measure of compensation in case of severance) of the 1965 Act 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 (powers of entry)(a) of the 1965 Act is modified to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right or restrictive covenant, as well as the notice of entry required by subsection (1) of that section (as it applies to compulsory acquisition under article 18 (compulsory acquisition of land)), it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant (which is deemed for this purpose to have been created on the date of service of the notice); and sections 11A (powers of entry: further notices of entry)(b), 11B (counter-notice requiring possession to be taken on specified date)(c), 12 (penalty for unauthorised entry)(d) and 13 (refusal to give possession to acquiring authority)(e) of the 1965 Act are modified correspondingly.

(6) Section 20 (tenants at will, etc.)(f) of the 1965 Act 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.

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- (a) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1), sections 186(2), 187(2) and 188 of, and paragraph 6 of Schedule 14 and paragraph 3 of Schedule 16 to, the Housing and Planning Act 2016 (c. 22) and S.I. 2009/1307.
 - (b) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016.
 - (c) Section 11B was inserted by section 187(3) of the Housing and Planning Act 2016.
 - (d) Section 12 was amended by section 56(2) of, and Part 1 of Schedule 9 to, the Courts Act 1971 (c. 23) and paragraphs (2) and (4) of Schedule 16 to the Housing and Planning Act 2016.
 - (e) Section 13 was amended by sections 62(3), 139(4) to (9) and 146 of, and paragraphs 27 and 28 of Schedule 13 and Part 3 of Schedule 23 to the Tribunals, Courts and Enforcement Act 2007 (c. 15).
 - (f) Section 20 was amended by paragraph 4 of Schedule 15 to the Planning and Compensation Act 1991 (c. 34) and S.I. 2009/1307.

(7) Section 22 (interests omitted from purchase) of the 1965 Act as modified by article 25(4) (modification of Part 1 of the Compulsory Purchase Act 1965) is so 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 restrictive covenant imposed, subject to compliance with that section as respects compensation.

(8) For Schedule 2A (counter notice requiring purchase of land not in notice to treat) to the 1965 Act substitute—

“SCHEDULE 2A

COUNTER-NOTICE REQUIRING PURCHASE OF LAND

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 22 (application of the 1981 Act) of the Sunnica Energy Farm Order 202* in respect of the land to which the notice to treat relates.

(2) But see article 23(3) (acquisition of subsoil only) of the Sunnica Energy Farm Order 202* 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 28 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 three months beginning with the day on which the counter-notice is served (“the decision period”).

7. If the authority decides to refer the counter-notice to the Upper Tribunal they must do so within the decision period.

8. If the authority does 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 serves 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 the 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 six 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 38

DOCUMENTS AND PLANS TO BE CERTIFIED

(1) <i>Document name</i>	(2) <i>Document reference</i>	(3) <i>Revision number</i>	(4) <i>Date</i>
access and rights of way plans	2.3	6	24/03/2023
arboricultural impact assessment	8.46	2	03/03/2023
book of reference	4.3	[]	[]
Campus plan	8.88	1	24/03/2023
[crash site exclusion area plan]	[8.89]	[0]	[30/03/2023]
Deed of Obligation	8.123	0	
design principles	8.87	0	30/01/2023
detailed archaeology mitigation strategy	8.79	1	24/03/2023
drainage technical note	8.83	1	24/03/2023
environmental statement	environmental statement 6.1 (excluding chapters 0, 3 and 16), 6.2 (excluding appendix 7H, 8M, 9C, 10I, 13C, 16C, 16D, 16E and 16F), 6.3 (excluding figures 3-1, 3-2, 3-17a-e, 3-20, 3-25a-d, 3-28a, 3-28b, 3-29, 3-30a, 3-30b, 3-31, 3-32, 9-1, 10-11a-f, 10-12) and 6.4	0	18/11/2021
	environmental statement 6.1 (chapter 0)	1	30/08/2022
	environmental statement 6.1 (chapter 3)	2	11/11/2022
	environmental statement 6.1 (chapter 16)	1	11/11/2022
	environmental statement 6.2 (appendix 7H)	1	13/07/2022
	environmental statement 6.2 (appendix 8M)	2	13/01/2023
	environmental statement 6.3 (figure 3-17a-e)	1	03/03/2023
	environmental statement 6.3 (figures	2	24/03/2023

	3-1, 3-2)		
	environmental statement 6.3 (figures 3-28a, 3-28b, 3-30a, 3-30b)	1	14/09/2022
	environmental statement 6.3 (figures 3-31, 3-32)	0	30/08/2022
	environmental statement 6.3 (figures 3-20, 3-25a-d, 3-29)	1	30/08/2022
	environmental statement 6.3 (figure 9-1)	1	21/01/2022
	environmental statement 6.3 (figures 10-11a-f, 10-12)	1	19/10/2022
flood risk assessment	Appendix 9C contained in volume 2 of the environmental statement (document reference 6.2) – Part 1	2	24/03/2023
	Appendix 9C contained in volume 2 of the environmental statement (document reference 6.2) – Parts 2-4	1	21/01/2022
	Appendix 9C flood risk assessment addendum – Part 1	1	24/03/2023
	drainage technical note	1	24/03/2023
	FRA clarification document in light of proposed Scheme changes	1	24/03/2023
framework construction environmental management plan	Appendix 16C contained in volume 2 of the environmental statement (document reference 6.2)	7	24/03/2023
framework construction traffic management plan and travel plan	Appendix 13C contained in volume 2 of the environmental statement (document reference 6.2)	5	03/03/2023
unplanned atmospheric emissions from battery energy storage systems	Appendix 16D contained in volume 2 of the environmental statement (document reference 6.2)	1	11/11/2022
framework decommissioning environmental	Appendix 16E contained in volume 2 of the environmental	4	13/03/2023

management plan	statement (document reference 6.2)		
framework operational environmental management plan	Appendix 16F contained in volume 2 of the environmental statement (document reference 6.2)	5	24/03/2023
land and Crown land plans	2.1	[]	[]
outline battery fire safety management plan	7.6	4	24/03/2023
outline landscape and ecology management plan	Appendix 10I contained in volume 2 of the environmental statement (document reference 6.2)	4	24/03/2023
outline skills, supply chain and employment plan	7.7	4	24/03/2022
[potential expanded crash site exclusion area plan]	[8.90]	[0]	[03/02/2023]
restoration overlap plan	2.9	0	18/11/2021
traffic regulation measures plans – temporary measures	2.4	3	30/01/2023
traffic regulation measures plans – temporary road closures	2.4	3	30/01/2023
tree preservation order trees location plans	8.48	2	24/03/2023
works plans	2.2	[]	[]

SCHEDULE 11

ARBITRATION RULES

Article 39

Commencing an arbitration

1. The arbitration is deemed to have commenced when a party (“the claimant”) serves a written notice of arbitration on the other party (“the respondent”).

Time periods

2.—(1) All time periods in these arbitration rules are measured in days and include weekends, but not bank or public holidays.

(2) Time periods are calculated from the day after the arbitrator is appointed which is either—

- (a) the date the arbitrator notifies the parties in writing of his/her acceptance of an appointment by agreement of the parties; or
- (b) the date the arbitrator is appointed by the Secretary of State.

Timetable

3.—(1) The timetable for the arbitration is that which is set out in sub-paragraphs (2) to (4) below unless amended in accordance with paragraph 5(3).

(2) Within 14 days of the arbitrator being appointed, the claimant must provide both the respondent and the arbitrator with—

- (a) a written statement of claim which describes the nature of the difference between the parties, the legal and factual issues, the claimant’s contentions as to those issues, the amount of its claim or the remedy it is seeking; and
- (b) all statements of evidence and copies of all documents on which it relies, including contractual documentation, correspondence (including electronic documents), legal precedents and expert witness reports.

(3) Within 14 days of receipt of the claimant’s statements under sub-paragraph (2) by the arbitrator and respondent, the respondent must provide the claimant and the arbitrator with—

- (a) a written statement of defence consisting of a response to the claimant’s statement of claim, its statement in respect of the nature of the difference, the legal and factual issues in the claimant’s claim, its acceptance of any elements of the claimant’s claim and its contentions as to those elements of the claimant’s claim it does not accept;
- (b) all statements of evidence and copies of all documents on which it relies, including contractual documentation, correspondence (including electronic documents), legal precedents and expert witness reports; and
- (c) any objections it wishes to make to the claimant’s statements, comments on the claimant’s expert reports (if submitted by the claimant) and explanations of the objections.

(4) Within seven days of the respondent serving its statements under sub-paragraph (3), the claimant may make a statement of reply by providing both the respondent and the arbitrator with—

- (a) a written statement responding to the respondent’s submissions, including its reply in respect of the nature of the difference, the issues (both factual and legal) and its contentions in relation to the issues;
- (b) all statements of evidence and copies of documents in response to the respondent’s submissions;

- (c) any expert report in response to the respondent's submissions;
- (d) any objections to the statements of evidence, expert reports or other documents submitted by the respondent; and
- (e) its written submissions in response to the legal and factual issues involved.

Procedure

4.—(1) The parties' pleadings, witness statements and expert reports (if any) must be concise. A single pleading must not exceed 30 single-sided A4 pages using 10pt Arial font.

(2) The arbitrator will make an award on the substantive differences based solely on the written material submitted by the parties unless the arbitrator decides that a hearing is necessary to explain or resolve any matters.

(3) Either party may, within two days of delivery of the last submission, request a hearing giving specific reasons why it considers a hearing is required.

(4) Within seven days of receiving the last submission, the arbitrator must notify the parties whether a hearing is to be held and the length of that hearing.

(5) Within 10 days of the arbitrator advising the parties that a hearing is to be held, the date and venue for the hearing are to be fixed by agreement with the parties, save that if there is no agreement the arbitrator must direct a date and venue which the arbitrator considers is fair and reasonable in all the circumstances. The date for the hearing must not be less than 35 days from the date of the arbitrator's direction confirming the date and venue of the hearing.

(6) A decision must be made by the arbitrator on whether there is any need for expert evidence to be submitted orally at the hearing. If oral expert evidence is required by the arbitrator, then any experts attending the hearing may be asked questions by the arbitrator.

(7) There is to be no examination or cross-examination of experts, but the arbitrator must invite the parties to ask questions of the experts by way of clarification of any answers given by the experts in response to the arbitrator's questions. Prior to the hearing in relation to the experts—

- (a) at least 28 days before a hearing, the arbitrator must provide a list of issues to be addressed by the experts;
- (b) if more than one expert is called, they will jointly confer and produce a joint report or reports within 14 days of the issues being provided; and
- (c) the form and content of a joint report must be as directed by the arbitrator and must be provided at least seven days before the hearing.

(8) Within 14 days of a hearing or a decision by the arbitrator that no hearing is to be held the parties may by way of exchange provide the arbitrator with a final submission in connection with the matters in dispute and any submissions on costs. The arbitrator must take these submissions into account in the award.

(9) The arbitrator may make other directions or rulings as considered appropriate in order to ensure that the parties comply with the timetable and procedures to achieve an award on the substantive difference within four months of the date on which the arbitrator is appointed, unless both parties otherwise agree to an extension to the date for the award.

(10) If a party fails to comply with the timetable, procedure or any other direction then the arbitrator may continue in the absence of a party or submission or document, and may make a decision on the information before the arbitrator attaching the appropriate weight to any evidence submitted beyond any timetable or in breach of any procedure or direction.

(11) The arbitrator's award must include reasons. The parties must accept that the extent to which reasons are given must be proportionate to the issues in dispute and the time available to the arbitrator to deliver the award.

Arbitrator's powers

5.—(1) The arbitrator has all the powers of the Arbitration Act 1996, save where modified in this Schedule.

(2) There must be no discovery or disclosure, except that the arbitrator is to have the power to order the parties to produce such documents as are reasonably requested by another party no later than the statement of reply, or by the arbitrator, where the documents are manifestly relevant, specifically identified and the burden of production is not excessive. Any application and orders should be made by way of a Redfern Schedule without any hearing.

(3) Any time limits fixed in accordance with this procedure or by the arbitrator may be varied by agreement between the parties, subject to any such variation being acceptable to and approved by the arbitrator. In the absence of agreement, the arbitrator may vary the timescales or procedure—

- (a) if the arbitrator is satisfied that a variation of any fixed time limit is reasonably necessary to avoid a breach of the rules of natural justice and then; and
- (b) only for such a period that is necessary to achieve fairness between the parties.

(4) On the date the award is made, the arbitrator will notify the parties that the award is completed, signed and dated, and that it will be issued to the parties on receipt of cleared funds for the arbitrator's fees and expenses.

Costs

6.—(1) The costs of the arbitration must include the fees and expenses of the arbitrator, the reasonable fees and expenses of any experts and the reasonable legal and other costs incurred by the parties for the arbitration.

(2) Where the difference involves connected or interrelated issues, the arbitrator must consider the relevant costs collectively.

(3) The final award must fix the costs of the arbitration and decide which of the parties are to bear them or in what proportion they are to be borne by the parties.

(4) The arbitrator must award recoverable costs on the general principle that each party should bear its own costs, having regard to all material circumstances, including such matters as exaggerated claims or defences, the degree of success for different elements of the claims, claims that have incurred substantial costs, the conduct of the parties and the degree of success of a party.

Confidentiality

7.—(1) Hearings in this arbitration are to take place in private.

(2) Materials, documents, awards, expert reports and any matters relating to the arbitration are confidential and must not be disclosed to any third party without prior written consent of the other party, save for any application to the courts or where disclosure is required under any legislative or regulatory requirement.

SCHEDULE 12

PROTECTIVE PROVISIONS

Article 40

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;
- (d) in the case of a sewerage undertaker—
 - (i) any drain or works vested in the utility undertaker under the Water Industry Act 1991(b); 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);
- (c) water undertaker within the meaning of the Water Industry Act 1991; and

(a) 1989 c. 29.

(b) 1991 c. 56.

(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).

(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 11 (temporary stopping up of 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 and Crown 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 39 (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 39 (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.

(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 39 (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 28 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 21 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 28 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 39 (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 in the electronic communications code;

“the electronic communications code” has the same meaning as in section 106 (application of the electronic communications code) of the 2003 Act;

“electronic communications code network” means—

(a) so much of an electronic communications network or conduit system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the 2003 Act; and

(b) an electronic communications network which the Secretary of State is providing or proposing to provide;

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

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

13. The exercise of the powers of article 29 (statutory undertakers) is subject to Part 10 (undertakers’ works affecting electronic communications apparatus) of the electronic communications code.

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 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.

^(a) 2003 c. 21.

(4) Any difference arising between the undertaker and the operator under this Part of this Schedule must be referred to and settled by arbitration under article 42 (procedure in relation to certain approvals etc.).

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 (street works in England and Wales) 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.

17. The undertaker must not exercise the powers granted under this Order so as to hinder or prevent access to the Airwaves Solutions Limited telecommunications site located 2.68 metres from the Order limits by Airwaves Solutions Limited, its employees, contractors or sub-contractors, such access to be over plot 9-06.

PART 3

FOR THE PROTECTION OF ANGLIAN WATER

18. For the protection of Anglian Water, the following provisions, unless otherwise agreed in writing between the undertaker and Anglian Water, have effect.

19. In this Part of this Schedule—

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

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

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

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

“functions” includes powers and duties;

“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;

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

“strategic water main” means the existing 500 millimetre diameter water main located at East Site A.

20.—(1) The undertaker must not interfere with, build over, under or near to any apparatus within the Order land or execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within the standard protection strips which are the strips of land falling the following distances to either side of the medial line of any relevant pipe or apparatus—

- (a) 2.25 metres where the diameter of the pipe is less than 150 millimetres;

- (b) 3 metres where the diameter of the pipe is between 150 and 450 millimetres;
- (c) 4.5 metres where the diameter of the pipe is between 450 and 750 millimetres; and
- (d) 6 metres where the diameter of the pipe is over 750 millimetres or is the strategic water main,

unless otherwise agreed in writing with Anglian Water, such agreement not to be unreasonably withheld or delayed, and such provision being brought to the attention of any agent or contractor responsible for carrying out any work on behalf of the undertaker.

21. The alteration, extension, removal or re-location of any apparatus must not be implemented until—

- (a) any permits required under the Environmental Permitting (England and Wales) Regulations 2016 or other legislation and any other associated consents are obtained, and any approval or agreement required from Anglian Water on alternative outfall locations as a result of such re-location are approved, such approvals from Anglian Water not to be unreasonably withheld or delayed; and
- (b) the undertaker has made the appropriate application required under the Water Industry Act 1991 together with a plan and section of the works proposed and Anglian Water has agreed all of the contractual documentation required under the Water Industry Act 1991, such agreement not to be unreasonably withheld or delayed, and such works to be executed only in accordance with the plan, section and description submitted and in accordance with such reasonable requirements as may be made by Anglian Water without delay for the alteration or otherwise for the protection of the apparatus, or for securing access to it.

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

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

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

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

26. If for any reason or in consequence of the construction of any of the works referred to in paragraphs 21 to 23 and 25 above any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of Anglian Water, or there is any interruption in any service provided, or in the supply of any goods, by Anglian Water, the undertaker must—

- (a) bear and pay the cost reasonably incurred by Anglian Water in making good any damage or restoring the supply; and

- (b) make reasonable compensation to Anglian Water for any other expenses, loss, damages, penalty or costs incurred by Anglian Water, by reason or in consequence of any such damage or interruption.

27. Anglian Water must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, penalties and costs to which the provisions of this Part of this Schedule apply. If requested to do so by the undertaker, Anglian Water will provide an explanation of how any claim has been minimised. The undertaker will only be liable under paragraph 26 for claims reasonably incurred by Anglian Water.

28. Nothing in paragraph 26 above 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 Anglian Water, its officers, servants, contractors or agents.

29. Any difference or dispute arising between the undertaker and Anglian Water under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and Anglian Water, be determined by arbitration in accordance with article 39 (arbitration).

PART 4

FOR THE PROTECTION OF CADENT GAS LIMITED

Application

30. For the protection of Cadent the following provisions will, unless otherwise agreed in writing between the undertaker and Cadent, have effect.

Interpretation

31. In this Part of this Schedule—

“acceptable insurance” means a third party liability insurance effected and maintained by the undertaker and / or its contractor(s) to a level as may be approved by Cadent in writing or in the case of dispute in accordance with the terms and level of cover determined by an expert under paragraph 44. Such insurance is to be arranged with an internationally recognised insurer of repute operating in the London and worldwide insurance market underwriters whose security/ credit rating meets the same requirements as an “acceptable credit provider”, such policy is to include (but without limitation)—

- (a) Cadent as a Co-Insured;
- (b) a cross liabilities clause; and
- (c) contractors’ pollution liability for third party property damage and third party bodily damage arising from a pollution/contamination event with cover of £10,000,000.00 (ten million pounds) per event or £20,000,000.00 (twenty million pounds) in aggregate;

“acceptable security” means either:

- (a) a parent company guarantee from a parent company in favour of Cadent to cover the undertaker’s liability to Cadent to a cap to be agreed on a per asset per event basis up to a total liability cap to be agreed (and not exceeding £50,000,000 (fifty million pounds) and in a form reasonably satisfactory to Cadent and where required by Cadent, accompanied with a legal opinion confirming the due capacity and authorisation of the parent company to enter into and be bound by the terms of such guarantee); or
- (b) a bank bond or letter of credit from an acceptable credit provider in favour of Cadent to cover the undertaker’s liability to Cadent for an amount to be agreed on a per asset per event basis up to a total liability cap to be agreed (and not exceeding £50,000,000 (fifty million pounds) (in a form reasonably satisfactory to Cadent);

“alternative apparatus” means appropriate alternative apparatus to the reasonable satisfaction of Cadent to enable Cadent to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means any gas mains, pipes, pressure governors, ventilators, cathodic protections, cables or other apparatus belonging to or maintained by Cadent for the purposes of Cadent’s undertaking together with any replacement apparatus and such other apparatus constructed pursuant to this Order that becomes operational apparatus of Cadent for the purposes of Cadent’s undertaking 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 the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised development;

“Cadent” means Cadent Gas Limited and includes its successors in title or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986;

“Cadent’s undertaking” means the rights, duties and obligations of Cadent Gas Limited as a public gas transporter within the meaning of Section 7 of the Gas Act 1986 (as amended by the Gas Act 1995);

“commence” has the same meaning as in article 2 (interpretation) of the Order and “commencement” is to be construed accordingly, and for the purpose of this Part of this Schedule only includes any below ground surveys, monitoring or operations or receipt, erection of construction plant within 15 metres of any apparatus and remedial work in respect of any contamination or other adverse ground condition;

“deed 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 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;

“facilities and rights” for construction and for maintenance include any appropriate working areas required to reasonably and safely undertake that construction or maintenance, and any necessary rights of access;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by Cadent (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, requires the undertaker to submit for Cadent’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;

“maintain” and “maintenance” includes notwithstanding article 2 (interpretation) of the Order the ability and right to do any of the following in relation to any apparatus or alternative apparatus of Cadent including construct, protect, use, repair, alter, renews or remove the apparatus;

“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;

“rights” includes restrictive covenants and, in relation to decommissioned apparatus, the surrender of rights, release of liabilities and transfer of decommissioned apparatus; and

“specified works” means any part of the authorised development or activities (including maintenance) 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 undertaker under sub-paragraph 36(2) or otherwise; or
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under sub-paragraph 36(2) or otherwise.

On street apparatus

32.—(1) This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and Cadent are regulated by the provisions of Part 3 of the 1991 Act, except for—

- (a) Paragraphs 33, 38, 39, 40 and 41; and
- (b) where sub-paragraph (2) applies, paragraphs 36, 37 and 38.

(2) This sub-paragraph applies where any apparatus is diverted from an alignment within the existing adopted public highway but not wholly replaced within the existing public highway, notwithstanding that any diversion may be carried out under the provisions of Part 3 of the 1991 Act.

(3) The protective provisions in this Part of this Schedule apply and take precedence over article 30 (apparatus and rights of statutory undertakers in stopped up streets) of the Order which does not apply to Cadent.

Apparatus of Cadent in stopped up streets

33.—(1) Notwithstanding the temporary alteration, diversion or restriction of use of any street under the powers of article 11 (temporary stopping up of public rights of way), Cadent will be 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 it would have been entitled to do immediately before such temporary alteration, diversion or restriction in respect of any apparatus which at the time of the stopping up or diversion was in that street.

Protective works to buildings

34.—(1) The undertaker must exercise the powers conferred by article 16 (protective works to buildings) so as not to obstruct or render less convenient the access to any apparatus without the written consent of Cadent (such consent not to be unreasonably withheld or delayed).

Acquisition of land

35.—(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 may not appropriate or acquire any interest in land or appropriate, acquire, extinguish, interfere with or override any easement or other interest in land of Cadent otherwise than by agreement.

(2) As a condition of agreement between the parties in sub-paragraph (1), prior to the construction or maintenance of any part of the authorised development (or in such other timeframe as may be agreed between Cadent and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of Cadent or affect the provisions of any enactment or agreement regulating the relations between Cadent and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as Cadent reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between Cadent and the undertaker acting reasonably and which must be no less favourable on the whole to Cadent

unless otherwise agreed by Cadent, and it will be the responsibility of the undertaker to procure or secure the consent to 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 development or maintenance thereof.

(3) The undertaker and Cadent agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation or removal of apparatus, including but not limited to the payment of costs and expenses relating to such relocation or removal of apparatus and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by Cadent and other enactments relied upon by Cadent as of right or other use in relation to the apparatus, then the provisions in this Schedule prevail.

(4) Any agreement or consent granted by Cadent under paragraph 38 or any other paragraph of this Part of this Schedule, is not to be taken to constitute agreement under sub-paragraph (1).

(5) As a condition of an agreement under sub-paragraph (1) that involves de-commissioned apparatus being left in situ the undertaker must accept a surrender of any existing easement or other interest of Cadent in such decommissioned apparatus and release Cadent from all liabilities in respect of such de-commissioned apparatus from the date of such surrender.

(6) Where an undertaker acquires land which is subject to any Cadent right or interest (including, without limitation, easements and agreements relating to rights or other interests) and the provisions of paragraph 36 do not apply, the undertaker must, unless Cadent agrees otherwise—

- (a) retain any notice of Cadent's easement, right or other interest on the title to the relevant land when registering the undertaker's title to such acquired land; and
- (b) (where no such notice of Cadent's easement, right or other interest exists in relation to such acquired land or any such notice is registered only on the Land Charges Register) include (with its application to register title to the undertaker's interest in such acquired land at the Land Registry) a notice of Cadent's easement, right or other interest in relation to such acquired land.

Removal of apparatus

36.—(1) If, in the exercise of the powers conferred by this Order, including pursuant to any agreement reached in accordance with paragraph 35, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be decommissioned or removed and any right of Cadent to maintain that apparatus in that land must not be extinguished or interfered with until alternative apparatus has been constructed, is in operation, and the facilities and rights referred to in sub-paragraph (2) have been provided, to the reasonable satisfaction of Cadent and in accordance with sub-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to Cadent advance 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 Cadent reasonably needs to move or remove any of its apparatus) the undertaker must afford to Cadent to its satisfaction (taking into account paragraph 37(1)) the necessary facilities and rights—

- (a) for the construction of alternative apparatus; and
- (b) subsequently for the maintenance of that apparatus.

(3) If 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, Cadent 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 assist the undertaker in obtaining the necessary facilities and rights in the land in which the alternative apparatus is to be

constructed save that this obligation does not extend to the requirement for Cadent to use its compulsory purchase powers to this end unless it (in its absolute discretion) elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by 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 Cadent and the undertaker.

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

Facilities and rights for alternative apparatus

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

(2) If the facilities and rights to be afforded by the undertaker and agreed with Cadent under sub-paragraph (1) 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 Cadent than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed, then the terms and conditions to which those facilities and rights are subject may be referred to arbitration in accordance with paragraph 44 of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to Cadent as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection of Cadent

38.—(1) Not less than 56 days (or such time period as may be agreed in writing between Cadent and the undertaker) before the commencement of any specified works the undertaker must submit to Cadent a plan and, if reasonably required by Cadent, a ground monitoring scheme in respect of those works.

(2) The plan to be submitted to Cadent under sub-paragraph (1) must include a method statement which describes—

- (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; and
- (f) any intended maintenance regimes.

(3) The undertaker must not commence any specified works until Cadent has given written approval of the plan so submitted (and the ground monitoring scheme if required).

(4) Any approval of Cadent given under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (6); and

- (b) must not be unreasonably withheld or delayed and Cadent must meaningfully engage with the undertaker within 28 days of the date of submission of the plan under sub-paragraph (1).
- (5) For the purposes of sub-paragraph (4)(b) it will be deemed to be reasonable for any approval to be refused if Cadent considers that the specified works would;
- (a) cause interference with or risk of damage to its apparatus; or
 - (b) prevent access to its apparatus at any time.
- (6) In relation to any work to which sub-paragraph (1) or (2) applies, Cadent may require such modifications to be made to the plan as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.
- (7) Specified works must only be executed in accordance with—
- (a) the plan submitted under sub-paragraph (1) (and ground monitoring scheme if required), as approved or as amended from time to time by agreement between the undertaker and Cadent; and
 - (b) all conditions imposed under sub-paragraph (4)(a), and Cadent is entitled to watch and inspect the execution of those works.
- (8) Where Cadent requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to Cadent's satisfaction prior to the commencement of any specified works (or any relevant part thereof) for which protective works are required.
- (9) If Cadent, 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 30 to 32 and 35 to 37 apply as if the removal of the apparatus had been required by the undertaker under paragraph 36(2) and Cadent must give it 56 days' notice of such works from the date of submission of a plan pursuant to this paragraph (except in an emergency).
- (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 unless otherwise agreed by Cadent in writing and the undertaker before commencing the execution of the specified works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.
- (11) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development (including such an event attributable to its maintenance)—
- (a) the undertaker must implement an appropriate ground mitigation scheme; and
 - (b) Cadent 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 39.
- (12) The undertaker is not required to comply with sub-paragraph (1) where it needs to carry out emergency works but in that case it must give to Cadent notice as soon as is reasonably practicable and a plan of those works and must comply with the conditions imposed under sub-paragraph (4)(a) insofar as is reasonably practicable in the circumstances.
- (13) In this paragraph, “emergency works” means works whose execution at the time when they are executed is required in order to put an end to, or to prevent the occurrence of, circumstances then existing or imminent (or which the person responsible for the works believes on reasonable grounds to be existing or imminent) which are likely to cause danger to persons or property.

Expenses

39.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to Cadent on demand, all charges, costs and expenses reasonably anticipated or reasonably incurred by Cadent in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be

required in consequence of the execution of any authorised development including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by Cadent in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs (including professional fees) incurred by Cadent as a consequence of Cadent;
 - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 36(3) if it elects to do so; or
 - (ii) exercising any compulsory purchase powers under this Order transferred to or benefitting Cadent;
- (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;
- (g) any watching brief pursuant to paragraph 38(7).

(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,

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 39 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the statutory undertaker in question by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

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

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

(5) Where anticipated charges, costs or expenses have been paid by the undertaker pursuant to sub-paragraph (1), if the actual charges, costs or expenses incurred by Cadent are less than the amount already paid by the undertaker, Cadent will repay the difference to the undertaker as soon as reasonably practicable.

Indemnity

40.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Part of this Schedule (including without limitation relocation, diversion, decommissioning, construction and maintenance of apparatus or alternative apparatus) or in consequence of the construction, use, maintenance or failure of any of the authorised development (including works carried out under article 16 (protective works to buildings) 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 the undertaker) 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 the authorised development) or property of Cadent, or there is any interruption in any service provided, or in the supply of any goods, by Cadent, or Cadent becomes liable to pay any amount to any third party, the undertaker will—

- (a) bear and pay on demand accompanied by an invoice or claim from Cadent, the cost reasonably incurred by Cadent in making good such damage or restoring the supply; and
- (b) indemnify Cadent for any other expenses, loss, demands, proceedings, damages, claims, penalty, compensation or costs properly incurred by, paid by or recovered from Cadent, by reason or in consequence of any such damage or interruption or Cadent becoming liable to any third party as aforesaid other than arising from any negligence, omission or default of Cadent.

(2) The fact that any act or thing may have been done by Cadent on behalf of the undertaker or in accordance with a plan approved by Cadent or in accordance with any requirement of Cadent or under its supervision including under any watching brief will not (unless sub-paragraph (3) applies) excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless Cadent 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 accord with the approved plan.

(3) Nothing in sub-paragraph (1) imposes 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 Cadent, its officers, servants, contractors or agents; and
- (b) any part of the authorised development or any other works authorised by this Part of this Schedule carried out by Cadent as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 (benefit of order granting development consent) of the 2008 Act or article 33 (consent to transfer the benefit of the Order) subject to the proviso that once such works become apparatus (“new apparatus”), any specified works yet to be executed and not falling within this paragraph (b) are subject to the full terms of this Part of this Schedule including this paragraph 40.

(4) Cadent must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering its representations.

(5) The undertaker must not commence construction (and must not permit the commencement of such construction) of the authorised development on any land owned by Cadent or in respect of which Cadent has an easement or wayleave for its apparatus or any other interest or to carry out any works within 15 metres in any direction of Cadent’s apparatus until the following conditions are satisfied;

- (a) unless and until Cadent is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has first provided the acceptable security (and provided evidence that it will maintain such acceptable security for the construction period of the authorised development referred to in sub-paragraph (5) from the proposed date of commencement of construction of such works to the completion of those works) and Cadent has confirmed the same to the undertaker in writing. The acceptable security is to be released upon completion of the works referred to in sub-paragraph ; and

- (b) unless and until Cadent is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to Cadent that it will maintain such acceptable insurance for the construction period of the authorised development referred to in sub-paragraph (5)) from the proposed date of commencement of construction of such works) and Cadent has confirmed the same in writing to the undertaker.

(6) In the event that the undertaker fails to comply with sub-paragraph (5), nothing in this Part of this Schedule is to prevent Cadent from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

Enactments and agreements

41. Except where this Part of this Schedule provides otherwise, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Cadent 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

42.—(1) Where in consequence of the proposed construction of any part of the authorised development, the undertaker or Cadent requires the removal of apparatus under paragraph 36(2) or Cadent makes requirements for the protection or alteration of apparatus under paragraph 38, the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of Cadent's undertaking and Cadent must use its best endeavours to co-operate with the undertaker for that purpose.

(2) Whenever Cadent's consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

Access

43. If in consequence of any agreement reached in accordance with paragraph 35(1) or the powers granted by this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative rights and means of access to such apparatus as will enable Cadent to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

44. Any difference or dispute arising between the undertaker and Cadent under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and Cadent, be determined by arbitration in accordance with article 39 (arbitration).

Notices

45. Notwithstanding article 41 (service of notices) any plans submitted to Cadent by the undertaker pursuant to sub-paragraph 38(1) must be sent via email to Cadent Gas Limited Plant Protection at plantprotection@cadentgas.com as well as via post to Plant Protection, Cadent Gas Limited, Brick Kiln Street, Hinckley, Leicestershire, LE10 0NA, or such other address as Cadent may from time to time appoint instead for that purpose and notify to the undertaker in writing.

PART 5

FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

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

(2) In this Part of this Schedule—

“Agency” means the Environment Agency;

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

“drainage work” means any main river and includes any land which provides or is expected to provide flood storage capacity for any main river and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage, flood defence, or tidal monitoring;

“fishery” means any waters containing fish and fish in, or migrating to or from, such waters and the spawn, spawning ground, habitat or food of such fish;

“main river” has the same meaning as given in section 113 of the Water Resources Act 1991;

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

“remote defence” means any berm, wall or embankment that is constructed for the purposes of preventing or alleviating, flooding from, or in connection with, any main river;

“specified work” means so much of any work or operation authorised by this Order as is in, on, under, over or within

(a) 8 metres of the base of a remote defence which is likely to—

(i) endanger the stability of, cause damage or reduce the effectiveness of that remote defence, or

(ii) interfere with the Agency’s access to or along that remote defence;

(b) 8 metres of a drainage work or is otherwise likely to—

(i) affect any drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work;

(ii) affect the flow, purity or quality of water in any main river;

(iii) cause obstruction to the free passage of fish or damage to any fishery;

(iv) affect the conservation, distribution or use of water resources; or

(v) affect the conservation value of the main river and habitats in its immediate vicinity; or which involves;

(c) an activity that includes dredging, raising or taking of any sand, silt, ballast, clay, gravel or other materials from or off the bed or banks of a drainage work (or causing such materials to be dredged, raised or taken), including hydrodynamic dredging or desilting; and

(d) any quarrying or excavation within 16 metres of a drainage work which is likely to cause damage to or endanger the stability of the banks or structure of that drainage work;

“watercourse” includes all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, basins, sewers and passages through which water flows except a public sewer.

Submission and approval of plans

47.—(1) Before being to construct any specified work, the undertaker must submit to the Agency plans of the specified work and such further particulars available to it as the Agency may within 28 days of the receipt of the plans reasonably request.

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the Agency, or determined under paragraph 57.

- (3) Any approval of the Agency required under this paragraph—
- (a) must not be unreasonably withheld or delayed;
 - (b) is deemed to have been refused if it is neither given nor refused within 2 months of the submission of the plans or receipt of further particulars if such particulars have been requested by the Agency for approval; and
 - (c) may be given subject to such reasonable requirements as the Agency may have for the protection of any drainage work or the fishery or for the protection of water resources, or for the prevention of flooding or pollution or for nature conservation or in the discharge of its environmental duties.
- (4) The Agency must use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (3)(b).
- (5) In the case of a refusal, if requested to do so the Agency must provide reasons for the grounds of refusal.

Construction of protective works

48. Without limiting paragraph 47, the requirements which the Agency may have under that paragraph include conditions requiring the undertaker, at its own expense, to construct such protective works, whether temporary or permanent, before or during the construction of the specified works (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

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

by reason of any specified work.

Timing of works and service of notices

49.—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the Agency under paragraph 48, must be constructed—

- (a) without unreasonable delay in accordance with the plans approved under this Part of this Schedule; and
- (b) to the reasonable satisfaction of the Agency,

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

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

(3) If the Agency reasonably requires, the undertaker must construct all or part of the protective works so that they are in place prior to the construction of any specified work to which the protective works relate.

Works not in accordance with this Schedule

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

(2) Subject to sub-paragraph (3) and paragraph 55, if, within a reasonable period, being not less than 28 days beginning with the date when a notice under sub-paragraph (1) is served upon the

undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may execute the works specified in the notice and any reasonable expenditure incurred by the Agency in so doing is recoverable from the undertaker.

(3) In the event of any dispute as to whether sub-paragraph (1) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the Agency must not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (2) until the dispute has been finally determined in accordance with paragraph 57.

51.—(1) Subject to sub-paragraph (6) the undertaker must from the commencement of the construction of the specified works maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation and on land held by the undertaker for the purposes of or in connection with the specified works, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

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

(3) Subject to sub-paragraph (5) and paragraph 55, if, within a reasonable period, being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2) on the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may do what is necessary for such compliance and any reasonable expenditure incurred by the Agency in so doing is recoverable from the undertaker.

(4) If there is any failure by the undertaker to obtain consent or comply with conditions imposed by the Agency in accordance with these protective provisions the Agency may serve written notice requiring the undertaker to cease all or part of the specified works and the undertaker must cease the specified works or part thereof until it has obtained the consent or complied with the condition unless the cessation of the specified works or part thereof would cause greater damage than compliance with the written notice.

(5) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the Agency must not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined in accordance with paragraph 57.

(6) This paragraph does not apply to—

- (a) drainage works which are vested in the Agency, or which the Agency or another person is liable to maintain and is not proscribed by the powers of the Order from doing so; and
- (b) any obstruction of a drainage work expressly authorised in the approval of specified works plans and carried out in accordance with the provisions of this Part provided that any obstruction is removed as soon as reasonably practicable.

Remediating impaired drainage works

52. Subject to paragraph 55, if by reason of the construction of any specified work or of the failure of any such work, the efficiency of any drainage work for flood defence purposes is impaired, or that drainage work is otherwise damaged, such impairment or damage must be made good by the undertaker to the reasonable satisfaction of the Agency and if the undertaker fails to do so, the Agency may make good the impairment or damage and recover any expenditure incurred by the Agency in so doing from the undertaker.

Agency access

53. If by reason of construction of the specified work the Agency's access to flood defences or equipment maintained for flood defence purposes is materially obstructed, the undertaker must provide such alternative means of access that will allow the Agency to maintain the flood defence or use the equipment no less effectively than was possible before the obstruction within 24 hours of the undertaker becoming aware of such obstruction.

Free passage of fish

54.—(1) The undertaker must take all such measures as may be reasonably practicable to prevent any interruption of the free passage of fish in the fishery during the construction of any specified work.

(2) If by reason of—

- (a) the construction of any specified work; or
- (b) the failure of any such work,

damage to the fishery is caused, or the Agency has reason to expect that such damage may be caused, the Agency may serve notice on the undertaker requiring it to take such steps as may be reasonably practicable to make good the damage, or, as the case may be, to protect the fishery against such damage.

(3) Subject to paragraph 55, if within such time as may be reasonably practicable for that purpose after the receipt of written notice from the Agency of any damage or expected damage to a fishery, the undertaker fails to take such steps as are described in sub-paragraph (2), the Agency may take those steps and any expenditure incurred by the Agency in so doing is recoverable from the undertaker.

(4) Subject to paragraph 55, in any case where immediate action by the Agency is reasonably required in order to secure that the risk of damage to the fishery is avoided or reduced, the Agency may take such steps as are reasonable for the purpose, and may recover from the undertaker any expenditure incurred in so doing provided that notice specifying those steps is served on the undertaker as soon as reasonably practicable after the Agency has taken, or commenced to take, the steps specified in the notice.

Indemnity

55. The undertaker indemnifies the Agency in respect of all costs, charges and expenses which the Agency may incur—

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

56.—(1) The undertaker is responsible for and indemnifies the Agency against all costs and losses not otherwise provided for in this Schedule which may be reasonably incurred or suffered by the Agency by reason of—

- (a) the construction, operation or maintenance of any specified works comprised within the authorised development or the failure of any such works comprised within them; or
- (b) any act or omission of the undertaker, its employees, contractors or agents or others whilst engaged upon the construction, operation or maintenance of the authorised development or dealing with any failure of the authorised development.

(2) For the avoidance of doubt, in sub-paragraph (1)—

“costs” includes—

- (a) expenses and charges;

(b) staff costs and overheads;

(c) legal costs; and

“losses” includes physical damage.

(3) The undertaker indemnifies the Agency against all liabilities, claims and demands arising out of or in connection with the authorised development or otherwise out of the matters referred to in sub-paragraphs (1)(a) and (1)(b).

(4) For the avoidance of doubt, in sub-paragraph (3)—

“claims” and “demands” include as applicable—

(a) costs (within the meaning of sub-paragraph (2)) incurred in connection with any claim or demand;

(b) any interest element of sums claimed or demanded;

“liabilities” includes—

(a) contractual liabilities;

(b) tortious liabilities (including liabilities for negligence or nuisance);

(c) liabilities to pay statutory compensation or for breach of statutory duty; and

(d) liabilities to pay statutory penalties imposed on the basis of strict liability (but does not include liabilities to pay other statutory penalties).

(5) The Agency must give to the undertaker reasonable notice of any such claim or demand; and must not settle or compromise a claim without the agreement of the undertaker which agreement must not be unreasonably withheld or delayed.

(6) The Agency must, at all times take reasonable steps to prevent and mitigate any such claims, demands, proceedings, costs, damages, expenses or loss.

(7) The fact that any work or thing has been executed or done by the undertaker in accordance with a plan approved by the Agency, or to its satisfaction, or in accordance with any directions or award of an arbitrator, must not relieve the undertaker from any liability under the provisions of this Part of this Schedule.

(8) Nothing in this paragraph imposes any liability on the undertaker with respect to any costs, charges, expenses, damages, claims, demands or losses to the extent that they are attributable to the neglect or default of the Agency, its officers, servants, contractors or agents.

Disputes

57. Any dispute arising between the undertaker and the Agency under this Part of this Schedule must, if the parties agree, be determined by arbitration under article 39 (arbitration), but failing agreement be determined by the Secretary of State for Environment, Food and Rural Affairs or its successor and the Secretary of State for Business, Energy and Industrial Strategy or its successor acting jointly on a reference to them by the undertaker or the Agency, after notice in writing by one to the other.

PART 6

FOR THE PROTECTION OF NATIONAL GRID ELECTRICITY TRANSMISSION PLC AS ELECTRICITY UNDERTAKER AND NATIONAL GAS TRANSMISSION PLC AS GAS UNDERTAKER

Application

58. For the protection of National Grid Electricity Transmission Plc (“NGET”) or National Gas Transmission Plc (“NGT”) as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and NGET and NGT (as appropriate).

Interpretation

59. In this Part of this Schedule—

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

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of NGET or NGT (as appropriate) to enable NGET or NGT to fulfil their statutory functions in a manner no less efficient than previously;

“apparatus” means

- (a) any electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by NGET; or
- (b) any mains, pipes or other apparatus belonging to or maintained by NGT for the purposes of gas supply;

together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of either NGET or NGT for the purposes of transmission, distribution or supply or any one or more of the aforementioned purposes, 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(1) (interpretation) of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the operation and maintenance of the authorised development and construction of any works authorised by this Schedule;

“commence” and “commencement” in this Part of this Schedule includes any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment;

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the undertaker and either NGET or NGT acting reasonably in order to vary 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 either NGET or NGT (as appropriate)(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, will require the undertaker to submit for NGET or NGT’s approval (as appropriate) 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;

“Incentive Deduction” means any incentive deduction NGET receives under its electricity transmission licence which is caused by an event on its transmission system that causes electricity not to be supplied to a demand customer and which arises as a result of the authorised development;

“maintain” and “maintenance” includes the ability and right to construct, use, repair, alter, inspect, renew or remove any apparatus or alternative apparatus;

“NGET” means National Grid Electricity Transmission Plc (Company Number 2366977) whose registered office is at 1-3 Strand, London, WC2N 5EH or any successor as a licence holder within the meaning of Part 1 of the Electricity Act 1989;

“NGT” means National Gas Transmission plc (Company Number 02006000) whose registered office is at National Grid House Warwick Technology Park, Gallows Hill, Warwick, CV34 6DA or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986;

“NGESO” means as defined in the STC;

“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;

“specified works” means any of the authorised development 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 undertaker under paragraph 64(2) or otherwise;
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 64(2) or otherwise; or
- (c) includes any of the activities that are referred to in paragraph 8 of T/SP/SSW/22 NGT’s specification for “Safe Working in the Vicinity of National Grid, High pressure Gas Pipelines” and associated installation requirements for third parties, or activity that is referred to in NGET’s EN43-8 “Development Near Overhead Lines” and HSE’s guidance note 6 “Avoidance of Danger from Overhead Lines”, or activities referred to in any one or more of the aforementioned documents.

or any one or more of (a), (b) or (c) above.

“STC” means the System Operator Transmission Owner Code prepared by the electricity Transmission Owners and NGESO as modified from time to time;

“STC Claims” means any claim made under the STC against NGET arising out of or in connection with the de-energisation (whereby no electricity can flow to or from the relevant system through the generator or interconnector’s equipment) of a generator or interconnector party solely as a result of the de-energisation of plant and apparatus forming part of NGET’s transmission system which arises as a result of the authorised development;

“Transmission Owner” means as defined in the STC;

“undertaker” means the undertaker as defined in article 2(1) (interpretation) of this Order.

On Street Apparatus

60. Except for paragraphs 61 (apparatus in stopped up streets), 66 (retained apparatus: protection of electricity undertaker) and 67 (retained apparatus: protection of gas undertaker), 68 (expenses) and 69 (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 NGET or NGT (or both), the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and NGET or NGT are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus of NGET or NGT in stopped up streets

61. Notwithstanding the temporary stopping up or diversion of any streets or public right of way (or both) under the powers of article 11 (temporary stopping up of public rights of way), NGET and NGT are at liberty at all times to take all necessary access across any such stopped up streets or public rights of way and to execute and do all such works and things in, upon or under any such street or public rights of way as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in such street or public rights of way.

Protective works to buildings

62. The undertaker, in the case of the powers conferred by article 16(6) (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 NGET or NGT (as appropriate).

Acquisition of land

63.—(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 (a) appropriate, or acquire or take temporary possession of any land or apparatus or (b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right or apparatus (or any one or more of the aforementioned interests or assets) of NGET or NGT otherwise than by agreement.

(2) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised development (or in such other timeframe as may be agreed between NGET or NGT (as appropriate) and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of NGET or NGT or affect the provisions of any enactment or agreement regulating the relations between NGET or NGT (or both) and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as NGET or NGT (as appropriate) reasonably require enter into such deeds of consent upon such terms and conditions as may be agreed between NGET or NGT and the undertaker acting reasonably and which must be no less favourable on the whole to NGET or NGT unless otherwise agreed by NGET or NGT (as appropriate), and it will be the responsibility of the undertaker to procure or secure (or both) 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 development.

(3) The undertaker and NGET and NGT agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation or removal (or both) of apparatus (including but not limited to the payment of costs and expenses relating to such relocation or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by NGET or NGT or other enactments relied upon by NGET or NGT as of right or other use in relation to the apparatus (or both), then the provisions in this part of this Schedule will prevail.

(4) Any agreement or consent granted by NGET or NGT under paragraph 66 or 67 or any other paragraph of this Part of this Schedule, must not be taken to constitute agreement under sub-paragraph (1).

Removal of apparatus

64.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in or possesses temporarily any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of NGET or NGT to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of NGET or NGT (as appropriate) in accordance with sub-paragraphs (2) to (5).

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to NGET or NGT (as appropriate) 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 NGET or NGT reasonably need to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), secure any necessary consents for the alternative apparatus and afford to NGET or NGT (as appropriate) to its satisfaction (taking into account paragraph 65(1) below) the necessary facilities and rights—

- (a) for the construction of alternative apparatus in other land of or land secured by 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 or land secured by 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, NGET or NGT (as appropriate) 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 does not extend to the requirement for NGET or NGT 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 or land secured by 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 NGET or NGT and the undertaker.

(5) NGET or NGT (as appropriate) must, after the alternative apparatus to be provided or constructed has been agreed, and subject to a written diversion agreement having been entered into between the parties and the grant to NGET or NGT (as appropriate) 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

65.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for NGET or NGT facilities and rights in land for the construction, use, maintenance and protection 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 NGET or NGT and must be no less favourable on the whole to NGET or NGT than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by NGET or NGT.

(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 less favourable on the whole to NGET or NGT than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject the matter may be referred to arbitration in accordance with paragraph 73 arbitration) of this Part of this Schedule and the arbitrator may make such provision for the payment of compensation by the undertaker to NGET or NGT (as appropriate) as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection of electricity undertaker

66.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to NGET a plan of the works to be executed and seek from NGET details of the underground extent of their electricity assets.

(2) In relation to any specified works, the plan to be submitted to NGET 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;
- (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) any 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 any cable installation methodology including access arrangements, jointing bays and backfill methodology;
- (e) a written management plan for high voltage hazard during construction and ongoing maintenance of any cable route;
- (f) written details of the operations and maintenance regime for any cable, including frequency and method of access;
- (g) assessment of earth rise potential if reasonably required by NGET's engineers; and
- (h) evidence that trench bearing capacity is to be designed to support overhead line construction traffic of up to and including 26 tonnes in weight.

(4) The undertaker must not commence any works to which sub-paragraphs (1), (2) or (3) apply until NGET has given written approval of the plan so submitted.

(5) Any approval of NGET required under sub-paragraph (4)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (6) or (8); and,
- (b) must not be unreasonably withheld.

(6) In relation to any work to which sub-paragraphs (1), (2) or (3) apply, NGET may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage, for the provision of protective works 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 in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (6), as approved or as amended from time to time by agreement between the undertaker and NGET and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (6) or (8) by NGET for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and NGET will be entitled to watch and inspect the execution of those works.

(8) Where NGET requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to NGET's satisfaction prior to the commencement of any authorised development (or any relevant part thereof) for which protective works are required and NGET must give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(9) If NGET in accordance with sub-paragraphs (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 58 to 60 and 63 to 65 apply as if the removal of the apparatus had been required by the undertaker under paragraph 64(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 the authorised development, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph must apply to and in respect of the new plan.

(11) The undertaker will 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 NGET notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (6), (7) or (8) insofar as is reasonably practicable in the circumstances and 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 NGET's policies for development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".

Retained apparatus: protection of gas undertaker

67.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to NGT a plan and, if reasonably required by NGT, a ground monitoring scheme in respect of those works.

(2) The plan to be submitted to NGT 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; and
- (f) any intended maintenance regimes.

(3) The undertaker must not commence any works to which sub-paragraphs (1) and (2) apply until NGT has given written approval of the plan so submitted.

(4) Any approval of NGT required under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (7); and
- (b) must not be unreasonably withheld.

(5) In relation to any work to which sub-paragraphs (1), (2) or (3) apply, NGT may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works executed under sub-paragraphs (1), (2) or (3) must be executed in accordance with the plan, submitted under sub-paragraph (2) or as relevant sub-paragraph (5), as approved or as amended from time to time by agreement between the undertaker and NGT and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5) or (7) by NGT for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and NGT will be entitled to watch and inspect the execution of those works.

(7) Where NGT requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to NGT's satisfaction prior to the commencement of any specified works for which protective works are required and NGT must give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(8) If NGT in accordance with sub-paragraphs (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 58 to 60 and 63 to 65 apply as if the removal of the apparatus had been required by the undertaker under paragraph 64(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 the specified works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(10) The undertaker will not be required to comply with sub-paragraph (2) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to NGT notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances and comply with sub-paragraph (11) at all times.

(11) At all times when carrying out any works authorised under the Order the undertaker must comply with NGT'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 HSE'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 must implement an appropriate ground mitigation scheme except that NGT 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 68.

Expenses

68.—(1) Save where otherwise agreed in writing between NGET or NGT and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to NGET or NGT (as appropriate) within 30 days of receipt of an invoice or claim from NGET or NGT all charges, costs and expenses reasonably anticipated within the following three months or reasonably and properly incurred by NGET or NGT (as appropriate) in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised development as are referred to in this Part of this Schedule including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by NGET or NGT (as appropriate) in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by NGET or NGT (as appropriate) as a consequence of it;
 - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 64(3); or
 - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting NGET or NGT (as appropriate);
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;
- (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, is not determined by arbitration in accordance with paragraph 73 (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 NGET or NGT by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and 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 will 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 will be treated as if it also had been agreed or had been so determined.

(5) Any amount which apart from this sub-paragraph would be payable to NGET or NGT in respect of works by virtue of sub-paragraph (1) will, 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 NGET or NGT 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

69.—(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 the authorised development) or property of NGET or NGT, or there is any interruption in any service provided, or in the supply of any goods or energy, by NGET or NGT, or NGET or NGT become liable to pay any amount to any third party, the undertaker will—

- (a) bear and pay on demand accompanied by an invoice or claim from NGET or NGT the cost reasonably and properly incurred by NGET or NGT (as appropriate) in making good such damage or restoring the supply; and
- (b) indemnify NGET and NGT for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from it, by reason or in consequence of any such damage or interruption or NGET or NGT (as appropriate) becoming liable to any third party including STC Claims or an Incentive Deduction other than arising from any default of either NGET or NGT (as appropriate).

(2) The fact that any act or thing may have been done by NGET or NGT (as appropriate) on behalf of the undertaker or in accordance with a plan approved by NGET or NGT (as appropriate) or in accordance with any requirement of NGET or NGT (as appropriate) or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the

provisions of this sub-paragraph (1) unless NGET or NGT (as appropriate) 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 accord with the approved plan.

(3) Nothing in sub-paragraph (1) imposes 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 NGET or NGT, its officers, servants, contractors or agents;
- (b) any authorised development or any other works authorised by this Part of this Schedule carried out by NGET or NGT as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article 33 (consent to transfer the benefit of the Order) subject to the proviso that once such works become apparatus (“new apparatus”), any authorised development yet to be executed and not falling within this sub-section (b) will be subject to the full terms of this Part of this Schedule including this paragraph 69; or
- (c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable.

(4) NGET or NGT (as appropriate) must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

(5) NGET or NGT (as appropriate) must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on their own behalf from their own funds.

(6) NGET must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands and penalties to which the indemnity under this paragraph applies where it is within NGET’s reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of NGET’s control and if reasonably requested to do so by the undertaker NGET must provide an explanation of how the claim has been minimised, where relevant.

(7) NGT must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where it is within NGT’s reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of NGT’s control and if reasonably requested to do so by the undertaker NGT must provide an explanation of how the claim has been minimised, where relevant.

Enactments and agreements

70. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between NGET or NGT (or both) and the undertaker, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and NGET or NGT (or both) 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

71.—(1) Where in consequence of the proposed construction of any part of the authorised development, the undertaker or NGET or NGT requires the removal of apparatus under paragraph 64(2) or NGET or NGT makes requirements for the protection or alteration of apparatus under paragraph 66 or 67, the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of NGET or NGT’s undertaking and NGET and NGT must separately use their best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever NGET or NGT's consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

Access

72. If in consequence of the agreement reached in accordance with paragraph 63(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable NGET or NGT to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

73. Save for differences or disputes arising under paragraph 64(2), 64(4), 65(1), 66 and 67, any difference or dispute arising between the undertaker and NGET or NGT under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and NGET or NGT (as appropriate), be determined by arbitration in accordance with article 39 (arbitration).

Notices

74. Notwithstanding article 41 (service of notices), any plans submitted to NGET or NGT by the undertaker pursuant to paragraph 66 and 67 must be submitted using the LSBUD system (<https://lsbud.co.uk/>) or to such other address as NGET or NGT may from time to time appoint instead for that purpose and notify to the undertaker in writing.

PART 7

FOR THE PROTECTION OF UK POWER NETWORKS LIMITED AND EASTERN POWER NETWORKS PLC

75. 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.

76. 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 electric lines or electrical plant (as defined in the Electricity Act 1989(a)), belonging to or maintained by that utility undertaker;

“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) UK Power Networks Limited, whose registered office is at Newington House, 237 Southwark Bridge Road, London, SE1 6NP;

(b) Eastern Power Networks plc, whose registered office is at Newington House, 237 Southwark Bridge Road, London, SE1 6NP,

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.

(a) 1989 c. 29.

77. 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 (street works in England and Wales) of the 1991 Act.

78. Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 11 (temporary stopping up of 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.

79. Regardless of any provision in this Order or anything shown on the land and Crown land plans, the undertaker must not acquire any apparatus otherwise than with the prior written agreement of the utility undertaker.

80.—(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 (6).

(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 28 days' 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 39 (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 39 (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.

(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 removal of apparatus or construction of alternative apparatus in any land controlled by the undertaker, that work, instead of being executed by the utility undertaker, must be executed by the undertaker if the undertaker is able to do so without unnecessary delay and only in accordance with plans and methodology approved by the utility undertaker, such approval may be subject to such reasonable conditions including but not limited to the undertaker entering

into an assets protection agreement with the utility undertaker as the utility undertaker deems necessary. The undertaker must carry out the works under the superintendence subject to the undertaker paying and the undertaker must pay the proper and reasonable fees of the utility undertaker, if given, and to the reasonable satisfaction of the utility undertaker subject to the utility undertaker's reasonable specification.

81.—(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 39 (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.

82.—(1) Not less than 28 days before starting the execution of any works in, on, over or under any land purchased, held, appropriated or used under this Order that are over, under or near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 80, 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 28 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 75 to 81 apply as if the removal of the apparatus had been required by the undertaker under paragraph 80(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, 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.

(7) The undertaker is not required to comply with sub-paragraph (1) in cases where for the purpose of constructing, operating, maintaining or decommissioning the authorised development the undertaker creates a footpath, footway or other means of access which is to be used for either vehicular or pedestrian access over or under any apparatus.

83.—(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 80(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—
apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type,; 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 39 (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, 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 80(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 seven years and six 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.

84.—(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 80(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 paragraph 80(2) 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.

85. Where in consequence of the proposed construction of any of the authorised development, the undertaker or a utility undertaker requires the removal of apparatus under paragraph 80(2) or a utility undertaker makes requirements for the protection or alteration of apparatus under paragraph 81, the undertaker must use reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of the utility undertaker's

undertaking and each utility undertaker must use its reasonable endeavours to co-operate with the undertaker for that purpose.

86. 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.

87. Any difference under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and the utility undertaker, be determined by arbitration in accordance with article 39 (arbitration).

PART 8

FOR THE PROTECTION OF DRAINAGE AUTHORITIES

88. The provisions of this Part of this Schedule have effect for the protection of the drainage authority unless otherwise agreed in writing between the undertaker and the drainage authority.

89. In this Part of this Schedule—

“authorised development” has the same meaning as in article 2(1) (interpretation) of this Order and (unless otherwise specified) for the purposes of this Part of this Schedule includes the operation and maintenance of the authorised development and the construction of any works authorised by this Part of this Schedule;

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

“drainage authority” means in relation to an ordinary watercourse—

- (a) the drainage board concerned within the meaning of section 23 (prohibition on obstructions etc. in watercourses) of the Land Drainage Act 1991; or
- (b) in the case of any area for which there is no such drainage board, the lead local flood authority within the meaning of section 6 (other definitions) of the Flood and Water Management Act 2010;

“drainage work” means any ordinary watercourse and includes any bank, wall, embankment or other structure, or any appliance, constructed for land drainage or flood defence which is the responsibility of the drainage authority;

“ordinary watercourse” has the meaning given by section 72 (interpretation) of the Land Drainage Act 1991;

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

“specified work” means so much of the authorised development as is in, on, under, over or within 8 metres of a drainage work or is otherwise likely to affect the flow of water in any watercourse.

90.—(1) Before commencing construction of a specified work, the undertaker must submit to the drainage authority plans of the specified work and such further particulars available to it as the drainage authority may reasonably require within 14 days of the submission of the plans.

(2) A specified work must not be constructed except in accordance with such plans as may be approved in writing by the drainage authority or determined under paragraph 96.

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

- (a) must not be unreasonably withheld or delayed;
- (b) is deemed to have been given if it is neither given nor refused within 28 days of the submission of the plans for approval, or submission of further particulars (where required by the drainage authority under sub-paragraph (1)) whichever is the later; and

- (c) may be given subject to such reasonable requirements as the drainage authority may make for the protection of any drainage work taking into account the terms of this Order.

(4) Any refusal under this paragraph must be accompanied by a statement of the reasons for refusal.

91. Without limiting the scope of paragraph 90, the requirements which the drainage authority may make under that paragraph include conditions requiring the undertaker at its own expense to construct such protective works, whether temporary or permanent, during the construction of the specified work (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary taking account of the terms of this Order—

- (a) to safeguard any drainage work against damage by reason of any specified work; or
- (b) to secure that the efficiency of any drainage work for flood defence and land drainage purposes is not impaired, and that the risk of flooding is not otherwise increased beyond the level of flood risk that was assessed in the environmental statement, by reason of any specified work.

92.—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the drainage authority under paragraph 91, must be constructed—

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

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

(2) The undertaker must give to the drainage authority—

- (a) not less than 14 days' notice in writing of its intention to commence construction of any specified work; and
- (b) notice in writing of its completion not later than seven days after the date on which it is brought into use.

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

94. The undertaker must make reasonable compensation for costs, charges and expenses which the drainage authority may reasonably incur—

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

95.—(1) The undertaker must make reasonable compensation for liabilities, costs and losses which may be reasonably incurred or suffered by reason of—

- (a) the construction of any specified works comprised within the authorised development; or
- (b) any act or omission of the undertaker, its employees, contractors or agents or others while engaged upon the construction of the authorised development.

(2) The drainage authority must give to the undertaker reasonable notice of any such claim or demand.

(3) The undertaker may at its own expense conduct all negotiations for the settlement of the same and any litigation that may arise therefrom.

(4) The drainage authority must not compromise or settle any such claim or make any admission which might be prejudicial to the claim without the agreement of the undertaker which agreement must not be unreasonably withheld or delayed.

(5) The drainage authority will, having regard to its statutory functions, at all times take reasonable steps to prevent and mitigate any such claims, demands, proceedings, costs, damages, expenses or loss.

(6) The drainage authority will, at the request of the undertaker and having regard to its statutory functions, afford all reasonable assistance for the purpose of contesting any such claim or action, and is entitled to be repaid its reasonable expenses reasonably incurred in so doing.

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

(8) Nothing in subparagraph 95(1) imposes any liability on the undertaker with respect to any damage to the extent that it is attributable to the act, neglect or default of the drainage authority or the breach of a statutory duty of the drainage authority, its officers, servants, contractors or agents.

96. Any dispute arising between the undertaker and the drainage authority under this Part of this Schedule, if the parties agree, is to be determined by arbitration under article 39 (arbitration).

PART 9

FOR THE PROTECTION OF NATIONAL HIGHWAYS

Application

97.—(1) The provisions of this Part of this Schedule apply for the protection of National Highways and have effect unless otherwise agreed in writing between the undertaker and National Highways.

(2) Nothing in this Order affects or prejudices the operation of the powers and duties of National Highways or the Secretary of State under the Highways Act 1980, the Road Traffic Regulation Act 1984, the New Roads and Street Works Act 1991, the Transport Act 2000, or Town and Country Planning (General Permitted Development) (England) Order 2015.

Interpretation

98.—(1) Where the terms defined in article 2 (interpretation) of this Order are inconsistent with sub-paragraph (2) below the latter prevail.

(2) In this Schedule—

“administration fee” means the fee payable pursuant to the provisions of this Part of this Schedule that represent the internal costs of National Highways in administering the implementation of the specified work and charged as a flat fee based on the value of the specified works only;

“as built information” means one digital copy of the following information—

- (a) as constructed drawings in both PDF and Auto CAD DWG formats for anything designed by the undertaker; in compliance with GG184 (Specification for the use of Computer Aided Design) or any successor document;
- (b) list of suppliers and materials used and test results and (where in the opinion of National Highways, following due diligence and assessment while acting reasonably, the carrying out of a specified work may have a materially adverse effect on any part of the highways drainage system maintained by National Highways) CCTV surveys;

- (c) product data sheets and technical specifications for all materials used;
- (d) as constructed information for any utilities discovered or moved during the works;
- (e) method statements for the works carried out;
- (f) in relation to road lighting, signs, and traffic signals any information required by Series 1300 and 1400 of the Specification for Highway Works or any replacement or modification of it;
- (g) organisation and methods manuals for all products used;
- (h) as constructed programme;
- (i) test results and records as required by the detailed design information and during construction phase of the project;
- (j) the health and safety file to include the geotechnical feedback report required under CD622; and
- (k) other such information as is required by National Highways to be used to update all relevant databases and to ensure compliance with National Highway's *Asset Data Management Manual* as is in operation at the relevant time,

provided that the items referred to in sub-paragraphs (c) and (g) above will only be required to be submitted if the relevant specified work would require any of the works of a description referred to in article 13(1)(a) to (d) (agreements with street authorities) of this Order to be carried out in relation to any highway for which National Highways is the highways authority;

“condition survey” means a survey of the condition of National Highways structures and assets (including, but not limited to pavements, lighting, soft estates, signals, barriers, drainage and cabling) within the Order limits that in the reasonable opinion of National Highways may be affected by a specified work, and further to include, where the undertaker, following due diligence and assessment, identifies a specified part of the highways drainage system maintained by National Highways that National Highways reasonably considers may be materially and adversely affected by a specified work. A CCTV survey of specified drains will only form part of a condition survey where the authority, following due diligence and assessment, identifies a specified part of the highways drainage system maintained by National Highways that National Highways reasonably considers may be materially and adversely affected by a specified work;

“contractor” means any contractor or sub-contractor appointed by the undertaker to carry out a specified work;

“detailed design information” means drawings specifications and calculations as appropriate for the following—

- (a) regime of California Bearing Ratio testing;
- (b) earthworks including supporting geotechnical assessments required by CD622 (Managing geotechnical risk) of the DMRB or any successor document and any required strengthened earthworks appraisal form certification;
- (c) proposed departures from DMRB standards;
- (d) utilities diversions;
- (e) topographical survey;
- (f) health and safety information including any asbestos survey required by GG105 (asbestos management) or any successor document; and
- (g) other such information that may be reasonably required by National Highways to inform the detailed design of a specified work.

“DMRB” means the Design Manual for Roads and Bridges or any replacement, revision or modification of it;

“the framework contract” means the contract between National Highways and the highway operations and maintenance contractor for the maintenance and operation of parts of the trunk

road which are within the Order limits or any successor or replacement contract that may be current at the relevant time;

“the highway operations and maintenance contractor” means the contractor appointed by National Highways under the framework contract;

“highways structure” means structures or installations within the scope of the DMRB and that are situated under, over or adjacent to a motorway or other trunk road;

“initial deposit” means the sum calculated by National Highways (acting reasonably) payable to National Highways to cover all initial stages of work until such time as the cost of the specified work and the NH costs payable under paragraph 102 of this Part can be estimated;

“nominated persons” means the undertaker’s representatives or the contractor’s representatives on site during the carrying out of a specified work as notified to National Highways from time to time;

“programme of works” means a document setting out the sequence and timetabling of a specified work;

“road space booking” means road space bookings in accordance with National Highways’ Asset Management Operational Requirements (AMOR) including Network Occupancy Management System (NOMS) used to manage road space bookings and network occupancy;

“specified work” means so much of any work authorised by this Order, including any maintenance of that work, as is in or under the trunk road and in particular means the crossing under the A11 north of junction 38 as shown in the indicative location on sheet 10 of the work plans; and

“trunk road” for the purpose of these protective provisions means any highway for which National Highways is the highway authority.

General

99.—(1) Notwithstanding the limits of deviation permitted pursuant to article 3(2) of this Order, no works in carrying out, maintaining or diverting the authorised development may be carried out under the trunk road at a distance within 4 metres of the lowest point of the ground.

(2) Notwithstanding the powers granted to the undertaker pursuant to this Order, if the carrying out of any specified work would require any works to be carried out in relation to the trunk road, excluding the works authorised in relation to the A11 specified in Schedule 4 (cable works beneath the width of the highway), and Schedule 5 Part 2 (temporary alteration of layout), the undertaker must enter into an agreement with National Highways prior to the commencement of any such work.

Prior Approvals

100.—(1) No specified work may commence until—

- (a) the programme of works has been approved by National Highways;
- (b) the following details relating to the specified work have been submitted to and approved by National Highways—
 - (i) the detailed design information;
 - (ii) details of any proposed road space bookings with National Highways;
 - (iii) (if details have been supplied pursuant to sub-paragraph (ii) above) a scheme of traffic management; and
 - (iv) the identity of the contractor and nominated persons,
- (c) if the carrying out of a specified work requires the booking of any road space with National Highways and a scheme of traffic management and a process for stakeholder liaison has been submitted by the undertaker and approved by National Highways, such scheme to be capable of amendment by agreement between the undertaker and National Highways from time to time;

- (d) any stakeholder liaison that may be required has taken place in accordance with the process for such liaison agreed between the undertaker and National Highways under sub-paragraph (c) above;
- (e) any further information that National Highways may reasonably request within 14 days of the submission of the detailed design of a specified work has been supplied to National Highways; and
- (f) a condition survey, and a reasonable regime of monitoring the structures, assets and pavements that are the subject of the condition survey, has been submitted to and approved by National Highways.

(2) National Highways must provide the undertaker with a list, which is to be agreed between the parties acting reasonably, of all the structures, assets and pavements to be subject to both a condition survey and reasonable regime of monitoring pursuant to sub-paragraph (1)(f) and paragraph 103(1) of this Part of this Schedule before the first condition survey is conducted and the reasonable regime of monitoring is implemented.

(3) National Highways must prior to the commencement of a specified work inform the undertaker of the identity of the person who will act as a point of contact on behalf of National Highways to consider the information required under sub-paragraph (1) and of the identity of the person or persons who are authorised to give consent or approval on behalf of National Highways for any matter requiring approval or consent in these provisions.

(4) Any approval of National Highways required by this paragraph—

- (a) must not be unreasonably withheld or delayed;
- (b) in the case of a refusal must be accompanied by a statement of grounds for refusal;
- (c) is deemed to have been refused if it is neither given or refused within 56 days of the submission of the relevant information (if further information is requested by National Highways any such request must be submitted to the undertaker within 28 days of submission of the relevant information under this sub-paragraph (c) and the provision of such further information by the undertaker will not be deemed to constitute a new application for approval pursuant to this paragraph); and
- (d) may be given subject to any reasonable conditions as National Highways considers necessary.

(5) Except where an approval has been provided under sub-paragraph (1), the undertaker must not exercise—

- (a) article 5 (power to maintain the authorised development);
- (b) article 14 (discharge of water);
- (c) article 16 (protective works to buildings);
- (d) article 17 (authority to survey and investigate the land);
- (e) article 27 (temporary use of land for constructing the authorised development);
- (f) article 28 (temporary use of land for maintaining the authorised development); or
- (g) article 36 (felling or lopping of trees and removal of hedgerows)

of this Order over any part of the trunk road without the consent of National Highways, and National Highways may in connection with any such exercise require the undertaker to provide details of any proposed road space bookings and submit a scheme of traffic management for National Highways' approval.

Construction of the specified work

101.—(1) The undertaker must, prior to commencement of a specified work, give to National Highways 28 days' notice in writing of the date on which the specified work will start unless otherwise agreed by National Highways.

(2) If the carrying out of any part of the authorised development requires the booking of road space with National Highways, the undertaker must comply with National Highway's road space

booking procedures prior to and during the carrying out of the specified work and no specified work for which a road space booking with National Highways is required will commence without a road space booking having first been secured from National Highways.

(3) Any specified work must be carried out to the reasonable satisfaction of National Highways (acting reasonably) in accordance with—

- (a) the relevant detailed design information and programme of works approved pursuant to paragraph 100(1) above or as subsequently varied by agreement between the undertaker and National Highways;
- (b) where relevant, the DMRB, the Specification for Highway Works (contained within the Manual of Contract Documents for Highway Works) together with all other relevant standards as required by National Highways to include, inter alia, all relevant interim advice notes and any amendment to or replacement thereof for the time being in force save to the extent that any departures or exceptions from those standards apply which have been approved by National Highways; and
- (c) any reasonable conditions of National Highways notified by National Highways to the undertaker pursuant to paragraph 100(4)(d) of this Part of this Schedule.

(4) The undertaker must ensure that (where possible) without entering the highway—

- (a) the highway is kept free from mud, soil and litter as a result of the carrying out of a specified work; and
- (b) the specified work is carried out without disturbance to the highway and so that the highway remains open for traffic at all times unless otherwise agreed with National Highways.

(5) The undertaker must permit and must require the contractor to permit at all reasonable times persons authorised by National Highways (whose identity must have been previously notified to the undertaker by National Highways) to gain access to a specified work for the purposes of inspection and supervision of a specified work or method of construction of such work.

(6) If any specified work is constructed—

- (a) other than in accordance with the requirements of this Part of this Schedule; or
- (b) in a way that causes damage to the highway, any highway structure or asset or any other land of National Highways,

National Highways may by notice in writing require the undertaker, at the undertaker's own expense, to comply with the requirements of this Part of this Schedule or put right any damage notified to the undertaker under this Part of this Schedule.

(7) If within 56 days of the date on which a notice under sub-paragraph (6) is served on the undertaker, the undertaker has failed to take steps to comply with the notice, National Highways may carry out the steps required of the undertaker and may recover from the undertaker any expenditure reasonably incurred by National Highways in so doing, such sum to be payable within 30 days of demand. Where the steps required to be taken pursuant to any notice require the submission of any information for the prior approval of National Highways under paragraph 100 of this Part of this Schedule, the submission of that information will evidence that the undertaker has taken steps to comply with a notice served by National Highways under sub-paragraph (6).

(8) National Highways may, at its discretion, in its notice in writing to the undertaker given pursuant to sub-paragraph (6) state that National Highways intend to put right the damage notified to the undertaker, and if it intends to do so it must give the undertaker not less than 28 days' notice of its intention to do so and National Highways may recover from the undertaker any reasonable expenditure incurred by National Highways in doing so.

(9) Nothing in this Part of this Schedule prevents National Highways from, in the event of an emergency or to prevent the occurrence of danger to the public, carrying out any work or taking any such action as it reasonably believes to be necessary as a result or in connection with of the carrying out of the specified works without prior notice to the undertaker and National Highways may recover from the undertaker any reasonable expenditure incurred by National Highways in so doing.

Payments

102.—(1) The undertaker must pay to National Highways a sum equal to the whole of any costs and expenses which National Highways reasonably incurs (including costs and expenses for using internal or external staff) in relation to any specified work and in relation to any approvals sought under this Order including—

- (a) the checking and approval of the information required under paragraph 100(1);
- (b) the supervision of a specified work;
- (c) contractual costs properly payable to the highway operations and maintenance contractor as a consequence of any specified work, including costs incurred by the highway operations and maintenance contractor in carrying out the tasks referred to in sub-paragraphs (a) and (b) of this paragraph, in which case National Highways will be responsible for the payment of any sums received from the undertaker under this paragraph to the highway operations and maintenance contractor; and
- (d) the administration fee and legal costs, reasonably and properly incurred;
- (e) any value added tax which is payable by National Highways only in respect of such costs and expenses arising under this sub-paragraph 102(1) and for which it cannot obtain reinstatement from HM Revenue and Customs,

sub-paragraphs (a) to (e) together comprising “the NH costs”.

(2) The undertaker must pay to National Highways upon demand and prior to such costs being incurred the total costs that National Highways believe will be properly and necessarily incurred by National Highways in undertaking any statutory procedure or preparing and bringing into force any traffic regulation order or orders necessary to carry out or for effectively implementing the authorised development.

(3) National Highways must notify the undertaker of the amount required for the Initial Deposit as soon as reasonably practicable and the undertaker must pay an amount equal to that sum within 28 days of receipt of the notification.

(4) National Highways must provide the undertaker with a fully itemised invoice showing its estimate of the NH costs including its estimate of the administration fee prior to the commencement of a specified work and the undertaker must pay to National Highways the estimate of the NH costs prior to commencing the specified work and in any event prior to National Highways incurring any cost.

(5) If at any time after the payment referred to in sub-paragraph (3) or (4) has become payable, National Highways reasonably believes that the NH costs will exceed the relevant sum notified to the undertaker it may give notice to the undertaker of the amount that it believes the NH costs will exceed the relevant sum (excess) and the undertaker must pay to National Highways within 28 days of the date of the notice a sum equal to the excess.

(6) National Highways must give the undertaker a final account of the NH costs referred to in sub-paragraph (1), as a fully itemised invoice, within 30 days of the undertaker notifying to National Highways that a specified work has been completed.

(7) Within 30 days of the issue of the final account—

- (a) if the final account shows a further sum as due to National Highways the undertaker must pay to National Highways the sum shown due to it; or
- (b) if the account shows that the payment or payments previously made by the undertaker have exceeded the costs incurred by National Highways, National Highways must refund the difference to the undertaker.

(8) If any payment due under any of the provisions of this Part of this Schedule is not made on or before the date on which it falls due the party from whom it was due must at the same time as making the payment pay to the other party interest at 1% above the rate payable in respect of compensation under Section 32 of the 1961 Act for the period starting on the date upon which the payment fell due and ending with the date of payment of the sum on which interest is payable together with that interest.

Completion of a specified work

103.—(1) Within 56 days of the completion of a specified work, the undertaker must arrange for the highway structures, assets and pavements that were the subject of the condition survey carried out in respect of the specified work to be re-surveyed and must submit the re-survey to National Highways for its approval.

(2) If the re-survey carried out pursuant to sub-paragraph (1) indicates that any damage has been caused to any highways structure or pavement, the undertaker must submit a scheme for remedial works in writing to National Highways for its approval in writing, which must not be unreasonably withheld or delayed, and must carry out the remedial works at its own cost and in accordance with the scheme submitted.

(3) If the undertaker fails to carry out the remedial work in accordance with the approved scheme, National Highways may carry out the steps required of the undertaker and may recover from the undertaker any expenditure reasonably incurred by National Highways in so doing, such sum to be payable within 30 days of demand.

(4) National Highways may, at its discretion, at the same time as giving its approval to the condition survey, give notice in writing to the undertaker stating that National Highways will remedy the damage identified by the condition survey and National Highways may recover from the undertaker any reasonable expenditure incurred by National Highways in so doing.

(5) Within 10 weeks of the completion of a specified work, the undertaker must submit to National Highways the as built information, both in hard copy and electronic form.

(6) The undertaker must make available to National Highways upon reasonable request copies of any survey or inspection reports produced pursuant to any inspection or survey of any specified work following its completion that the undertaker may from time to time carry out.

Indemnification

104.—(1) Subject to sub-paragraphs (2) and (3), the undertaker must indemnify National Highways from and against all costs, expenses, damages, losses and liabilities suffered by National Highways arising from or in connection with any claim, demand, action or proceedings resulting from damage caused by the construction, maintenance or use of the specified works.

(2) Sub-paragraph (1) does not apply if the costs expenses liabilities and damages were caused by or arose out of the neglect or default of National Highways or its officers, servants, agents or contractors or any person or body for whom it is responsible.

(3) If any person makes a claim or notifies an intention to make a claim against National Highways which may reasonably be considered likely to give rise to a liability under this paragraph then National Highways must—

- (a) as soon as reasonably practicable give the undertaker reasonable notice of any such third party claim or demand, specifying the nature of the indemnity liability in reasonable detail; and
- (b) not make any admission of liability, agreement or compromise in relation to the indemnity liability without first consulting the undertaker and considering their representations.

(4) The undertaker acknowledges that National Highways may receive statutory compensation claims and that National Highways may not be able to comply with sub-paragraph (3) above in respect of such claims.

(5) Where National Highways considers that sub-paragraph (4) applies to any claim or demand it must give notice of that view as part of the relevant notice provided pursuant to sub-paragraph (3)(a) above.

(6) National Highways must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands and penalties to which the indemnity under this paragraph applies where it is within National Highway's reasonable gift and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of National Highway's control. If reasonably requested to do so by the undertaker,

National Highways must provide an explanation of how any claim has been mitigated or minimised or where mitigation or minimisation is not possible an explanation as to why.

Arbitration

105. Any difference or dispute arising between the undertaker and National Highways under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Highways, be determined by arbitration in accordance with article 39 (arbitration).

PART 10

FOR THE PROTECTION OF RAILWAY INTERESTS

106. The provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 120 of this Part of this Schedule, any other person on whom rights or obligations are conferred by that paragraph.

107. In this Part of this Schedule—

“asset protection agreement” means an agreement to regulate the construction and maintenance of the specified work in a form prescribed from time to time by Network Rail;

“construction” includes execution, placing, alteration and reconstruction and “construct” and “constructed” have corresponding meanings;

“the engineer” means an engineer appointed by Network Rail for the purposes of this Order;

“network licence” means the network licence, as the same is amended from time to time, granted to Network Rail Infrastructure Limited by the Secretary of State in exercise of their powers under section 8 (licences) of the Railways Act 1993(a);

“Network Rail” means Network Rail Infrastructure Limited (company number 02904587, whose registered office is at 1 Eversholt Street, London, NW1 2DN) and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition “associated company” means any company which is (within the meaning of section 1159 of the Companies Act 2006(b) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited and any successor to Network Rail Infrastructure Limited’s railway undertaking;

“plans” includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

“railway operational procedures” means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

“railway property” means any railway belonging to Network Rail and—

- (a) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and
- (b) any easement or other property interest held or used by Network or a tenant or licensee of Network Rail for the purposes of such railway or works, apparatus or equipment;

“regulatory consents” means any consent or approval required under:

- (a) the Railways Act 1993;
- (b) the network licence; or
- (c) any other relevant statutory or regulatory provisions;

(a) 1993 c. 43.

(b) 2006 c. 46.

by either the Office of Rail and Road or the Secretary of State for Transport or any other competent body including change procedures and any other consents, approvals of any access or beneficiary that may be required in relation to the authorised development;

“specified work” means so much of any of the authorised development as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property and, for the avoidance of doubt, includes the maintenance of such works under the powers conferred by article 5 (power to maintain the authorised development) in respect of such works.

108.—(1) Where under this Part of this Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail must—

- (a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and
- (b) use their reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development pursuant to this Order.

109.—(1) The undertaker must not exercise the powers conferred by—

- (a) article 3 (development consent etc. granted by the Order);
- (b) article 5 (power to maintain the authorised development);
- (c) article 14 (discharge of water);
- (d) article 17 (authority to survey and investigate the land);
- (e) article 18 (compulsory acquisition of land);
- (f) article 20 (compulsory acquisition of rights);
- (g) article 23 (acquisition of subsoil only);
- (h) article 24 (power to override easements and other rights);
- (i) article 27 (temporary use of land for constructing the authorised development);
- (j) article 28 (temporary use of land for maintaining the authorised development);
- (k) article 29 (statutory undertakers);
- (l) article 36 (felling or lopping of trees and removal of hedgerows);
- (m) article 37 (trees subject to tree preservation orders);
- (n) or the powers conferred by section 11(3) (power of entry) of the 1965 Act;
- (o) the powers conferred by section 203 (power to override easements and rights) of the Housing and Planning Act 2016;
- (p) the powers conferred by section 172 (right to enter and survey land) of the Housing and Planning Act 2016;
- (q) any powers under in respect of the temporary possession of land under the Neighbourhood Planning Act 2017,

in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(3) The undertaker must not exercise the powers conferred by sections 271 or 272 of the 1990 Act, article 29 (statutory undertakers), article 24 (power to override easement and other rights) or

article 21 (private rights), in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

(4) The undertaker must not under the powers of this Order acquire or use or acquire new rights over, or seek to impose restrictive covenants over, any railway property, or extinguish any existing rights of Network Rail in respect of any third party property, except with the consent of Network Rail.

(5) The undertaker must not under the powers of this Order do anything which would result in railway property being incapable of being used or maintained or which would affect the safe running of trains on the railway.

(6) Where Network Rail is asked to give its consent pursuant to this paragraph, such consent must not be unreasonably withheld but may be given subject to reasonable conditions but it must never be unreasonable to withhold consent for reasons of operational or railway safety (such matters to be in Network Rail's absolute discretion).

(7) The undertaker must enter into an asset protection agreement prior to the carrying out of any specified work.

110.—(1) The undertaker must before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated their disapproval of those plans and the grounds of such disapproval the undertaker may serve upon the engineer written notice requiring the engineer to intimate approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further 28 days the engineer has not intimated approval or disapproval, the engineer is deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail must construct it without unnecessary delay on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.

(4) When signifying their approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes must be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works must be carried out at the expense of the undertaker in either case without unnecessary delay and the undertaker must not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to their reasonable satisfaction.

111.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 110(4) must, when commenced, be constructed—

- (a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 110;

- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage as is possible to railway property; and
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free,
- (e) uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction is to be caused by the carrying out of, or in consequence of the construction of a specified work, the undertaker must, notwithstanding any such approval, make good such damage and must pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Part of this Schedule imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents or any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

112. The undertaker must—

- (a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and
- (b) supply the engineer with all such information as they may reasonably require with regard to a specified work or the method of constructing it.

113. Network Rail must at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by Network Rail under this Part of this Schedule during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

114.—(1) If any permanent or temporary alterations or additions to railway property are reasonably necessary in consequence of the construction or completion of a specified work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the undertaker 56 days' notice (or in the event of an emergency or safety critical issue such notice as is reasonable in the circumstances) of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work is to be constructed, Network Rail must assume construction of that part of the specified work and the undertaker must, notwithstanding any such approval of a specified work under paragraph 110(3), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 115(a) provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

(4) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving must be set off against any sum payable by the undertaker to Network Rail under this paragraph.

115. The undertaker must repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

- (a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 110(3) or in constructing any protective works under the provisions of paragraph 110(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work;
- (c) in respect of the employment or procurement of the services of any inspectors, signallers, watch-persons and other persons whom it is to be reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;
- (d) in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and
- (e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

116.—(1) In this paragraph—

“EMI” means, subject to sub-paragraph (2), electromagnetic interference with Network Rail apparatus generated by the operation of the authorised development where such interference is of a level which adversely affects the safe operation of Network Rail’s apparatus; and

“Network Rail’s apparatus” means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised development) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail’s apparatus carried out after approval of plans under paragraph 110(1) for the relevant part of the authorised development giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the undertaker must in the design and construction of the authorised development take all measures necessary to prevent EMI and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) In order to facilitate the undertaker’s compliance with sub-paragraph (3)—

- (a) the undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail’s apparatus which may be at risk of EMI, and thereafter must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 110(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;
- (b) Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail’s apparatus identified pursuant to sub-paragraph (a); and
- (c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail’s apparatus identified pursuant to sub-paragraph (a) .

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail’s apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail’s apparatus, but the means of prevention and the

method of their execution must be selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 110(1) has effect subject to this sub-paragraph.

(6) Prior to the commencement of operation of the authorised development the undertaker must test the use of the authorised development in a manner that must first have been agreed with Network Rail and if, notwithstanding any measures adopted pursuant to sub-paragraph (3), the testing of the authorised development causes EMI then the undertaker must immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) the undertaker's apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail's apparatus.

(7) In the event of EMI having occurred—

- (a) the undertaker must afford reasonable facilities to Network Rail for access to the undertaker's apparatus in the investigation of such EMI;
- (b) Network Rail must afford reasonable facilities to the undertaker for access to Network Rail's apparatus in the investigation of such EMI;
- (c) Network Rail must make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail's apparatus or such EMI;
- (d) the undertaker must not allow the use or operation of the authorised development in a manner that has caused or will cause EMI until measures have been taken in accordance with this paragraph to prevent EMI occurring.

(8) Where Network Rail approves modifications to Network Rail's apparatus pursuant to sub-paragraphs (5) or (6)—

- (a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus;
- (b) any modifications to Network Rail's apparatus approved pursuant to those sub-paragraphs must be carried out and completed by the undertaker in accordance with paragraph 111.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 120(1) applies to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.

(10) For the purpose of paragraph 115(a) any modifications to Network Rail's apparatus under this paragraph are deemed to be protective works referred to in that paragraph.

117. If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.

118. The undertaker must not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail unless it has first consulted Network Rail and it must comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

119. Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this

Order by reason of the existence of a specified work must, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to Network Rail.

120.—(1) The undertaker must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule which may be occasioned to or reasonably incurred by Network Rail—

- (a) by reason of the construction, maintenance or operation of a specified work or the failure thereof; or
- (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work,
- (c) by reason of any act or omission of the undertaker or any person in its employ or of its contractors or others whilst accessing to or egressing from the authorised development;
- (d) in respect of any damage caused to or additional maintenance required to, railway property or any such interference or obstruction or delay to the operation of the railway as a result of access to or egress from the authorised development by the undertaker or any person in its employ or of its contractors or others;
- (e) in respect of costs incurred by Network Rail in complying with any railway operational procedures or obtaining any regulatory consents which procedures are required to be followed or consents obtained to facilitate the carrying out or operation of the authorised development;

and the undertaker must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision must not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(2) Network Rail must—

- (a) give the undertaker reasonable written notice of any such claims or demands
- (b) not make any settlement or compromise of such a claim or demand without the prior consent of the undertaker; and
- (c) take such steps as are within its control and are reasonable in the circumstances to mitigate any liabilities relating to such claims or demands.

(3) The sums payable by the undertaker under sub-paragraph (1) must if relevant include a sum equivalent to the relevant costs.

(4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(5) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs is, in the event of default, enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-paragraph (4).

(6) In this paragraph—

“the relevant costs” means the costs, losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any specified work including but not limited to any restriction of the use of Network Rail's railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in subparagraph (1); and

“train operator” means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

121. Network Rail must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part of this Schedule (including the amount of the relevant costs mentioned in paragraph 120) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Part of this Schedule (including any claim relating to those relevant costs).

122. In the assessment of any sums payable to Network Rail under this Part of this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part of this Schedule or increasing the sums so payable.

123. The undertaker and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the undertaker of—

- (a) any railway property shown on the works and land plans and described in the book of reference;
- (b) any lands, works or other property held in connection with any such railway property; and
- (c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

124. Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part I of the Railways Act 1993.

125. The undertaker must give written notice to Network Rail if any application is proposed to be made by the undertaker for the Secretary of State's consent, under article 32 (benefit of the Order) of this Order and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

- (a) the nature of the application to be made;
- (b) the extent of the geographical area to which the application relates; and
- (c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

126. The undertaker must no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 38 (certification of plans and documents, etc.) are certified by the Secretary of State, provide a set of those plans to Network Rail in a format specified by Network Rail.

127. In relation to any dispute arising under this Part of this Schedule (except for those disputes referred to in paragraph 116) the provisions of article 39 (arbitration) will not apply and any such dispute, unless otherwise provided for, must 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) to the President of the Institution of Civil Engineers.

PART 11

FOR THE PROTECTION OF EAST OF ENGLAND AMBULANCE SERVICE NHS TRUST

Application

128. For the protection of East of England Ambulance Service NHS Trust as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and East of England Ambulance Service NHS Trust.

Site familiarisation

129.—(1) The undertaker must, prior to the date of final commissioning, use reasonable endeavours to facilitate a site familiarisation exercise in connection with the authorised development for the East of England Ambulance Service NHS Trust for the purpose of mitigating the potential impacts or risks associated with the authorised development.

(2) Save where otherwise agreed in writing between East of England Ambulance Service NHS Trust and the undertaker, the undertaker must pay to East of England Ambulance Service NHS Trust the costs and expenses reasonably and properly incurred by East of England Ambulance Service NHS Trust in, or in connection with, its attendance at the site familiarisation exercise facilitated by the undertaker pursuant to sub-paragraph (1).

Arbitration

130. Any difference or dispute arising between the undertaker and East of England Ambulance Service NHS Trust under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and East of England Ambulance Service NHS Trust, be determined by arbitration in accordance with article 39 (arbitration).

PART 12

FOR THE PROTECTION OF HPUT A LIMITED AND HPUT B LIMITED

Application

131. For the protection of HPUT and persons deriving title from HPUT the following provisions, unless otherwise agreed in writing at any time between the undertaker and HPUT, have effect.

Interpretation

132. In this Part of this Schedule—

“Campus” means the land comprised in titles CB328220 and CB119083 registered at Land Registry on the date of this Order and shown for indicative purposes only edged red and dark blue respectively on the Campus plan;

“Campus access road” means the area tinted brown and labelled “Campus access road” on the Campus plan;

“Campus cable route corridor” means the land shown with a dashed purple line and labelled “Campus cable route corridor” on the Campus plan;

“Campus laydown area” means the land tinted yellow and labelled “Campus laydown area” on the Campus plan and which, for the avoidance of doubt, includes the Campus cable route corridor;

“Campus plan” means the drawing entitled Campus plan dated 21 March 2023 and given drawing reference 70050915-230118-WSP-PLN-AAA-001-BS-0 Rev 6 and certified by the Secretary of State as the Campus plan for the purposes of this Order;

“Campus works area” means the Campus cable route corridor and the Campus laydown area;

“HPUT” means—

- (a) HPUT A LIMITED, a company incorporated and registered in England and Wales with company registration number 09389098; and
- (b) HPUT B LIMITED, a company incorporated and registered in England and Wales with company registration number 09389118,

both having their registered office at 250 Bishopsgate, London EC2M 4AA and in their capacity as nominees for and on behalf of NatWest Trustee and Depositary Services Limited as trustee and

depository (and not otherwise) of Federated Hermes Property Unit Trust and their successors in title to the freehold of the Campus or any part of it;

“security fence” means the security fence to be installed by the undertaker pursuant to paragraph 135 (campus security) along the alignment indicated by a dashed green line and labelled “proposed security fence” on the Campus plan for the purposes of preventing any access by the undertaker from the Campus works area into the remainder of the Campus;

“undertaker” includes—

- (a) any person to whom the benefit of any or all of the provisions of the Order is transferred or granted pursuant to Article 33 (Consent to transfer benefit of the Order) of the Order (whether the consent of the Secretary of State is required or not); and
- (b) any agents, contractors or subcontractors acting on behalf of the undertaker;

“vibration criterion VC-B” is set out in Figure B.2 and Table B.3 of British Standard BS 5228-2:2009+A1:2014 on the date of this Order;

“written agreement of HPUT” means a written agreement between (1) the undertaker and (2) HPUT from time to time;

“working day” means any day other than a Saturday, Sunday or English bank or public holiday.

Written Agreement of HPUT

133.—(1) Subject to sub-paragraph (2), the undertaker must not exercise any powers pursuant to this Order or the powers conferred by section 11(3) of the 1965 Act (powers of entry), and such powers have no effect, in respect of HPUT’s interests in the Campus, the interests of any person deriving title from HPUT in relation to the Campus and any other tenants or occupiers of the Campus or those interests which benefit any of the aforementioned interests, including all rights, wayleaves and easements enjoyed by HPUT, or any person deriving title from it, in relation to the Campus including pursuant to any of—

- (a) article 12 (Access to works);
- (b) article 14 (Discharge of water);
- (c) article 17 (Authority to survey and investigate the land);
- (d) article 18 (Compulsory acquisition of land);
- (e) article 20 (Compulsory acquisition of rights);
- (f) article 21 (Private rights);
- (g) article 24 (Power to override easements and other rights);
- (h) article 26 (Rights under and over streets);
- (i) article 27 (Temporary use of land for constructing the authorised development);
- (j) article 28 (Temporary use of land for maintaining the authorised development); or
- (k) article 36 (Felling or lopping trees and removal of hedgerows),

unless the exercise of such powers is in accordance with the written agreement of HPUT.

(2) The undertaker must not exercise any powers pursuant to this Order or the powers conferred by section 11(3) of the 1965 Act (powers of entry) to which sub-paragraph (1) refers, and such powers have no effect—

- (a) in respect of any part of the Campus (which for the avoidance of doubt includes the Campus access road) except, on the terms of this Part of this Schedule, the Campus works area;
- (b) so far as they affect any rights of which HPUT, or any person deriving title from HPUT in relation to the Campus, has the benefit pursuant to the transfer dated 7 March 1994 made between Horseracing Forensic Laboratory Limited, Frances Delia Sidebottom and Harry Sidebottom unless otherwise with the written agreement of HPUT.

Limits on the authorised development within the Campus

134.—(1) The undertaker must not carry out any of the authorised development within the Campus save within—

- (a) the Campus works area on the terms of this Part of this Schedule provided that, subject to paragraph (b), any works or structures placed within it are removed in accordance with paragraph 144 (Reinstatement) of this Part of this Schedule;
- (b) the Campus cable route corridor on the terms of this Part of this Schedule provided that only below ground works or structures comprised in the authorised development may remain within it, save for a single access to the below ground works or structures comprised in the authorised development the details of which have been agreed in accordance with sub-paragraph (2), following reinstatement of the Campus cable route corridor in accordance with paragraph 144 (Reinstatement) of this Part of this Schedule.

(2) The undertaker must not lay any electrical cable within the Campus cable route corridor until it has submitted written details of Work No. 4(c) in the Campus cable route corridor to HPUT, such details to include the proposed location and dimensions for the single access to which paragraph 134(1)(b) of this Part of this Schedule refers which is not to exceed 2 metres by 2 metres wide and 2 metres deep, and the details have been approved by HPUT (such approval not to be unreasonably withheld or delayed and in any event to be given or refused no later than 40 working days following receipt of the written details) and the undertaker must comply with the approved details.

Campus security

135.—(1) The undertaker must install the security fence to the reasonable satisfaction of HPUT before either—

- (a) commencement of any of the authorised development and the beginning of any permitted preliminary works on the Campus works area (excluding the security fence);
- (b) the undertaker enters the Campus works area (except in connection with installation of the security fence),
unless the details approved by HPUT in respect of a particular survey or investigation pursuant to paragraph 146 (Surveys and investigations) expressly set out that this is not necessary in relation to the survey or investigation.

(2) The undertaker must not submit details of the proposed security fence to the relevant planning authority under requirement 11 until it has submitted to HPUT written details of—

- (a) the proposed security fence; and
- (b) any measures on the Campus works area with which the undertaker must comply during installation of the proposed security fence, and the details have been approved by HPUT (such approval not to be unreasonably withheld or delayed and in any event to be given or refused no later than 40 working days following receipt of the written details) and the undertaker must comply with the details to which paragraph (a) refers as approved by the relevant planning authority under requirement 11 and with the details approved by HPUT to which paragraph (b) refers.

(3) The undertaker must not at any time with or without vehicles enter upon any part of the Campus (which for the avoidance of doubt includes the Campus access road) except, on the terms of this Part of this Schedule, the Campus works area.

Work dates

136. The undertaker must not carry out any of the authorised development on the Campus works area until it has proposed and agreed the dates with HPUT (such agreement not to be unreasonably withheld or delayed and in any event given or refused no later than 40 working days following receipt of the written request) on which the authorised development on the Campus works area is to be carried out and—

- (a) the undertaker must not carry out the authorised development on the Campus works area (which includes there being no on-site presence by any personnel of the undertaker)—
 - (i) other than on the agreed dates; and
 - (ii) before a period of 20 working days has passed after the dates have been agreed;
- (b) the number of working days comprised in such dates, unless otherwise agreed in writing with HPUT (such agreement not to be unreasonably withheld or delayed) must not exceed 45.

(2) This paragraph 136 (Work dates) does not apply to surveys and investigations, in respect of which paragraph 146 (Surveys and investigations) will apply.

Construction method and management scheme

137.—(1) The undertaker must submit a detailed construction method and management scheme in respect of that part of the authorised development to be carried out within the Campus works area no later than 40 working days prior to commencing it and must not carry out any part of the authorised development within the Campus works area until the scheme has been approved by HPUT (such approval not to be unreasonably withheld or delayed and in any event to be given or refused no later than 40 working days following receipt of the scheme); and the undertaker must comply with the approved scheme.

(2) The construction method and management scheme must include details in respect of—

- (a) a construction programme specific to the authorised development on the Campus works area;
- (b) plans showing the extent of any part of the Campus works area to be used at any time for the purposes of constructing the authorised development on it;
- (c) the storage of plant and materials;
- (d) the location and height of all plant and construction equipment;
- (e) the location and size of compounds and welfare facilities;
- (f) the management and mitigation of dust emissions and odour;
- (g) the disposal of waste and other materials arising from the construction programme;
- (h) security measures during the carrying out of the authorised development including any fencing (but not the security fence to which paragraph 135 (Campus security) instead applies) and any hoardings, any CCTV (including the location of cameras), any security lighting and a physical security presence where appropriate;
- (i) the lighting of works;
- (j) impacts on the Campus's services and utilities (including surface water and foul drainage) throughout the carrying out of the authorised development (including interruption and disruption periods and emergency procedures) and appropriate management and mitigation measures;
- (k) emergency protocols, including a 24-hour contact number for emergencies;
- (l) any other matters relevant to the Campus and its operation.

(3) The undertaker must not burn waste on the Campus works area at any time.

Noise and vibration

138.—(1) The undertaker must not carry out any part of the authorised development on the Campus works area until it has submitted a detailed noise and vibration management plan in respect of that part of the authorised development and the plan has been approved by HPUT (such approval not to be unreasonably withheld or delayed and in any event to be given or refused no later than 40 working days- following receipt of the plan); and the undertaker must comply with the approved plan.

(2) The plan must include—

- (a) a list of all equipment likely to be a source of noise or vibration affecting the Campus;
 - (b) noise and vibration predictions for the Campus;
 - (c) measures to reduce noise and vibration;
 - (d) measures to monitor compliance with this paragraph 138 (Noise and vibration);
 - (e) the sharing of compliance monitoring information with HPUT (to be no less than weekly for the duration of the construction period for the works in the Campus works area);
 - (f) the procedure to be followed in the event of complaints (including a 24-hour contact number so that the undertaker may be contacted in the event of any issues).
- (3) The undertaker must not use vibrating rollers or impact-driven or vibro-hammer piling rigs on, and within 300 metres of, the Campus works area.
- (4) Noise levels at 1m from any office window at the Campus caused by the carrying out of the authorised development (including construction traffic) must not exceed 65 dB LAeq, 12hour between the hours of 07:00 – 19:00 Monday to Saturday and 65 dB LAeq 12 hour at other times.
- (5) Noise levels at 1m from any residential window at the Campus caused by the carrying out of the authorised development (including construction traffic) must not exceed 65 dB LAeq, 12hour between the hours of 07:00 – 19:00 Monday to Saturday and 45 dB LAeq 12 hour at other times.
- (6) Levels of vibration caused by the carrying out of the authorised development must not exceed vibration criterion VC-B measured on the floor of any building or part of a building on the Campus.

Construction hours

139.—(1) Subject to paragraph 136 (Work dates) no part of the authorised development may be carried out on the Campus works area nor may any other powers pursuant to this Order be exercised on it—

- (a) other than between the hours of 07:00 and 19:00 on Mondays to Saturdays;
 - (b) on Sundays and public holidays.
- (2) Sub-paragraph (1) does not apply in relation to:
- (a) cases of emergency;
 - (b) overnight traffic management measures; and
 - (c) activities otherwise agreed by the undertaker with HPUT in advance (such agreement not to be unreasonably withheld or delayed),
 - (d) provided that in respect of paragraph (a) the undertaker provides HPUT with details of the emergency within 3 working days of its occurrence, in respect of paragraph (b) the undertaker has provided HPUT with no less than 10 working days written notice and in respect of paragraph (c) the undertaker's request has been made in writing no less than 10 working days in advance.

Supervision

140. The undertaker must carry out the authorised development on the Campus works area under HPUT's reasonable supervision (where given) and the undertaker must give HPUT all such access as it reasonably requires for those purposes.

Construction liaison

141.—(1) The undertaker must procure that a dedicated construction liaison officer will throughout the construction of the authorised development on the Campus works area—

- (a) respond to telephone calls and emails from HPUT between 07:00 and 19:00 hours Mondays to Saturdays (and at any time in case of emergencies or for the purposes of paragraphs 138(2)(f) and 139(2) of this Part of this Schedule) in respect of the construction of the authorised development;

- (b) arrange and hold meetings with HPUT no less than once a week (unless otherwise agreed in writing between HPUT and the undertaker) in respect of the construction of the authorised development on the Campus works area throughout the construction of that part of the authorised development; and the officer must issue minutes of each meeting to HPUT no later than 5 working days after each meeting;
- (c) resolve on behalf of the undertaker reasonable concerns raised by HPUT promptly in respect of the construction of the authorised development,
and the undertaker must not construct any part of the authorised development on the Campus works area until it has provided HPUT in writing with the contact details of the officer.

(2) If HPUT does not consider that the undertaker (or dedicated construction liaison officer on its behalf) has resolved its reasonable concerns in respect of the carrying out of the authorised development pursuant to this paragraph 141 (Construction liaison) it may require the matter to be settled in accordance with Article 39 (Arbitration).

Use of the Campus's facilities

142. The undertaker may not use any of the Campus's facilities (including its power supply) other than on such terms as the undertaker and HPUT agree in advance from time to time.

Health and safety

143. The undertaker must make the health and safety file maintained in respect of the authorised development on the Campus works area pursuant to The Construction (Design and Management) Regulations 2007 available for inspection by HPUT at reasonable prior written notice.

Reinstatement

144.—(1) The undertaker must not carry out any part of the authorised development within the Campus works area until it has submitted a schedule of condition of that area and the schedule has been approved by HPUT (such approval not to be unreasonably withheld or delayed and in any event to be given or refused no later than 40 working days following receipt of the schedule).

(2) The restriction on carrying out any part of the authorised development within the Campus works area to which sub-paragraph (1) refers does not apply in respect of non-intrusive surveys reasonably required for the preparation of the schedule to which the sub-paragraph refers which have been approved in advance in writing by HPUT and are carried out in accordance with such approval (such approval not to be unreasonably withheld or delayed and in any event to be given or refused no later than 40 working days following receipt of the schedule).

(3) The undertaker must within 20 working days following the earlier of—

- (a) the authorised development on the Campus works area, once commenced, not having been carried out for more than 20 consecutive working days; or
- (b) completion of the authorised development on the Campus works area,

reinstate the Campus works area to the condition set out in the schedule of condition (unless otherwise agreed by HPUT and the undertaker acting reasonably) save for the below ground works or structures comprised in the authorised development and any means of access to those works the details of which have been agreed pursuant to paragraph 134 (Limits on the authorised development within the Campus) of this Part of this Schedule and which must be in accordance with the details agreed in writing between HPUT and the undertaker.

Maintenance and decommissioning

145.—(1) Subject to sub-paragraph (2), the undertaker must not carry out any maintenance or decommissioning of the authorised development on the Campus works area, or enter upon any part of it, until it has submitted details of the proposed maintenance or decommissioning activities and measures proposed to mitigate any resulting adverse impacts on the operation of the Campus

and the details have been approved by HPUT (such approval not to be unreasonably withheld or delayed and in any event to be given or refused no later than 40 working days of receipt of the written details) and—

- (a) such details must (unless otherwise agreed in writing between HPUT and the undertaker) accord with the principles of the provisions in this Part of this Schedule where relevant for the purposes of maintenance or decommissioning;
- (b) the undertaker must comply with the approved details.

(2) The undertaker must not use or enter upon any part of the Campus (which for the avoidance of doubt includes the Campus access road) to carry out any maintenance or decommissioning of the authorised development except, on the terms of this Part of this Schedule, the Campus works area, unless otherwise agreed in writing between HPUT in its absolute discretion and the undertaker.

Surveys and investigations

146. The undertaker must not carry out any surveys or investigations (including environmental surveys, geotechnical surveys, intrusive archaeological surveys and other investigations for the purpose of assessing ground conditions) on the Campus works area, or enter upon any part of it for such purposes, until it has submitted details of the proposed surveys or investigations and measures proposed to mitigate any resulting adverse impacts on the Campus works area or operation of the Campus and the details have been approved by HPUT (such approval not to be unreasonably withheld or delayed and in any event to be given or refused no later than 40 working days of receipt of the written details); and—

- (a) such details must (unless otherwise agreed in writing between HPUT and the undertaker) accord with the principles of the provisions in this Part of this Schedule where relevant for the purposes of the surveys or investigations in question; and
- (b) the undertaker must comply with the approved details.

Expenses

147.—(1) The undertaker must pay HPUT the reasonable expenses reasonably incurred by it (including by its solicitors, surveyors or other relevant consultants) for, or in connection with, the carrying out of the authorised development or any action required of HPUT in this Part of this Schedule including—

- (a) considering and giving any agreement or approval pursuant to this Part of this Schedule or otherwise required by the undertaker;
- (b) considering and liaising with the undertaker in respect of any compliance monitoring information provided by the undertaker pursuant to this Part of this Schedule;
- (c) HPUT's reasonable supervision pursuant to paragraph 140 (Supervision) of this Part of this Schedule;
- (d) attending meetings with the undertaker during the construction, maintenance or decommissioning of the authorised development,

and it will be reasonable for HPUT to withhold its agreement or approval pursuant to the relevant provision of this Part of this Schedule if the undertaker does not in advance pay such expenses or provide a solicitor's undertaking (from a firm of reasonably sufficient covenant strength) in respect of them.

Reasonableness

148. The undertaker and HPUT must act reasonably in respect of any given term of this Part of this Schedule and, in particular, (without prejudice to generality) where any consent, approval or expression of satisfaction is required by this Part of this Schedule it must not be unreasonably withheld or delayed (save in each aforementioned case except in respect of agreement by HPUT pursuant to paragraph 145(2) (Maintenance and decommissioning)).

The HPUT Trustees

149. References in this Part of this Schedule to HPUT A Limited and HPUT B Limited (the “Nominees”) are only to them in their capacity as nominees for and on behalf of NatWest Trustee and Depositary Services Limited (“NatWest”). The same will be the case for any party succeeding them in their capacity as nominees for and on behalf of NatWest.

150. References in this Part of this Schedule to NatWest is to it solely in its capacity as trustee and depositary of Federated Hermes Property Unit Trust (the “Fund”). The same will be the case for any party succeeding NatWest in its capacity as trustee and depositary of the Fund.

PART 13

FOR THE PROTECTION OF THE RELEVANT LOCAL HIGHWAY AUTHORITIES

Application

151. The provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and the relevant local highway authority.

Interpretation

152. In this Part of this Schedule—

“highway” means, notwithstanding article 2(1) of this Order, a street vested in or maintainable by the relevant local highway authority under the 1980 Act;

“plans” includes sections, drawings, specifications and particulars (including descriptions of methods of construction);

“relevant local highway authority” means—

- (a) Cambridgeshire County Council, in relation to any specified work constructed in the area of that council;
- (b) Suffolk County Council, in relation to any specified work constructed in the area of that council.

“specified work” means so much of any part of the authorised development as forms part of or is intended to become a highway, or part of any such highway;

“structure, apparatus or surface” means any highway drainage structure or drainage apparatus, street furniture or carriageway comprised in a specified work.

Relevant local highway authority approval of specified works

153. Without affecting the application of sections 59(a) (general duty of street authority to co-ordinate works) and 60(b) (general duty of undertakers to co-operate) of the 1991 Act, before commencing the construction of any specified work, the undertaker must submit to the relevant local highway authority for its approval proper and sufficient plans and must not commence the construction of a specified work until the plans for that specified work have been approved by the relevant local highway authority or settled by arbitration.

154. When signifying approval of plans submitted under paragraph 153, the relevant local highway authority may specify any protective works (whether temporary or permanent) which in its reasonable opinion must be carried out before the commencement of the construction of a

(a) As amended by section 42 of the Traffic Management Act 2004 (c. 18).

(b) As amended by section 40(1) and (2) of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).

specified work to ensure the safety or stability of the highway and such protective works must be carried out at the expense of the undertaker.

155. If, within 28 days after any plans have been submitted to the relevant local highway authority under paragraph 153, it has not intimated its disapproval and the grounds of disapproval, the relevant local highway authority is deemed to have approved them.

156. In the event of any disapproval of plans by the relevant local highway authority under paragraph 153, the undertaker may re-submit the plans with modifications and, in that event, if the relevant local highway authority has not intimated its disapproval and the grounds of disapproval within 28 days of the plans being re-submitted, it is deemed to have approved them.

Inspection and supervision of specified works

157. Any specified work, and all protective works required by the relevant local highway authority in accordance with paragraph 154, must be constructed in accordance with the approved plans for that specified work and an officer of the relevant local highway authority is entitled on giving such notice as may be reasonable in the circumstances, to inspect and watch the construction of such works.

Maintenance of specified works by the undertaker

158. If any specified work is not maintained by the undertaker in accordance with article 10 (construction and maintenance of altered streets) of this Order to the reasonable satisfaction of the relevant local highway authority, it may by notice require the undertaker to maintain the specified work or any part of it in accordance with article 10 to such extent as the relevant local highway authority reasonably requires for as long as the obligation to maintain the specified work under article 10 applies.

159. If the undertaker has failed to begin taking steps to comply with the reasonable requirements of any notice issued under paragraph 158 or in any event has not subsequently made reasonably expeditious progress towards their implementation within 28 days beginning with the date on which a notice in respect of any work is served on the undertaker, the relevant local highway authority may do what is necessary for such compliance and may recover any expenditure reasonably incurred by it in so doing from the undertaker.

160. In the event of any dispute as to the reasonableness of any requirement of a notice served under paragraph 158, the relevant local highway authority must not, except in a case of emergency or to prevent the occurrence of danger to the public, exercise the powers conferred by paragraph 159, until the dispute has been finally determined.

Payment of fees for approving and supervising the construction of specified works

161. On submission of the plans for a specified work, the undertaker must pay the relevant local highway authority 2% of the anticipated cost of constructing the specified work to cover the relevant local highway authority's reasonable fees, costs, charges and expenses in approving the plans for and in supervising construction of the specified work.

162. The relevant local highway authority may apply to the undertaker for up to two further payments (limited in each case to a maximum of 2% of the anticipated cost of constructing the specified work) if it reasonably considers that its fees, costs, charges and expenses in approving plans for and supervising construction of the specified work will exceed the amount the undertaker must pay under paragraph 161.

163. The undertaker must use reasonable endeavours to agree to pay any amount reasonably sought by the relevant local highway authority under paragraph 162 (having regard to the extent of the outstanding work in respect of which the relevant local highway authority is likely to incur fees, costs, charges and expenses) and following agreement must pay any such amount.

164. The undertaker must repay to the relevant local highway authority, all reasonable fees, costs, charges and expenses reasonably incurred by it in approving the plans for and supervising construction of a specified work which have not otherwise been covered by a payment made under paragraphs 161 to 163.

165. The relevant local highway authority must repay to the undertaker (or, with the undertaker's agreement, offset against any amounts for which the undertaker is otherwise liable to that relevant local highway authority) any payment or part of a payment made under paragraphs 161 to 163 which exceeds the fees, costs, charges and expenses it has incurred in approving plans for and in supervising the construction of a specified work and in response to a written request from the undertaker (served no earlier than after the final adoption or restoration of all of the specified works under article 10(1) and 10(3) as the case may be) the relevant local highway authority must provide to the undertaker a financial summary containing detailed evidence of how the payments received by the relevant local highway authority under paragraphs 161 to 163 have been spent.

Commuted sums

166. In respect of a structure, apparatus or surface installed or altered as result of a specified work in relation to which the relevant local highway authority is, or is to become, liable to maintain, the undertaker must pay to the relevant local highway authority (at the time when the relevant structure, apparatus or surface is, in accordance with this Order, to become maintainable by the relevant local highway authority) a commuted sum to reflect any additional cost that may be incurred by the relevant local highway authority over an appropriate timeframe in maintaining that structure, apparatus or surface.

167. The amount of the commuted sum referred to in paragraph 166 is to be determined with reference to the detailed design of that structure, apparatus or surface and agreed between the relevant local highway authority and the undertaker, both acting reasonably.

Consents and agreements

168. Wherever in this Part of this Schedule provision is made with respect to the approval or consent of the relevant local highway authority, that approval or consent must be in writing and may be given to such reasonable terms and conditions as the relevant local highway authority may require in the interests of safety or to ensure highway construction standards are met in order to minimise inconvenience to persons using the highway, but must not be unreasonably withheld.

Disputes

169. Any difference or dispute arising between the undertaker and the relevant local highway authority under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and the relevant local highway authority, be determined by arbitration in accordance with article 39 (arbitration) of this Order.

Saving for the 1991 Act

170. This Part of this Schedule does not apply to any works comprised in the authorised development in respect of which the relations between the undertaker and the relevant local highway authority are regulated by Part 3 (street works in England and Wales) of the 1991 Act.

PART 14

FOR THE PROTECTION OF SOUTH STAFFORDSHIRE WATER PLC

Application

171. For the protection of SSW the following provisions have effect unless otherwise agreed in writing between Sunnica Limited (“Sunnica”) and SSW.

172. The provisions of Part 1 of Schedule 12 (Protective Provisions for the protection of Water Undertakers, etc.), in so far as they relate to the removal of apparatus, do not apply in relation to apparatus to which this Part of this Schedule applies.

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

Interpretation

174. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable SSW to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means—

- (i) mains, pipes or other apparatus belonging to or maintained by SSW for the purposes of water supply;
- (ii) any drain or works vested in SSW under the Water Industry Act 1991; and
- (iii) any sewer which is so vested in SSW or is the subject of a notice of intention to adopt by SSW given under section 102(4) of that Act or an agreement to adopt by SSW 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 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;

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

“SSW” means South Staffordshire Water Plc and includes its successors in function or any successor in respect of any land interests or any successor as a water undertaker within the meaning of the Water Industry Act 1991.

Acquisition of apparatus

175. Regardless of any provision in this Order or anything shown on the deposited plans, Sunnica must not acquire any apparatus otherwise than by agreement.

Alternative apparatus

176.—(1) If, in the exercise of the powers conferred by this Order, Sunnica 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 SSW to maintain that apparatus in that land must not be extinguished, until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of SSW.

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, Sunnica requires the removal of any apparatus placed in

that land, it must give to SSW 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.

(3) The proposed position of the alternative apparatus to be provided or constructed is subject to approval by SSW (such approval not to be unreasonably withheld or delayed). In the event that SSW (acting reasonably) considers the proposed position of the alternative apparatus to be unsuitable, SSW must (acting reasonably) propose an alternative position for the alternative apparatus and must give Sunnica written notice of such alternative position for the alternative apparatus within 28 days of the service of a notice under sub-paragraph (2). Any dispute regarding the alternative apparatus (including but not limited to the proposed position or the alternative proposed position) which cannot be agreed between the parties is to be determined in accordance with article 39 (arbitration).

(4) Any alternative apparatus to be constructed in land of Sunnica under this Part of this Schedule is to be constructed in such manner and in such line or situation as may be agreed between SSW and Sunnica such agreement to be within 28 days of the service of a notice under sub-paragraph (2) (or within 28 days of service of a notice under sub-paragraph (3) where SSW has proposed an alternative position for the alternative apparatus under sub-paragraph (3) which is acceptable to Sunnica) or in default of such agreement settled by arbitration in accordance with article 39 (arbitration).

(5) In any case where alternative apparatus is to be provided or constructed under sub-paragraphs (2) or (3), or if in consequence of the exercise of any of the powers conferred by this Order SSW reasonably needs to remove any of its apparatus, Sunnica must, subject to sub-paragraph (6), afford to SSW the necessary facilities and rights for the construction of alternative apparatus in other land of Sunnica and subsequently for the maintenance of that apparatus and SSW is entitled to recover its reasonable costs incurred in securing such necessary facilities and rights from Sunnica subject to paragraph 179(3) below.

(6) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of Sunnica, or Sunnica is unable to afford such facilities and rights as are mentioned in sub-paragraph (5), in the land in which the alternative apparatus or part of such apparatus is to be constructed, SSW must, on receipt of a written notice to that effect from Sunnica, 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.

(7) SSW must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 39 (arbitration), and after the grant to SSW of any such facilities and rights as are referred to in sub-paragraph (5) or (6), proceed without unreasonable delay (having regard to the operational requirements of SSW) to construct and bring into operation the alternative apparatus and subsequently to allow Sunnica to remove any apparatus as required to be removed by Sunnica (acting reasonably) under the provisions of this Part of this Schedule PROVIDED THAT to the extent that any reasonable costs are incurred by SSW as a result of the removal of such apparatus then such reasonable costs are recoverable in full from Sunnica.

(8) Regardless of anything in sub-paragraph (7), if Sunnica gives notice in writing to SSW 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 of Sunnica, that work, instead of being executed by SSW, must be executed by Sunnica without unreasonable delay under the superintendence, if given, and to the reasonable satisfaction of SSW.

(9) Nothing in sub-paragraph (8) authorises Sunnica 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 6 metres of the apparatus without the written consent of SSW (such consent not to be unreasonably withheld or denied).

(10) In relation to any works which will or may be situated on, over or within 6 metres measured in any direction of any apparatus, the plan to be submitted to SSW under sub-paragraph (1) must be detailed, include a method statement and describe—

- (a) the exact position of the works;

- (b) the level at which they are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation and positioning of plant;
- (d) the position of all apparatus including existing apparatus and apparatus to be retained;
- (e) by way of detailed drawings, every alteration proposed to be made to such apparatus; and
- (f) any maintenance required.

177.—(1) Where, in accordance with the provisions of this Part of this Schedule, Sunnica affords to SSW facilities and rights for the construction and maintenance in land of Sunnica of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between Sunnica and SSW or in default of agreement settled by arbitration in accordance with article 39 (arbitration).

(2) In settling those terms and conditions in respect of alternative apparatus to be constructed within 6 metres of any existing apparatus of SSW, the arbitrator must—

- (a) give effect to all reasonable requirements of SSW for ensuring the protection of the existing apparatus and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with the existing apparatus; and
- (b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions, if any, applicable to the existing apparatus for which the alternative apparatus is to be substituted.

(3) If the facilities and rights to be afforded by Sunnica 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 SSW than the facilities and rights enjoyed by SSW 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 Sunnica to SSW as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Existing apparatus: protection and access

178.—(1) Not less than 42 days before starting the execution of any of the authorised works that are near to, or will or may affect, any apparatus the removal of which has not been required by Sunnica under paragraph 176(2), Sunnica must submit to SSW a plan, section and description of the works to be executed.

(2) Those works are to 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 SSW for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and an officer of SSW is entitled to watch and inspect the execution of those works.

(3) Any requirements made by SSW under sub-paragraph (2) must be made within a period of 28 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If SSW in accordance with sub-paragraph (3) and in consequence of the works proposed by Sunnica, reasonably requires the removal of any apparatus and gives written notice to Sunnica of that requirement, paragraphs 171 to 177 apply as if the removal of the apparatus had been required by Sunnica under paragraph 176(2).

(5) Nothing in this paragraph precludes Sunnica from submitting at any time or from time to time, but in no case less than 42 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) Sunnica is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to SSW 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.

Expenses

179.—(1) Subject to the following provisions of this paragraph, Sunnica must repay to SSW the reasonable expenses incurred by SSW in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus (including reasonable costs or compensation payable in connection with the acquisition of land for that purpose) which may be required in consequence of the execution of any of the authorised works.

(2) The value of any apparatus removed under the provisions of this Part of this Schedule (other than apparatus that is re-used by SSW acting reasonably as alternative apparatus) is to be deducted from any sum payable under sub-paragraph (1), that value being calculated after removal.

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

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions except where this has been solely due to using the nearest currently available type; 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 Sunnica or, in default of agreement, is not determined by arbitration in accordance with article 39 (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 type, capacity, dimensions, or at the existing depth required to maintain the existing operational requirement, as the case may be, the amount which apart from this paragraph would be payable to SSW by virtue of sub-paragraph (1) is to be reduced by the amount of that excess (save to the extent that it is not possible in the circumstances (or it would be unlawful due to a statutory or regulatory change) to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth).

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

(a) an extension of apparatus to a length greater than the length of existing apparatus must not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole must be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to SSW in respect of works under sub-paragraph (1) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on SSW 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.

(6) Any dispute as to whether a financial benefit is conferred in accordance with sub-paragraph (5) or as to the amount of such financial benefit which cannot be agreed is to be determined in accordance with article 39 (arbitration).

Damage to apparatus: costs, losses, etc.

180.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the authorised works 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 SSW or there is any interruption in any service provided or in the supply of any goods by SSW, Sunnica must—

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

(2) Nothing in sub-paragraph (1) imposes any liability on Sunnica with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of SSW, its officers, servants, contractors or agents.

(3) SSW must give Sunnica reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of Sunnica (such consent not to be unreasonably withheld or delayed) and in the event of any dispute to be settled by arbitration in accordance with article 39 (arbitration).

Enactments and agreements

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

PART 15

FOR THE PROTECTION OF SUFFOLK COUNTY COUNCIL AND CAMBRIDGESHIRE COUNTY COUNCIL

182. The provisions of this Part of this Schedule have effect for the protection of Suffolk County Council and Cambridgeshire County Council unless otherwise agreed in writing between the undertaker and Suffolk County Council or Cambridgeshire County Council.

183. In this Part of this Schedule—

“authorised development” has the same meaning as in article 2(1) (interpretation) of this Order and (unless otherwise specified) for the purposes of this Part of this Schedule includes the operation and maintenance of the authorised development and the construction of any works authorised by this Part of this Schedule;

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

“drainage authority” means Suffolk County Council or Cambridgeshire County Council;

“drainage work” means any ordinary watercourse and includes any bank, wall, embankment or other structure, or any appliance, constructed for land drainage or flood defence which is the responsibility of the drainage authority;

“ordinary watercourse” has the meaning given by section 72 (interpretation) of the Land Drainage Act 1991;

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

“specified work” means so much of the authorised development, as is in, on, under, over or within 8 metres of a drainage work or is otherwise likely to affect the flow of water in any watercourse.

184.—(1) Before commencing construction of a specified work, the undertaker must submit to the drainage authority plans of the specified work and such further particulars available to it as the drainage authority may reasonably require within 28 days of the submission of the plans.

(2) A specified work must not be constructed except in accordance with such plans as may be approved in writing by the drainage authority or determined under paragraph 190.

- (3) Any approval of the drainage authority required under this paragraph—
- (a) must not be unreasonably withheld or delayed;
 - (b) is deemed to have been given if it is neither given nor refused within 2 months of the submission of the plans for approval, or submission of further particulars (where required by the drainage authority under sub-paragraph (1)) whichever is the later; and
 - (c) may be given subject to such reasonable requirements as the drainage authority may make for the protection of any drainage work taking into account the terms of this Order.
- (4) Any refusal under this paragraph must be accompanied by a statement of the reasons for refusal.

185. Without limiting the scope of paragraph 184, the requirements which the drainage authority may make under that paragraph include conditions requiring the undertaker at its own expense to construct such protective works, whether temporary or permanent, during the construction of the specified work (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary taking account of the terms of this Order—

- (a) to safeguard any drainage work against damage by reason of any specified work; or
- (b) to secure that the efficiency of any drainage work for flood defence and land drainage purposes is not impaired, and that the risk of flooding is not otherwise increased beyond the level of flood risk that was assessed in the environmental statement, by reason of any specified work.

186.—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the drainage authority under paragraph 185, must be constructed—

- (a) without unreasonable delay in accordance with the plans approved or deemed to have been approved or settled under this Part of this Schedule; and
- (b) to the reasonable satisfaction of the drainage authority,
and an officer of the drainage authority is entitled to watch and inspect the construction of such works.

(2) The undertaker must give to the drainage authority—

- (a) not less than 14 days' notice in writing of its intention to commence construction of any specified work; and
- (b) notice in writing of its completion not later than seven days after the date on which it is brought into use.

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

188. The undertaker must repay to the drainage authority all reasonable costs, charges and expenses which the drainage authority may reasonably incur—

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

189.—(1) The undertaker must compensate the drainage authority for all liabilities, costs and losses which may be reasonably incurred or suffered by reason of—

- (a) the construction of any specified works comprised within the authorised development; or

- (b) any act or omission of the undertaker, its employees, contractors or agents or others while engaged upon the construction of the authorised development.
- (2) The drainage authority must give to the undertaker reasonable notice of any such claim or demand.
- (3) The undertaker may at its own expense conduct all negotiations for the settlement of the same and any litigation that may arise therefrom.
- (4) The drainage authority must not compromise or settle any such claim or make any admission which might be prejudicial to the claim without the agreement of the undertaker which agreement must not be unreasonably withheld or delayed.
- (5) The drainage authority will, having regard to its statutory functions, at all times take reasonable steps to prevent and mitigate any such claims, demands, proceedings, costs, damages, expenses or loss.
- (6) The drainage authority will, at the request of the undertaker and having regard to its statutory functions, afford all reasonable assistance for the purpose of contesting any such claim or action, and is entitled to be repaid its reasonable expenses reasonably incurred in so doing.
- (7) The fact that any work or thing has been executed or done by the undertaker in accordance with a plan approved or deemed to be approved by the drainage authority, or to its satisfaction, or in accordance with any directions or award of an arbitrator, does not relieve the undertaker from any liability under this Part of this Schedule.
- (8) Nothing in sub-paragraph 189(1) imposes any liability on the undertaker with respect to any damage to the extent that it is attributable to the act, neglect or default of the drainage authority or the breach of a statutory duty of the drainage authority, its officers, servants, contractors or agents.
- 190.** Any dispute arising between the undertaker and the drainage authority under this Part of this Schedule, if the parties agree, is to be determined by arbitration under article 39 (arbitration)

PROCEDURE FOR DISCHARGE

Interpretation**1. In this Schedule—**

“appeal documentation” means a written statement of appeal which describes the nature of the differences between the parties, the factual issues, the undertaker’s case and evidence relied on;

“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 person, 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 provisions of this Order

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) in respect of all provisions (including the requirements in Schedule 2 (requirements)) a period of 56 days beginning with the day immediately following that on which the application is received by the relevant authority;
- (b) where further information is requested under paragraph 3 of this Schedule (further information and consultation), a period of 56 days beginning with the day immediately following that on which further information has been supplied by the undertaker; or
- (c) such period that is longer than the periods in sub-paragraphs (a) or (b) as may be agreed in writing by the undertaker and the relevant authority before the end of such period.

(2) In determining any application 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 may—

- (a) give or refuse its consent, agreement or approval; or
- (b) give its consent, agreement or approval subject to reasonable conditions,

and where consent, agreement or approval is refused or granted subject to reasonable conditions the relevant authority must provide its reasons for that decision within the notice of the decision.

(3) Subject to sub-paragraph (4), 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.

(4) 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

(a) 1971 c. 80.

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.

(5) The undertaker must include in any application made to the relevant authority for any consent, agreement or approval required or contemplated by any of the provisions of this Order a statement that the provisions of sub-paragraph (3) apply and, if the application fails to do so, it is to be null and void.

(6) In the case of requirements in respect of which—

- (a) West Suffolk Council is the discharging authority under Schedule 2 of this Order, West Suffolk Council must consult with Suffolk County Council;
- (b) Suffolk County Council is the discharging authority under Schedule 2 of this Order, Suffolk County Council must consult with West Suffolk Council;
- (c) East Cambridgeshire District Council is the discharging authority under Schedule 2 of this Order, East Cambridgeshire District Council must consult with Cambridgeshire County Council; and
- (d) Cambridgeshire County Council is the discharging authority under Schedule 2 of this Order, Cambridgeshire County Council must consult with East Cambridgeshire District Council.

Further information and consultation

3.—(1) In relation to any application submitted pursuant to a requirement in Schedule 2 (requirements), 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 additional 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 14 business days of receipt of the application, notify the undertaker in writing specifying the additional 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 additional further information requested by the requirement consultee within 14 business days of receipt of the application.

(4) In the event that the relevant authority does not give notification as specified in sub-paragraph (2) or (3) it is to be deemed to have sufficient information to consider the application and is not thereafter entitled to request additional further information without the prior agreement of the undertaker.

Appeals

4.—(1) The undertaker may appeal in the event that—

- (a) the relevant authority refuses (including a deemed refusal pursuant to paragraph 2(4)) 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) 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

- (c) 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) any appeal by the undertaker must be made within 42 days of the date of the notice of the decision or determination giving rise to the appeal referred to in sub-paragraph (1);
- (b) 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 provision of this Order which is the subject of the appeal (together with the undertaker, these are the “appeal parties”);
- (c) 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);
- (d) the relevant authority and any consultee required to be consulted pursuant to the provision of this Order which is the subject of the appeal must submit written representations to the appointed person in respect of the appeal within 20 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;
- (e) the undertaker must make any counter-submissions to the appointed person within 20 business days of receipt of written representations pursuant to sub-paragraph (d) above; and
- (f) 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 30 business days of the deadline for the receipt of counter-submissions pursuant to sub-paragraph (e).

(3) The appointment of the person pursuant to sub-paragraph (2)(c) 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 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 appeal parties to the appointed person 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 any written representations on the submitted further information to the appointed person within 10 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)(d) to (2)(f).

(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 or determination 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 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.

Fees

5.—(1) Where an application is made to the relevant authority for consent, agreement or approval in respect of a requirement only, a fee is to be paid to that relevant authority as follows—

<i>Requirement</i>	<i>Fee</i>
Category 1: Design and management approval – first application made under a requirement to the relevant authority	£2,028

Requirement 6: Detailed design approval

Requirement 8: Landscape and ecology management plan

Requirement 10: Stone curlew

Requirement 11: Fencing and other means of enclosure

Requirement 12: Surface and foul water drainage

Requirement 14: Construction environmental management plan

Requirement 15: Operational environmental management plan

Requirement 21: Permissive paths

Requirement 22: Decommissioning and restoration

Category 2: Design approval – subsequent applications made under a requirement to the relevant authority following the first application pursuant to Category 1	£462
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Requirement 6: Detailed design approval

Requirement 8: Landscape and ecology management plan

Requirement 10: Stone curlew

Requirement 11: Fencing and other means of enclosure

Requirement 12: Surface and foul water drainage

Requirement 14: Construction environmental management plan

Requirement 15: Operational environmental management plan

Requirement 21: Permissive paths

Requirement 22: Decommissioning and restoration

Category 3a: re-approvals for applications made under Category 1 and 2, and applications made under Requirement 5 £462

(i) In respect of any Category 1 or Category 2 requirement where an application is made for discharge in respect of which an application has been made previously; and

(ii) Requirement 5: Approved details and amendments to them

Category 3b: re-approvals for applications made under Category 4 £116

In respect of re-approvals of matters previously approved under Category 4.

Category 4: all applications made under other requirements set out below £116

Requirement 3: Phasing of the authorised development and date of final commissioning

Requirement 7: Fire safety management

Requirement 13: Archaeology

Requirement 16: Construction traffic management plan

Requirement 17: Operational noise

Requirement 18: Ground conditions

Requirement 19: Water management plan

Requirement 20: Skills, supply chain and employment

Requirement 23: Crash site exclusion area

Requirement 24: Public rights of way

(2) Any fee paid under this Schedule must be refunded to the undertaker if the relevant authority fails to determine the application within 8 weeks, unless—

- (a) within that period the undertaker agrees, in writing, to a longer period; or
- (b) within that period the undertaker agrees, in writing, that the fee is to be retained by the relevant authority and credited in respect of a future application to be made under this Schedule.

SCHEDULE 14

Article 44

TRAFFIC REGULATION MEASURES

PART 1

TEMPORARY SPEED LIMITS

<i>(1)</i> <i>District</i>	<i>(2)</i> <i>Road name, number and length</i>	<i>(3)</i> <i>Temporary speed limit</i>
East Cambridgeshire District	B1102 Ness Road From a point 240 metres in a generally south-westerly direction from its junction with the access road leading to High Ness Farm (reference SL1B) for a distance of 720 metres in a generally south-westerly direction (to reference SL1A) as shown on sheets 2 and 3 of the traffic regulation measures plans – temporary measures.	40 miles per hour
East Cambridgeshire District	Newmarket Road (north of the A142 roundabout) From its junction with the A142 roundabout (reference SL2A) in a generally northerly direction for a distance of 590 metres to a point 40 metres south of its junction with the northern access to Dojima Sake Brewery at Fordham Abbey (reference SL2B) as shown on sheets 4 and 5 of the traffic regulation measures plans – temporary measures.	40 miles per hour
East Cambridgeshire District	Chippenham Road From its commencement point adjacent to the Green junction and 40 metres south west of the car park (reference SL4A), for a distance of 900 metres in a generally north-easterly direction (to reference SL4B) as shown on sheets 7 and 8 of the traffic regulation measures plans – temporary measures.	40 miles per hour
East Cambridgeshire District	La Hogue Road From its junction with the access to La Hogue Farm (reference SL5A) in a generally north-westerly direction for a distance of 610 metres (to reference SL5B) as shown on sheet 9 of the traffic regulation measures plans – temporary measures.	40 miles per hour
East Cambridgeshire District	B1085 From its junction with the access to Wild Tracks Outdoor Activity Park (reference SL6A) in a generally westerly direction for a distance of 660 metres (to reference SL6B) as shown on sheet 10 of the traffic regulation measures plans – temporary measures.	40 miles per hour
East Cambridgeshire District	B1085 Dane Hill Road From its junction with A11 roundabout	40 miles per hour

	(reference SL7A) in a generally south-easterly direction for a distance of 390 metres to its junction with the access to Dane Hill Farm (reference SL7B) as shown on sheet 11 of the traffic regulation measures plans – temporary measures.	
West Suffolk District	Elms Road From its junction with Bridge End Road (reference SL8A) in a generally north-westerly direction for a distance of 1150 metres (to reference SL8B) as shown on sheets 12 and 13 of the traffic regulation measures plans – temporary measures.	40 miles per hour
West Suffolk District	Newmarket Road (Worlington) From a point 350 metres south of its junction with Golf Links Road (reference SL9A) for a distance of 900 metres in a generally southerly direction (to reference SL9B) as shown on sheets 15 and 16 of the traffic regulation measures plans – temporary measures.	40 miles per hour

PART 2

TEMPORARY PROHIBITION

<i>(1)</i> <i>District</i>	<i>(2)</i> <i>Road name, number and length</i>	<i>(3)</i> <i>Measures</i>
East Cambridgeshire District	A142 From a point 70 metres in a generally westerly direction of its roundabout junction with Newmarket Road (reference TP1A), in a generally westerly direction for a distance of 50 metres (to reference TP1B), as shown on sheet 5 of the traffic regulation measures plans – temporary measures.	Prohibition of entry No right turn for entry to, or egress from, the means of access to the authorised development by vehicular traffic.

PART 3

TEMPORARY ROAD CLOSURES

<i>(1)</i> <i>District</i>	<i>(2)</i> <i>Road name, number and length</i>	<i>(3)</i> <i>Measure</i>
East Cambridgeshire District	Newnham Drove From its junction with Weirs Drove (reference RC2A) in a generally north-westerly direction for a distance of 350 metres (to reference RC2B) as shown on sheet 1 of the traffic regulation measures plans – temporary road closures.	Closed to all traffic save for traffic under the direction of the undertaker.
East Cambridgeshire District	Little Fen Drove From a point 100 metres from its commencement point from Dyson Drove (reference RC3A) in a generally westerly direction for a distance of 305 metres (to	Closed to all traffic save for traffic under the direction of the undertaker.

	reference RC3B) as shown on sheet 2 of the traffic regulation measures plans – temporary road closures.	
East Cambridgeshire District	First Drove From its junction with Broads Road (reference RC4A) in a generally northerly direction for a distance of 100 metres (to reference RC4B) as shown on sheet 3 of the traffic regulation measures plans – temporary road closures.	Closed to all traffic save for traffic under the direction of the undertaker.
East Cambridgeshire District	Broads Road From its junction with First Drove (reference RC5A) in a generally north-easterly direction for a distance of 100 metres (to reference RC5B) as shown on sheet 3 of the traffic regulation measures plans – temporary road closures.	Closed to all traffic save for traffic under the direction of the undertaker.
East Cambridgeshire District	Chippenham Road From a point adjacent to the car park along Chippenham Road (reference RC6A) in a generally north-easterly direction for a distance of 1390 metres to its junction with the access road to Water Hall Farm (reference RC6B) as shown on sheets 6 and 7 of the traffic regulation measures plans – temporary road closures.	Closed to all traffic save for traffic under the direction of the undertaker.
East Cambridgeshire District	La Hogue Road From its junction with the access road to La Hogue Cottages (references RC7A) in a generally north-westerly direction for a distance of 700 metres to its junction with the access road to Water Hall Farm (reference RC7B) as shown on sheet 8 of the traffic regulation measures plans – temporary road closures.	Closed to all traffic save for traffic under the direction of the undertaker.
East Cambridgeshire District	B1085 From its junction with the access to Wild Tracks Outdoor Activity Park (reference RC8A) in a generally westerly direction for a distance of 1030 metres to its junction with the access road to Stanel Wood Farm (reference RC8B) as shown on sheets 9 and 10 of the traffic regulation measures plans – temporary road closures.	Closed to all traffic save for traffic under the direction of the undertaker.
West Suffolk District	Elms Road From its junction with Bridge End Road (reference RC9A) in a generally north-westerly direction for a distance of 1280 metres to its junction with Badlingham Road (reference RC9B) as shown on sheets 13, 14 and 15 of the traffic regulation measures plans – temporary road closures.	Closed to all traffic save for traffic under the direction of the undertaker.
West Suffolk District	Beck Road From its junction with the access to Lee Farm (reference RC10A) in a generally easterly direction for a distance of 780 metres to its	Closed to all traffic save for traffic under the direction of the undertaker.

	junction with Ferry Lane (reference RC10B) as shown on sheet 21 of the traffic regulation measures plans – temporary road closures.	
West Suffolk District	Isleham Road From a point 10 metres in a generally easterly direction of its junction with Fourways Farm access road (reference RC11A) in a generally easterly direction for a distance of 450 metres to a point 310 metres west of its junction with the Pen Villa access road (reference RC11B) as shown on sheet 22 of the traffic regulation measures plans – temporary road closures.	Closed to all traffic save for traffic under the direction of the undertaker.
West Suffolk District	Newmarket Road (Worlington) From its junction with Queens Hill access road (reference RC12A) in a generally southerly direction for a distance of 1530 metres to a point 20 metres north of Bay Farm access road (reference RC12B) as shown on sheets 17, 18 and 19 of the traffic regulation measures plans – temporary road closures.	Closed to all traffic save for traffic under the direction of the undertaker.
West Suffolk District	U6006 From a point 450 metres in a generally south-westerly direction from its junction with Newmarket Road (Worlington) (reference RC13A) in a generally south-westerly direction for a distance of 70 metres (reference RC13B) as shown on sheet 17 of the traffic regulation measures plans – temporary road closures.	Closed to all traffic save for traffic under the direction of the undertaker.
West Suffolk District	U6006 From a point 700 metres in a generally north-easterly direction of its junction with Elms Road (reference RC14A) in a generally north-easterly direction for a distance of 400 metres (to reference RC14B) as shown on sheets 15 and 16 of the traffic regulation measures plans – temporary road closures.	Closed to all traffic save for traffic under the direction of the undertaker.

PART 4

TEMPORARY TRAFFIC SIGNALS

<i>(1)</i> <i>District</i>	<i>(2)</i> <i>Extent of temporary traffic signal control</i>
East Cambridgeshire District	B1102 Ness Road An area of existing highway from a point 15 metres in a generally south-westerly direction from its junction with the access road leading to Lark Hall Farm for a distance of 100 metres in a generally south-westerly direction and including the means of access to the authorised development, as shown on sheet 2 of the traffic regulation measures plans – temporary measures (reference TS2).
East Cambridgeshire District	Newmarket Road (north of the A142 roundabout) An area of existing highway from its junction with the southern access road to Fordham Abbey for a distance of 100 metres in a generally southerly direction and including the means of access to the authorised development, as shown on sheet 4 of the traffic regulation measures plans – temporary

	measures (reference TS3).
East Cambridgeshire District	Newmarket Road (north of the A142 roundabout) An area of existing highway from its roundabout junction with A142 for a distance of 100 metres in a generally northerly direction, as shown on sheet 5 of the traffic regulation measures plans – temporary measures (reference TS4).
East Cambridgeshire District	Chippenham Road An area of existing highway from a point 315 metres in a generally north-easterly direction from the commencement point Chippenham Road (prior to which it is the Green) and 280 metres in a generally north-easterly direction from the access to the car park on Chippenham Road, for a distance of 100 metres in a generally north-easterly direction and including the means of access to the authorised development, as shown on sheet 7 of the traffic regulation measures plans – temporary measures (reference TS6).
East Cambridgeshire District	Chippenham Road An area of existing highway from a point 590 metres in a generally south-westerly direction its junction with the Water Hall Farm access road for a distance of 120 metres in a south-westerly direction and including the two means of access to the authorised development, as shown on sheet 8 of the traffic regulation measures plans – temporary measures (reference TS7).
East Cambridgeshire District	La Hogue Road An area of existing highway from a point 60 metres in a generally north-westerly direction from its junction with the access to La Hogue Cottages for a distance of 100 metres in a generally north-westerly direction and including the means of access to the authorised development, as shown on sheet 9 of the traffic regulation measures plans – temporary measures (reference TS8).
East Cambridgeshire District	B1085 (North) An area of existing highway from a point 320 metres in a generally westerly direction from its junction with the access to Wild Tracks Outdoor Activity Park for a distance of 100 metres in a generally westerly direction and including the two means of access to the authorised development, as shown on sheet 10 of the traffic regulation measures plans – temporary measures (reference TS9).
East Cambridgeshire District	B1085 Dane Hill Road An area of existing highway from a point 145 metres in a generally westerly direction from its junction with Dane Hill Farm for a distance of 100 metres in a generally westerly direction and including the means of access to the authorised development, as shown on sheet 11 of the traffic regulations measures plans – temporary measures (reference TS10).
West Suffolk District	Elms Road An area of existing highway from a point 175 metres in a generally north-westerly direction from its junction with Bridge End Road for a distance of 100 metres in a generally north-westerly direction and including the means of access to the authorised development, as shown on sheet 12 of the traffic regulation measures plans – temporary measures (reference TS11).
West Suffolk District	Elms Road An area of existing highway from a point 390 metres in a generally south-easterly direction from its junction with Badlingham Road for a distance of 215 metres in a generally south-easterly direction and including the two means of access to the authorised development, as shown on sheet 13 of the traffic regulation measures plans – temporary measures (reference TS12).
West Suffolk	B1102 Freckenham Road

District	An area of existing highway from a point 330 metres in a south-westerly direction from its junction with the access to Fairways for a distance of 100 metres in a south-westerly direction and including the two means of access to the authorised development, as shown on sheet 14 of the traffic regulation measures plans – temporary measures (reference TS13).
West Suffolk District	Newmarket Road (Worlington) An area of existing highway from a point 740 metres in generally southerly direction from its junction with Golf Links Road for a distance of 100 metres and including the two means of access to the authorised development, as shown on sheet 16 of the traffic regulation measures plans – temporary measures (reference TS14).

SCHEDULE 15

Article 37

TREES SUBJECT TO TREE PRESERVATION ORDERS

<i>Type of tree</i>	<i>Tree Preservation Order / Conservation Area Reference</i>
Tree within the area identified as G1 in the First Schedule to the East Cambridgeshire District Council Tree Preservation Order (No: E/08/22) dated 21/09/22 and being trees located on land adjacent to- Chippenham Road, Snailwell and shown on Sheet 1 of the tree preservation order trees location plan	TPO/E/08/22 G1
Tree within the area identified as G2 in the First Schedule to the East Cambridgeshire District Council Tree Preservation Order (No: E/08/22) dated 21/09/22 and being two trees located on land adjacent to- Chippenham Road, Snailwell and shown on Sheet 1 of the tree preservation order trees location plan	TPO/E/08/22 G2
[Tree within the area identified as G2 in the First Schedule to the East Cambridgeshire District Council Tree Preservation Order (No: E/08/22) dated 21/09/22 and being trees located on land adjacent to the existing access driveway at- Chippenham Road, Snailwell and shown on Sheet 1 of the Tree Preservation order trees location plan]	[TPO/E/08/22 G2]
Tree within the central junction of The Street (B1106) and Church Lane, Freckenham and shown on Sheet 3 of the tree preservation order trees location plan	Freckenham Conservation Area
Trees within the area identified as W1 in the First Schedule to the West Suffolk District Council Tree Preservation Order (No: 002/2022) dated 2022 and being trees located on land to the south of Worlington and shown on Sheet 2 of the tree preservation order trees location plan and labelled on that sheet as W1a.	TPO/002(2022)
Trees within the area identified as W1 in the First Schedule to the West Suffolk District Council Tree Preservation Order (No: 002/2022) dated 2022 and being trees located on land adjacent to- the south of Worlington and shown on Sheet 2 of the tree preservation order trees location plan and labelled on that sheet as W1b.	TPO/002(2022)

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises Sunnica Limited (referred to in this Order as the undertaker) to construct, operate, maintain and decommission a ground mounted solar photovoltaic generating station with a gross electrical output capacity over 50 megawatts and associated development. 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 38 of this Order (documents and plans to be certified) may be inspected free of charge during working hours at East Cambridgeshire District Council, The Grange, Nutholt Lane, Ely, Cambridgeshire, CB7 4EE and at West Suffolk District Council, West Suffolk House, Western Way, Bury St Edmunds, Suffolk, IP33 3YU.