



# EAST PARK ENERGY

**East Park Energy**

EN010141

**Draft Development Consent Order**

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Infrastructure Planning (Applications: Prescribed Forms and  
Procedure) Regulations 2009: Regulation 5(2)(b)

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# EAST PARK ENERGY

Planning Act 2008

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

## Draft Development Consent Order

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202[ ] No.

**INFRASTRUCTURE PLANNING**

The East Park Energy Order 202[ ]

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

*Coming into force* \*\*\*

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

(a) 2008 c. 29. Parts 1 to 7 were amended by Chapter 6 of Part 6 of the Localism Act 2011 (c. 20).

(b) S.I. 2009/2264, amended by S.I. 2010/602, S.I. 2010/602, S.I. 2012/2732, S.I. 2013/522, S.I. 2013/755, S.I. 2015/377, S.I. 2017/572; modified by S.I. 2012/1659.

The application was examined by the Examining Authority appointed by the Secretary of State pursuant to Chapter 3 of Part 6 of the 2008 Act and carried out in accordance with Chapter 4 of Part 6 of the 2008 Act and the Infrastructure Planning (Examination Procedure) Rules 2010(a).

The Examining Authority having considered the representations made and not withdrawn and the application together with the accompanying documents, in accordance with section ~~83(1)(b)~~ of the 2008 Act, has submitted a report and recommendation to the Secretary of State.

The Secretary of State, having considered the representations made and not withdrawn, and the recommendations and report of the Examining Authority, and taken into account the environmental information in accordance with regulation 4 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017(c), has decided to make an Order granting development consent for the development described in the application with modifications which in the opinion of the Secretary of State do not make any substantial changes to the proposals comprised in the application.

The Secretary of State, in exercise of the powers conferred by sections 114(d), 115(e), 120(f), 122(g), 123(h) and 140 of the 2008 Act, makes the following Order—

## PART 1

### PRELIMINARY

#### Citation and commencement

1. This Order may be cited as the East Park Energy Order 202[ ] and comes into force on [ ]

#### Interpretation

2. —(1) In this Order except where provided otherwise—
  - “the 1961 Act” means the Land Compensation Act 1961(i);
  - “the 1965 Act” means the Compulsory Purchase Act 1965(j);
  - “the 1980 Act” means the Highways Act 1980(k);
  - “the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981(l);
  - “the 1984 Act” means the Road Traffic Regulation Act 1984(m);
  - “the 1989 Act” means the Electricity Act 1989(n);
  - “the 1990 Act” means the Town and Country Planning Act 1990(o);
  - “the 1991 Act” means the New Roads and Street Works Act 1991(p);

(a) S.I. 2010/103, amended by S.I. 2012/635.

(b) [Section 83\(1\) was amended by paragraph 35 of Part 1 of Schedule 13 to the Localism Act 2011 \(c.20\).](#)

(c) S.I. 2017/572.

(d) Section 114 was amended by paragraph 55 of Part 1 of Schedule 13 to the Localism Act 2011 (c.20).

(e) Section 115 was amended by section 160 of the Housing and Planning Act 2016 (c. 22) and section 43 of the Wales Act 2017 (c. 4).

(f) Section 120 was amended by section 140 and paragraph 60 of Part 1 of Schedule 13 to the Localism Act 2011 (c. 20).

(g) Section 122 was amended by paragraph 62 of Part 1 of Schedule 13 to the Localism Act 2011 (c. 20).

(h) Section 123 was amended by paragraph 62 of Part 1 of Schedule 13 to the Localism Act 2011 (c. 20).

(i) 1961 c. 33.

(j) 1965 c. 56.

(k) 1980 c. 66.

(l) 1981 c. 66.

(m) 1984 c. 27.

(n) 1989 c. 29.

(o) 1990 c. 8.

(p) 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).

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

“address” includes any number or address 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 protective test posts, field boundary markers, transformer rectifier kiosks, electrical cables, telecommunications equipment and electricity cabinets;

“authorised development” means the development and associated development described in Schedule 1 (authorised development) which is development within the meaning of section 32 of the 2008 Act;

“book of reference” means the book of reference certified by the Secretary of State as the book of reference for the purposes of the Order in accordance with article 39 (certification of plans, etc.);

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

“commence” means to carry out any material operation (as defined in section 155 of the 2008 Act) forming part of the authorised development other than the site preparation works (except where stated to the contrary), and “commencement”, “commenced” and “commencing” are to be construed accordingly;

“commissioning” means the process of testing all systems and components of Work No. 1 in order to ensure that they, and the authorised development as a whole, function in accordance with plant design specifications and the undertaker’s operational and safety requirement;

“date of final commissioning” means in respect of each phase of the authorised development as notified under requirement 2 of Schedule 2 (requirements) that contains part or all of Work No.1 the date on which each such phase commences operation by generating electricity on a commercial basis but excluding the generation of electricity during commissioning and testing;

“design parameters and principles statement” means the design parameters and principles set out in the design parameters and principles statement certified by the Secretary of State as the design parameters and principles for the purposes of this Order in accordance with article 39;

“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 certified by the Secretary of State as the environmental statement for the purposes of this Order in accordance with article 39;

“generating station” has the same meaning as in Part 1 of the Electricity Act 1989 (see section 64(1) of that Act);

“hedgerows plan” means the plan identifying hedgerows and important hedgerows and certified by the Secretary of State as the hedgerows plan for the purposes of this Order in accordance with article 39;

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

“land and crown land plans” means the plans certified by the Secretary of State as the land and crown land plans for the purposes of this Order in accordance with article 39;

“lead local flood authority” has the same meaning as in section 6(7) (other definitions) of the Flood and Water Management Act 2010(c);

“limits of deviation” means the limits for the scheduled works referred to in article 7 (limits of deviation) and shown for each numbered work on the works plan;

“local planning authority” means the local planning authority (as defined in section 336 of the 1990 Act) for the area to which the provision relates;

“maintain” includes inspect, repair, adjust, alter, remove, refurbish, reconstruct, replace and improve any part of, but not remove, reconstruct or replace the whole of, the authorised development, provided these do not give rise to any materially new or materially different

(a) 2008 c. 29.

(b) “highway” is defined in section 328 (1). For “highway authority” see section 1.

(c) 2010 c. 29.

environmental effects compared to those identified in the environmental statement, and “maintenance” and “maintaining” are to be construed accordingly;

“National Highways” means National Highways Limited (Company No. 09346363) whose registered office is at Three Snowhill, Snow Hill Queensway, Birmingham, England B4 6GA;

“Order land” means the land which is required for, or is required to facilitate, or is incidental to, the authorised development as 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 within which the authorised development may be carried out and land acquired or used;

“outline archaeological mitigation strategy” means the plan certified by the Secretary of State as the outline archaeological mitigation strategy for the purposes of this Order in accordance with article 39;

“outline battery safety management plan” means the plan certified by the Secretary of State as the outline battery safety management plan for the purposes of this Order in accordance with article 39;

“outline construction environmental management plan” means the document certified by the Secretary of State as the outline construction environmental management plan for the purposes of this Order in accordance with article 39;

“outline construction traffic management plan” means the document certified by the Secretary of State as the outline construction traffic management plan for the purposes of the Order in accordance with article 39;

“outline decommissioning environmental management plan” means the document certified by the Secretary of State as the decommissioning environmental management plan for the purposes of this Order in accordance with article 39;

“outline heritage enhancement strategy” means the document certified by the Secretary of State as the outline heritage enhancement strategy for the purposes of the Order in accordance with article 39;

“outline landscape and ecological management plan” means the document certified by the Secretary of State as the outline landscape and ecological management plan for the purposes of this Order in accordance with article 39;

“outline operational environmental management plan” means the document certified by the Secretary of State as the outline operational environmental management plan for the purposes of this Order in accordance with article 39;

“outline public rights of way management plan” means the plan certified by the Secretary of State as the outline public rights of way management plan for the purposes of this Order in accordance with article 39;

“outline skills, supply chain and employment plan” means the document certified by the Secretary of State as the outline skills, supply chain and employment plan for the purposes of this Order in accordance with article 39;

“outline soil management plan” means the plan certified by the Secretary of State as the outline soil management plan for the purposes of this Order in accordance with article 39;

“outline surface water management plan” means the plan certified by the Secretary of State as the outline surface water management plan for the purposes of this Order in accordance with article 39;

“outline waste management plan” means the plan certified by the Secretary of State as the outline waste management plan for the purposes of this Order in accordance with article 39;

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

“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;

“requirements” means those matters set out in Part 1 of Schedule 2 and any reference to a numbered requirement is to be construed accordingly;

“site preparation works” means all or any of—

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(a) 1981 c. 67.

- (a) environmental surveys, geotechnical surveys, intrusive archaeological surveys and other investigations required in advance of construction;
- (b) receipt and erection of construction plant and equipment;
- (c) above ground site preparation for temporary facilities for the use of contractors;
- (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) preliminary site access works; or
- (h) site clearance (including vegetation removal, demolition of existing buildings and structures);

[“statutory nature conservation body” means the appropriate nature conservation body as defined in regulation 5 of the Conservation of Habitats and Species Regulations 2017\(a\);](#)

“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(b);

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

“street” means a street within the meaning of section 48(d) (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 or part of a street;

“street works, public rights of way and access plans” means the plan certified as the street works, public rights of way and access plans by the Secretary of State for the purposes of this Order in accordance with article 39;

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

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

“traffic regulation measures plan” means the plans certified by the Secretary of State as the traffic regulation measures plan for the purposes of this Order in accordance with article 39;

“undertaker” means BSSL Cambsbed 1 Ltd (company number 13941201) whose registered office is at 16 Stratford Place, London, England, W1C 1BF;

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

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

“work” means a work set out in Schedule 1 (authorised development);

“working day” means any day other a Saturday, Sunday or English bank or public holiday; and

“works plan” means the plans certified by the Secretary of State as the works plan for the purposes of this Order in accordance with article 39.

(2) 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 plan and street works, public rights of way and access plans are to be taken to be measured along that work.

(3) Any reference in this Order to a work identified by the number of the work is to be construed as a reference to the work of that number as described in Schedule 1 (authorised development) and authorised by this Order.

(a) [S.I. 2017/1012.](#)

(b) 2003 c. 21.

(c) “street authority” is defined in section 49, which was amended by paragraph 117 of Schedule 1 to the Infrastructure Act 2015 (c. 7).

(d) Section 48 was amended by section 124(2) of the Local Transport Act 2008 (c. 26).

(e) 2006 c. 46.

(f) 1984 c. 27. 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.

(4) In this Order “includes” must be construed without limitation unless the contrary intention appears.

(5) References in this Order to any statutory body include that body’s successor bodies as from time to time have jurisdiction in relation to the authorised development.

(6) 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.

(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 in Part 1 of Schedule 2 (requirements), the undertaker is granted development consent for the authorised development to be carried out within the Order limits.

(2) Any enactment applying to land within or adjacent to the Order limits has effect subject to the provisions of this Order.

#### **Power to maintain the authorised development**

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

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

(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 environmental effects compared to those identified in the environmental statement.

#### **Consent to transfer benefit of Order**

**5.**—(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 supply 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,
  - (c) the transfer or grant is made to National Grid Electricity Transmission PLC (company registration number 02366977) whose registered office is at 1 - 3 Strand, London, WC2N 5EH for the purposes of undertaking Work No. 4 and/or 5;
  - (d) the transfer or grant is made to Anglian Water Services Limited (company registration number 02366656) whose registered office is at Lancaster House Lancaster Way, Ermine Business Park, Huntingdon, Cambridgeshire, United Kingdom, PE29 6XU for the purposes of undertaking Work No. 6; or
  - (e) the transfer or grant is made to Openreach Limited (company registration number 10690039) whose registered office is at 6 Gracechurch Street, London, United Kingdom, EC3V 0AT for the purposes of undertaking Work No. 6.
- (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 ten working 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.

### **Planning permission**

6. If planning permission is granted under the powers conferred by the 1990 Act for development, any part of which is within the Order limits, following the coming into force of this Order that is—

- (a) not itself a nationally significant infrastructure project under the 2008 Act or part of such a project; or
- (b) required to complete or enable the use or operation of any part of the development authorised by this Order,

then the carrying out, use or operation of such development under the terms of the planning permission does not constitute a breach of the terms of this Order.

## Limits of deviation

7.—(1) The authorised development is to be carried out and maintained within the limits of deviation except where it is demonstrated by the undertaker to the Secretary of State’s satisfaction and following consultation by the undertaker with the local planning authority, that a deviation in excess of the limits of deviation would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.

(2) Part 2 (procedure for discharge of requirements) of Schedule 2 (requirements) applies to an application to the Secretary of State for certification under paragraph (1) as though it were an approval required by a requirement under that Schedule.

## Disapplication and modification of legislative provisions

8.—(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 purpose of, or in connection with, the construction, operation, maintenance or decommissioning of any part of the authorised development—

- (a) regulation 12 (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016(a) in respect of a flood risk activity only;
- (b) section 23 (prohibition on obstructions etc. in watercourses) of the Land Drainage Act 1991(b);
- (c) section 32(c) (variation of awards) of the Land Drainage Act 1991;
- (d) the provisions of any byelaws made under section 66(d) (powers to make byelaws) of the Land Drainage Act 1991;
- (e) 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(e); and
- (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) in so far as they relate to the temporary possession of land, the provisions of the Neighbourhood Planning Act 2017(f).

(2) Regulation 6 of the Hedgerows Regulations 1997(g) is modified so as to read for the purposes of this Order only as if there were inserted after paragraph (1)(j) the following—

or (k) for carrying out development which has been authorised by the East Park Energy Order 202[●].

(3) Regulation 5 of The Management of Hedgerows (England) Regulations 2024(h) is modified so as to read for the purposes of this Order only as if there were inserted after paragraph 5(e)—

- (a) the carrying out of any development or in the exercise of any functions that are authorised by the East Park Energy Order 202[ ];

(4) Notwithstanding the provisions of section 208 (liability) of the 2008 Act, for the purposes of regulation 6 (meaning of “development”) of the Community Infrastructure Levy Regulations 2010(i) any building comprised in the authorised development is deemed to be—

(a) S.I. 2016/1154, amended by S.I. 2018/110.

(b) 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.

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

(d) 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).

(e) 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.

(f) 2017 c. 20.

(g) S.I. 1997/1160, amended by S.I. 2015/377.

(h) S.I. 2024/680.

(i) S.I. 2010/948, amended by S.I. 2011/987. There are other amending instruments but none are relevant to this Order.

- (a) a building into which people do not normally go; or
- (b) a building into which people go only intermittently for the purpose of inspecting or maintaining fixed plant or machinery.

(5) For the purposes of section 9 (requirement of licence for felling) of the Forestry Act 1967<sup>(a)</sup>, 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.

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

**9.**—(1) Where proceedings are brought under section 82(1) (summary proceedings by a person aggrieved by statutory nuisance) of the Environmental Protection Act 1990<sup>(b)</sup> in relation to a nuisance falling within paragraph (a), (d), (e) (fb)<sup>(c)</sup>, (g) and (ga)<sup>(d)</sup> of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order is to be made, and no fine is to be imposed, under section 82(2)<sup>(e)</sup> of that Act if the defendant shows that the nuisance—

- (a) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction sites), or a consent given under section 61 (prior consent for work on construction sites) of the Control of Pollution Act 1974<sup>(f)</sup>; or—
- (b) is a consequence of the construction, maintenance or decommissioning of the authorised development and cannot reasonably be avoided; or
- (c) is a consequence of the use of the authorised development and cannot reasonably be avoided.

(2) Section 61(9)<sup>(g)</sup> (prior consent for work on construction sites) of the Control of Pollution Act 1974 does not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction, maintenance or decommissioning of the authorised development.

## **PART 3 STREETS**

### **Street works**

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

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) drill, tunnel or bore under the street;
- (c) place and keep apparatus under the street;
- (d) maintain apparatus in the street, change its position or remove it;
- (e) repair, replace or otherwise alter the surface or structure of it; and

<sup>(a)</sup> 1967 c.10. 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.

<sup>(b)</sup> 1990 c. 43.

<sup>(c)</sup> Section 79(1)(fb) was inserted by section 102 of the Clean Neighbourhoods and Environment Act 2005 (c.16).

<sup>(d)</sup> Section 79(1)(ga) was inserted by section 2 of the Noise and Statutory Nuisance Act 1993 (c.40)

<sup>(e)</sup> section 82(2) was amended by section 5 of the Noise and Statutory Nuisance Act 1993 (c.40). There are other amendments to section 82(2) which are not relevant to this Order.

<sup>(f)</sup> 1974 c. 40.

<sup>(g)</sup> Section 61(9) was amended by Schedule 24 to the Environment Act 1995 (c.25) and paragraph 15(3) of Schedule 15 to the Environmental Protection Act 1990 (c.43).

- (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 Part 3 (street works in England and Wales) 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<sup>(a)</sup> apply to any street works carried out under paragraph (1).

### **Application of the 1991 Act**

**11.—**(1) Works carried out under this Order in relation to a highway which consists of or includes a carriageway must be treated for the purposes of Part 3 of the 1991 Act (street works in England and Wales) as major highway works if they are of a description mentioned in section 86(3) of the 1991 Act (highway authorities, highways and related matters).

(2) In Part 3 of the 1991 Act, in relation to works which are major highway works by virtue of paragraph (1), references to the highway authority concerned are to be construed as references to the undertaker.

(3) The provisions of the 1991 Act mentioned in paragraph (4) that apply in relation to the carrying out of street works under that Act and any regulations made or code of practice issued or approved under those provisions apply (with all necessary modifications) in relation to—

- (a) the carrying out of works under article 10 (street works); and
- (b) the temporary stopping up, temporary alteration or temporary diversion of a street by the undertaker under article 15 (temporary stopping up of streets and public rights of way);

whether or not the carrying out of the works or the temporary stopping up, alteration or diversion constitutes street works within the meaning of that Act.

(4) The provisions of the 1991 Act<sup>(b)</sup> are—

- (a) section 54 (advance notice of certain works);
- (b) subject to paragraph (4), section 55 (notice of starting date of works);
- (c) section 57 (notice of emergency works);
- (d) section 60 (general duty of undertakers to co-operate);
- (e) section 65 (safety measures);
- (f) section 68 (facilities to be afforded to street authority);
- (g) section 69 (works likely to affect other apparatus in the street);
- (h) section 71 (materials, workmanship and standard of reinstatement);
- (i) section 72 (powers of street authority in relation to reinstatement);
- (j) section 73 (reinstatement affected by subsequent works);
- (k) section 75 (inspection fees);
- (l) section 76 (liability for cost of temporary traffic regulation);
- (m) section 77 (liability for cost of use of alternative route; and
- (n) all provisions of that Act that apply for the purposes of the provisions referred to in sub-paragraphs (a) to (g).

<sup>(a)</sup> Sections 54 to 106 were amended by Schedule 7 to the Road Traffic Act 1991 (c. 40), Schedule 1 to the Water Consolidation (Consequential Provisions) Act 1991 (c. 60), sections 255 and 256 of the Transport Act 2000 (c. 38), sections 40 to 59 of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18), Schedule 3 to the Flood and Water Management Act 2010 (c. 29), and S.I. 2007/1951. There are other amendments to sections 54 to 106 which are not relevant to this Order.

<sup>(b)</sup> Sections 55, 57, 60, 68, and 69 were amended by the Traffic Management Act 2004 (c. 18).

(5) Section 54 and 55 of the 1991 Act as applied by paragraph (4) has effect as if references in section 57 of that Act to emergency works included a reference to a temporary closure, stopping up, alteration or diversion (as the case may be) required in a case of emergency.

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

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

- (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 as 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, maintaining or decommissioning 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 the carriageway by reducing the width of any kerb, footway, cycle track or verge within the street;
- (b) alter the level or increase the width of any such kerb, footway, cycle track, or verge;
- (c) reduce the width of the carriageway;
- (d) make and maintain passing places; and
- (e) alter, remove, replace and relocate any street furniture, including bollards, lighting columns, road signs and chevron signs.

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

(4) The powers conferred by paragraph (2) may not be exercised without the consent of the street authority, but such consent is not to be unreasonably withheld or delayed.

(5) If a street authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent under paragraph (4), or such longer period that is agreed in writing between the undertaker and that street authority, that street authority is deemed to have granted consent.

(6) 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**

13.—(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 relevant highway authority and, unless otherwise agreed by the relevant highway authority, the alterations including any culverts, bunding or other structures laid under it or supporting it must be maintained to the same standard by and at the expense of the undertaker for a period of 12 months from their completion and from the expiry of that period, subject to certification by the relevant highway authority that it has been made up to the same satisfactory manner, shall be maintained by and at the expense of the relevant highway authority.

(2) Where a footpath or bridleway is constructed altered or diverted under this Order, the constructed altered or diverted part of that highway must be completed to the reasonable satisfaction of the relevant highway authority and, unless otherwise agreed in writing with the relevant highway authority, that part of the footpath or bridleway including any culverts, bunding or other structures laid under it or supporting it must be maintained to the same standard by and at the expense of the undertaker for a period of 12 months from their completion and from the expiry of that period, subject to certification by the relevant highway authority that it has been made up to the same satisfactory manner, shall be maintained by and at the expense of the relevant highway authority.

(3) Subject to paragraph (4), the temporary alterations to the street 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.

(4) Those restoration works carried out pursuant to article 12(3) (power to alter layout, etc., of streets) must be completed to the reasonable satisfaction of the street authority and must be maintained to the same standard by the undertaker for a period of 12 months from their completion and from the expiry of that period, subject to certification by the relevant highway authority that it has been made up to the same satisfactory manner, shall be maintained by and at the expense of the street authority.

(5) In any action against the undertaker in respect of loss or damage resulting from any failure by it to maintain a street under this article, it 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.

(6) For the purposes of a defence under paragraph (5), 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.

(7) Paragraphs (1) to (6) do not apply where the undertaker is the street authority for a street in which the works are being carried out.

#### **Access to works**

**14.—**(1) 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 (provision of permanent means of access) of Schedule 7 (access to works);
- (b) form and lay out the temporary means of access in the location specified in Part 2 (provision of temporary means of access) of Schedule 7; and
- (c) with the prior approval of the local planning authority after consultation with the relevant 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.

(2) If a local planning authority fails to notify the undertaker of its decision within 28 days of receiving an application under paragraph (1)(c) or refuses approval without giving any grounds for its refusal that highway authority is deemed to have granted approval.

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

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

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

- (a) divert the traffic or a class of traffic from the street or public right of way;
- (b) authorise 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 street or public right of way.

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

(3) Without prejudice to the generality of paragraph (1), the undertaker may temporarily stop up, prohibit the use of, authorise the use of, restrict the use of, alter or divert—

(a) the streets or public rights of way specified in column 2 of the table in Part 1 (temporary alteration, prohibition, diversion or restriction of the use of streets and public rights of way) of Schedule 6 (temporary prohibition or restriction of use of streets and public rights of way and authorising vehicular use on public rights of way) to the extent specified in column 3 of that table; and

(b) the streets or public rights of way specified in column 2 of the table in Part 2 (authorising permanent 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, authorise the use of, restrict the use of, alter or divert—

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

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

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

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

(7) In this article expressions used in this article and in the 1984 Act have the same meaning.

(8) Nothing in this article prevents the undertaker from temporarily closing, prohibiting the use of, authorising the use of, restricting the use of, altering or diverting a street or public right of way under this article more than once.

(9) If a street authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent under paragraph (4)(b), or such longer period that is agreed in writing between the undertaker and that street authority, that street authority is deemed to have granted consent.

(10) Paragraph (1)(b) and (3)(b), and any authorisation given by the undertaker under it constitutes lawful authority for the purposes of section 34 (prohibition on driving mechanically propelled vehicles elsewhere than on roads) of the Road Traffic Act 1988.<sup>(a)</sup>

### **Agreements with street authorities**

**16.—**(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, restriction, alteration or diversion of a street authorised by this Order;

(c) the carrying out in the street of any of the works referred to in article 10(1) (street works), [article 12\(2\) \(power to alter layout, etc., of streets\)](#) and article 14 (access to works); or

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

(i) undertaken on a street which is existing public maintainable highway; or

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

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<sup>(a)</sup> 1988 c.52.

(2) If such 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.

### Traffic regulation measures

17.—(1) Subject to the provisions of this article the undertaker may at any time, in the interests of safety and for the purposes of, or in connection with, the construction of the authorised development—

- (a) make provision in respect of those lengths of road specified in column 2 of Part 1 of Schedule 8 (traffic regulation measures) imposing the temporary speed limit mentioned in column 3 of that Part of that Schedule; and

~~(b) make provision in respect of those lengths of road specified in column 2 of Part 2 of Schedule 8 (traffic regulation measures) temporarily suspending the weight restriction mentioned in column 3 of that Part of that Schedule; and~~

- (b) ~~(e)~~ temporarily place traffic signs and signals in the extents of the road specified in column 2 of Part ~~3~~<sup>2</sup> of Schedule 8 (traffic regulation measures) and 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)~~.

(2) 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) 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 the 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.

(3) 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 Amendments) Regulations 2011~~(b)~~ when used in accordance with regulation 3(5) of those regulations.

(4) Before exercising the power conferred by paragraph (2) the undertaker must—

- (a) consult with the chief officer of police in whose area the road is situated; and
- (b) obtain the written consent of the traffic authority, which consent must not be unreasonably withheld.

(5) The undertaker must not exercise the powers in paragraphs (1) or (2) unless it has—

- (a) except in the case of emergency given not less than 4 weeks' notice in writing of its intention so to do to the chief officer of police and to the traffic authority in whose area the road is situated;
- (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 newspaper circulating in the area in which any road to which the provision relates is situated;
- (c) displayed a site notice containing the same information at each end of the length of road affected; and

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(a) S.I. 2016/362.

(b) S.I. 2011/935.

(d) either—

- (i) in relation to the construction of the authorised development only, have first obtained approval under requirement 8 for a construction traffic management plan for the phase of the authorised development in relation to which the power conferred by paragraph (1) or (2) is sought to be utilised; or
- (ii) in relation to the decommissioning of the authorised development only, have first obtained approval under requirement 18 for a decommissioning traffic management plan for the part of the authorised development in relation to which the power conferred by paragraph (1) or (2) is sought to be utilised.

(6) Any provision made under the powers conferred by paragraphs (1) or (2) of this article may be suspended, varied or revoked by the undertaker from time to time by subsequent exercise of the powers conferred in paragraph (1) or (2).

(7) Any provision made by the undertaker under paragraphs (1) or (2)—

- (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 specific savings and exemptions to which the provision is subject; and
- (c) is deemed to be a traffic order for the purposes of Schedule 7 to the Traffic Management Act 2004<sup>(a)</sup> (road traffic contraventions subject to civil enforcement).

(8) If the traffic authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent under paragraph (4) the traffic authority is deemed to have granted consent.

## PART 4

### SUPPLEMENTAL POWERS

#### Discharge of water

**18.**—(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 carrying out or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

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

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

(4) The undertaker must not carry out any works to or make any opening into any public sewer or drain pursuant to paragraph (1) except—

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

(5) The undertaker must not, in carrying out or maintaining works pursuant to this article damage or interfere with the bed or banks of any watercourse forming part of a main river.

<sup>(a)</sup> 2004 c. 18.

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

(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 is prohibited by regulation 12 (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016<sup>(a)</sup>.

(8) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to the Environment Agency, an internal drainage board, a joint planning board, a local 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.

(9) If a person who receives an application for consent or approval fails to notify the undertaker of a decision within 28 days of receiving an application for consent under paragraph (3) or approval under paragraph (4)(a) that person is deemed to have granted consent or given approval, as the case may be.

(10) Any application for consent under paragraph (3) or approval under sub-paragraph (4)(a) must include a statement that the provisions of paragraph (9) apply to that application.

(11) If an application for consent under paragraph (3) or approval under sub-paragraph (4)(a) does not include the statement required under paragraph (10), then the provisions of paragraph (9) will not apply to that application.

### **Protective works to buildings**

**19.—**(1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any building located 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 purposes 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 that is adjacent to the building but outside its curtilage, enter the adjacent land (but not any building erected on it) within the Order limits.

(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.

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(a) S.I. 2016/1154.

(6) Where a notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question of whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 43 (arbitration).

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

(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 that the protective works are inadequate to protect the building against damage caused by the construction, operation or maintenance of that part of the authorised development,

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

(9) Nothing in this article relieves the undertaker from any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 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 that may be caused to the building by the construction, operation, maintenance or use of the authorised development; and
- (b) any works the purpose of which is to remedy any damage that has been caused to the building by the construction, operation, maintenance or use of the authorised development.

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

**20.—(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 for the purposes of the authorised development and—

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

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 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 held by or in right of the Crown without the consent of the Crown;
- (b) in land located within the highway boundary without the consent of the relevant highway authority; or
- (c) in a private street without the consent of the street authority,

but such consent must not be unreasonably withheld.

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

(6) If either a highway authority or a street authority which receives an application for consent fails to notify the undertaker of its decision within 28 days of receiving the application for consent—

(a) under paragraph (4)(a) in the case of a highway authority; or

(b) under paragraph (4)(b) in the case of a street authority,

or such longer period that is agreed in writing between the undertaker and that authority, that authority is deemed to have granted consent.

(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**

**21.** Subject to the provisions of this Part, the undertaker may acquire compulsorily so much of the Order land as is required for the authorised development or to facilitate, or is incidental, to it.

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

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

(a) no notice to treat is to be served under Part 1 (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 24 (application of the 1981 Act).

(2) The authority conferred by article 30 (temporary use of land for carrying out 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.

(3) The applicable period for the purposes of section 4 of the 1965 Act (time limit for giving notice to treat) and section 5A of the 1981 Act (time limit for general vesting declaration) (as modified by this Order) is the period of five years beginning on the day on which this Order is made.

#### **Compulsory acquisition of rights**

**23.—(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 21 (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 24 (private rights) and article 32 (statutory undertakers), in the case of the Order land specified in column (1) of Schedule 9 (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 (3) 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 11 of Schedule 7 (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 10 (modification of compensation and compulsory purchase enactments for 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 47 (Crown rights).

### **Private rights**

**24.—(1)** Subject to the provisions of this article, all private rights and restrictive covenants 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 23 (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 the imposition of the restrictive covenant by the undertaker (whether the right 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 32 (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**

- 25.**—(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) 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)” substitute “section 118 (legal challenges relating to applications for orders granting development consent) of the 2008 Act”.
- (6) In section 6 (notices after execution 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”.
- (7) 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)”.
- (8) In Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration), for paragraph 1(2) substitute—
- (2) But see article 26(3) (acquisition of subsoil only) of the East Park Energy Order 202[ ], which excludes the acquisition of subsoil only from this Schedule.
- (9) 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 28 (modification of Part 1 of the Compulsory Purchase Act 1965) to the compulsory acquisition of land under this Order.

### **Acquisition of subsoil only**

- 26.**—(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 21 (compulsory acquisition of land) or article 23 (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;
- (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**

**27.**—(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**

**28.**—(1) Part 1 (compulsory acquisition under Acquisition of Land Act 1946) of the 1965 Act, as applied to this Order by section 125 (application of compulsory acquisition provisions) of the 2008 Act, is modified as follows.

(2) In section 4A(1) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to the High Court in respect of compulsory purchase order)” substitute “section 118 (legal challenges relating to applications for orders granting development consent) of the 2008 Act”.

(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 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 26(3) (acquisition of subsoil only) of the East Park Energy Order 202[●], which excludes the acquisition of subsoil only from this Schedule. and

- (b) after paragraph 29 insert—

## PART 3 INTERPRETATION

**30.** In this Schedule, references to entering on and taking possession of land do not include doing so under article 18 (protective works to buildings), article 30 (temporary use of land for carrying out the authorised development) or article 31 (temporary use of land for maintaining the authorised development) of the East Park Energy Order 202[●].

### **Rights under or over streets**

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

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

(3) Paragraph (2) 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 carrying out the authorised development**

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

- (a) enter on and take temporary possession of—
  - (i) so much of the land specified in column (1) of the table in Schedule 11 (land of which temporary possession may be taken) for the purpose specified in relation to the land in column (2) of that table; and
  - (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 (execution of declaration) of the 1981 Act;
- (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 the 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 pursuant to the requirements in Part 1 of Schedule 2 (requirements).

(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 Part 1 of Schedule 2 (requirements).

(6) 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.

(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 carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (6).

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

(10) Nothing in this article precludes the undertaker from—

- (a) creating and acquiring new rights or imposing restrictions over any part of the Order land identified in Schedule 9 (land in which only new rights etc. may be acquired); or
- (b) acquiring any part of the subsoil of (or rights in the subsoil of) that land under article 26 (acquisition of subsoil only) or any part of the subsoil or air-space over that land under article 29 (rights under or over streets).

(11) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (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.

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

**31.—**(1) Subject to paragraph (2), at any time during the maintenance period (as defined in paragraph (11)) 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.
- (10) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.
- (11) In this article “the maintenance period” means the period of 5 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 local planning authority pursuant to requirement 4 beginning with the date on which that part of the landscaping is completed.

### **Statutory undertakers**

32. Subject to the provisions of Schedule 13 (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
  - (b) extinguish the rights of, remove, relocate the rights of or reposition the apparatus belonging to statutory undertakers over or within the Order land.

### **Apparatus and rights of statutory undertakers in temporarily stopped up streets**

33. Where a street is altered or diverted or its use is temporarily prohibited or restricted under article 10 (street works), article 12 (power to alter layout, etc., of streets) or article 15 (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 13 (protective provisions), as if this Order had not been made.

#### **Recovery of costs of new connections**

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

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

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

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

(3) This article does not have effect in relation to apparatus to which Part 3 (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<sup>(a)</sup>; and

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

#### **Compulsory acquisition of land – incorporation of the mineral code**

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

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

## PART 6 OPERATIONS

#### **Operation of generating station**

**36.**—(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.

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(a) 2003 c. 21.

**PART 7**  
**MISCELLANEOUS AND GENERAL**

**Removal of human remains**

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

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

- (a) publishing a notice once in each of 2 successive weeks in a newspaper circulating in the area of the authorised development; and
- (b) displaying a notice in a conspicuous place within or near the Order limits.

(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 local 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 within the Order limits 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 re-interred in any burial ground or cemetery in which burials may legally take place; or
- (b) removed to, and cremated in, any crematorium,

and that person must, as soon as reasonably practicable after such re-interment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (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 must be determined on the application of either party in a summary manner by the county court, and the court may make an order specifying who must remove the remains and as to the payment of the costs of the application.

(7) The undertaker must pay the reasonable expenses of removing and re-interring 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 within the Order limits; 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 (9) the undertaker must remove the remains and cause them to be re-interred in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose; and, so far as possible, remains from individual graves are to be re-interred in individual containers which must be identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

(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 re-interment or cremation of the remains.

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

- (a) a certificate of re-interment or cremation must be sent by the undertaker to the Registrar General giving the date of re-interment or cremation and identifying the place from which the remains were removed and the place in which they were re-interred or cremated; and
- (b) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (8) must be sent by the undertaker to the local 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 this article references to a personal representative or relative of the deceased are to a person who—

- (a) is a husband, wife, civil partner, parent, grandparent, child or grandchild of the deceased; or
- (b) is, or is a child of, a brother, sister, uncle or aunt of the deceased; or
- (c) is the lawful executor of the estate of the deceased; or
- (d) is the lawful administrator of the estate of the deceased.

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

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

(15) 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.

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

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

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

### **Certification of plans, etc.**

**39.—(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 15 (documents 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.

### **Service of notices**

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

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

(a) 1857 c. 81. Section 25 was substituted by section 2 of the Church of England (Miscellaneous Provisions) Measure 2014 (No. 1).

(b) S.I. 1950/792.

- (c) with the consent of the recipient and subject to paragraphs (5) 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<sup>(a)</sup> 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 the time of service.
- (4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having an interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—
- (a) addressing it to that person by name or 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 a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.
- (5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is to be taken to be fulfilled only where—
- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
  - (b) the notice or document is capable of being accessed by the recipient;
  - (c) the notice or document is legible in all material respects; and
  - (d) 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 7 days of receipt that the recipient requires a paper copy of all or 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 electronic communication given 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 7 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.
- (10) In this article “legible in all material respects” means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served, given or supplied by means of a notice or document in printed form.

### **Felling or lopping of trees or removal of hedgerows**

**41.**—(1) Subject to Article 42 (trees subject to 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—

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(a) 1978 c. 30.

- (a) obstructing or interfering with the construction, maintenance, operation or decommissioning 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; and
  - (b) pay compensation to any person for any loss or damage arising from such activity.
- (3) Any dispute as to a person’s entitlement to compensation under paragraph (2), or as to the amount of compensation, must be determined under Part 1 of the 1961 Act.
- (4) The undertaker may, for the purposes of the authorised development remove those parts of the hedgerows as are within the Order limits and specified in Schedule 12 (removal of hedgerows).
- (5) The undertaker may not pursuant to paragraph (1) fell or lop a tree or remove hedgerows within the extent of the publicly maintainable highway without the prior consent of the relevant highway authority.
- (6) In this article “hedgerow” has the same meaning as in the Hedgerow Regulations 1997(a).

**Trees subject to tree preservation orders**

- 42.—(1) The undertaker may fell or lop any tree within or overhanging land within the Order limits which is subject to a tree preservation order 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, operation or maintenance 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 (determination of questions of disputed compensation) of the 1961 Act.

**Arbitration**

- 43.—(1) 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 at Schedule 14 (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.
- (2) Any matter for which the consent or approval of the Secretary of State is required under any provision of this Order will not be subject to arbitration.

**Requirements, appeals, etc.**

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

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(a)S.I. 1997/1160.

(2) Part 2 (procedure for discharge of requirements) of Schedule 2 (requirements) has effect in relation to all agreements or approvals granted, refused or withheld in relation to requirements in Part 1 (requirements) of that Schedule.

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

45.—(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 to which paragraph (2) 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.

### **Protective provisions**

46. Schedule 13 (protective provisions) has effect.

### **Crown Rights**

47.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular, nothing in this Order authorises the undertaker or any transferee, lessee or licensee to take possession of, use, enter upon or in any manner interfere with any land or rights of any description (including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary)—

- (a) belonging to His 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 His 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
- (c) belonging to a government department or held in trust for His 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) 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.

### **Funding**

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

- (a) a guarantee, the 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 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 21 (compulsory acquisition of land);
- (b) article 23 (compulsory acquisition of rights);
- (c) article 24 (private rights);
- (d) article 26 (acquisition of subsoil only);
- (e) article 29 (rights under or over streets);
- (f) article 30 (temporary use of land for carrying out the authorised development);
- (g) article 31 (temporary use of land for maintaining the authorised development); and
- (h) article 32 (statutory undertakers).

(3) A guarantee or alternative form of security given in respect of any liability of the undertaker to pay compensation pursuant to the provisions referred to in paragraph (2) is to be treated as enforceable against the guarantor or person providing the alternative form of security by any person to whom such compensation is payable and must be in such a form as to be capable of enforcement by such a person.

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

Signed by authority of the Secretary of State for Energy Security and Net Zero

*Name*  
[Position]

Date Department for Energy Security and Net Zero

## SCHEDULE 1

Article 3

### AUTHORISED DEVELOPMENT

1. In this Schedule—

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

“CCTV” means a closed circuit television security system;

“construction compound” means a compound including central offices, welfare facilities, accommodation facilities, storage and parking for construction of the authorised development and other associated facilities;

“electrical circuit” means an electrical conductor necessary to transmit electricity between two points within the authorised development and may include one or more auxiliary cables for the purpose of gathering monitoring data;

“inverter” means electrical equipment required to convert direct current power to alternating current which will either be a string inverter attached to a mounting structure or a central container inverter;

“mounting structure” means a frame or rack with posts made of galvanised steel or other material pushed into the ground to support the solar panels, or fixed to surface mounted concrete blocks;

“permissive path” means the new paths providing restricted public access within Work No. 8 as shown on the works plan;

“solar PV module” means a solar photovoltaic panel or module designed to convert solar irradiance to electrical energy fitted to a mounted structure;

“substation” means a compound containing electrical equipment required to switch, transform, convert electricity and provide reactive power compensation with welfare facilities, means of access and other associated facilities;

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

“transformer” means a structure serving to step up or step down the voltage of electricity.

2. In the administrative areas of Bedford Borough Council and Huntingdonshire District Council, the construction, operation, maintenance and decommissioning of a nationally significant infrastructure project as defined in sections 14(1) and 15 of the 2008 Act with associated development under section 115(1)(b) of the 2008 Act.

3. The nationally significant infrastructure project authorised by this Order comprises a 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 comprising—

- (a) solar PV modules and mounting structures;
- (b) inverters;
- (c) transformers;
- (d) switchgears; and
- (e) electrical and communication cables,

and associated development within the meaning of Section 115(2) (for which development consent may be granted) of the 2008 Act including—

**Work No. 2** – a battery energy storage system comprising—

- (a) battery storage units and power conversion systems;
- (b) battery transformers and switchgears;
- (c) auxiliary transformers;
- (d) control building;
- (e) water storage tanks;
- (f) fencing;
- (g) surfacing and drainage; and
- (h) internal access and parking.

**Work No. 3** - an on-site substation (East Park Substation) comprising—

- (a) substation control building;
- (b) transformers;
- (c) switchgear;
- (d) electrical equipment;
- (e) fencing;
- (f) surfacing and drainage;
- (g) rainwater harvesting tanks; and
- (h) internal access.

**Work No. 4** - a 400 kV electrical cable connection from the East Park Substation to the Eaton Socon Substation comprising—

- (a) a 400 kV electrical circuit;
- (b) fibre optic cables;
- (c) protective plates;
- (d) cable jointing chambers; and
- (e) temporary access and laydown areas.

**Work No. 5** - works at the Eaton Socon Substation to create a new 400 kV generation bay including—

- (a) an electrical bay to connect into the Eaton Socon Substation, including associated outdoor air insulated switchgear (AIS) or indoor gas insulated switchgear (GIS) and electrical apparatus, circuit breakers, disconnectors and earth switches;
- (b) substation electrical apparatus, including bus-bars, steel supports, insulation posts, cable sealing ends, surge arrestors, instrument transformers, metering equipment, and protection equipment;
- (c) underground and above ground electrical cables and electrical connectors, including cables for power, control and communication with electrical bays and to connect into the Eaton Socon Substation, including associated outdoor AIS or indoor GIS and electrical apparatus.

**Work No. 6** - internal cabling and ancillary infrastructure comprising—

- (a) 33 kV high voltage cabling;
- (b) low voltage cabling;
- (c) fencing and gates;
- (d) access tracks;
- (e) drainage;
- (f) CCTV and monitoring systems; and
- (g) utility connections.

**Work No. 6A** – operations and maintenance area comprising—

- (a) storage, operations and maintenance building;
- (b) surfacing and drainage;
- (c) storage;
- (d) rainwater harvesting tanks; and
- (e) car parking and access.

**Work No. 6B** – drainage lagoon comprising—

- (a) surface water retention basin;
- (b) drainage infrastructure; and
- (c) isolation valve and control systems.

**Work No. 7** - temporary construction and decommissioning compounds and laydown areas, including—

- (a) areas of hardstanding and track matting;
- (b) car parking and access;
- (c) site and welfare offices and cabins;
- (d) areas to store materials and equipment;
- (e) security infrastructure, including cameras, perimeter fencing and lighting;
- (f) site drainage and waste management infrastructure (including sewerage);
- (g) electricity, water, waste water and telecommunications connections.

**Work No. 8** - works to create, enhance and maintain green infrastructure comprising—

- (a) planting of native species hedgerows, individual trees and grassland;
- (b) installation of ecological enhancements such as bird and bat boxes;
- (c) improvements to existing public rights of way;
- (d) creation of permissive paths;
- (e) fencing, gates, boundary treatment and other means of enclosure;
- (f) improvement, maintenance repair and use of existing streets and private tracks;
- (g) signage and information boards; and
- (h) benches.

**Work No. 9** - works to facilitate access comprising—

- (a) creation of access from or across the public highway;
- (b) creation of visibility splays; and
- (c) works to widen and surface the existing highway.

**Work No. 9A** – creation of visibility Splays outside the public highway .

**Work No. 10** - works to create an agrisolar research area.

In connection with the construction of Work Nos. 1-10 above and to the extent that they do not form any part of any such work, further associated development comprising such other works as may be necessary or expedient for the purpose of or in connection with the relevant part of the authorised development within the Order limits 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) haul roads, vehicular and pedestrian means of access including creation of new tracks and paths, widening upgrades alterations and improvements of existing roads tracks and paths;
  - (ii) boundary treatments, including means of enclosure;
  - (iii) bunds, embankments, trenching and swales;
  - (iv) crossings of watercourses and roads;
  - (v) foundations for structures, buildings, plant and machinery;
  - (vi) works to the existing irrigation system and works to alter the position and extent of such irrigation system;
  - (vii) surface water drainage systems, storm water attenuation systems including storage basins, oil water separators, including channelling and culverting and works to existing drainage networks;
  - (viii) electrical, gas, water, foul water drainage and telecommunications infrastructure connections, diversions and works to alter the position of such services and utilities connections;
  - (ix) joint bays, link boxes, cable ducts, cable protection, joint protection, manholes, marker posts, underground cable markers, tiles and tape, communications chambers, fibre optic cables and other works associated with cable laying;
  - (x) works to alter the course of or otherwise interfere with non-navigable rivers, streams or watercourses;
  - (xi) works for the provision of security and monitoring measures such as CCTV columns, cameras, lighting columns and lighting, weather stations, communication infrastructure, perimeter fencing;
  - (xii) site establishments and preparation works including site clearance (including vegetation removal, demolition of existing buildings and structure), 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;
  - (xiv) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised development; and
- (c) such other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised development insofar as they are unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

## SCHEDULE 2 REQUIREMENTS

Article 3

### PART 1 REQUIREMENTS

#### **Time limits**

1. —(1) Subject to sub-paragraph (2) the authorised development must commence no later than the expiration of five years beginning with the date this Order comes into force.

(2) If proceedings are begun to challenge the validity of this Order before the end of the period referred to in sub-paragraph (1) the period in sub-paragraph (1) must be taken to be extended by one year.

#### **Phases of authorised development and date of final commissioning**

2. —(1) The authorised development must not be commenced until a written scheme setting out the phases of construction of the authorised development has been submitted to and approved by the local planning authority.

(2) The scheme submitted pursuant to sub-paragraph (1) must include a timetable for the construction of the phases of the authorised development and a plan identifying the phasing areas.

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

(4) Notice of the date of final commissioning for each phase of Work No. 1 that completes commissioning must be given to the local planning authority within 15 working days of the date of final commissioning for that phase.

(5) Nothing shall prevent the undertaker and the local planning authority agreeing from time to time to amend the written scheme setting out the proposed phases of construction.

(6) The agreed written scheme may contain flexibility and optioneering for different proposed phases of construction provided that the undertaker notifies the local planning authority of the final intended phasing prior to commencement.

#### **Detailed design approval**

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

- (a) the layout;
- (b) scale;
- (c) proposed finished ground levels;
- (d) fencing;
- (e) external appearance; and

- (f) vehicular access, parking and circulation areas,

relating to that phase have been submitted to and approved in writing by the local planning authority.

(2) The details submitted must be in substantial accordance with the design parameters and principles statement unless it can be demonstrated to the satisfaction of the local planning authority that the subject matter of the approval sought would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.

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

#### **Landscape and ecological management plan (LEMP)**

4. —(1) No phase of the authorised development may commence until a landscape and ecological management plan (LEMP) covering that phase which is in substantial accordance with the outline landscape and ecological management plan to the extent that it is applicable to that phase has been submitted to and approved by the local planning authority.

(2) The LEMP must be implemented as approved and maintained throughout the operation of the relevant part of the authorised development to which the plan relates.

(3) No site preparation works comprising site clearance (including vegetation removal, demolition of existing structures or buildings) are to be commenced until a LEMP covering the site preparation works which is in substantial accordance with the outline landscape and ecological management plan has been submitted to and approved by the local planning authority. Such LEMP must be implemented as approved.

#### **Construction environmental management plans (CEMP)**

5. —(1) No phase of the authorised development may commence until a construction environmental management plan (CEMP) for that phase has been submitted to and approved by the local planning authority in consultation with the [relevant statutory nature conservation body and](#) Environment Agency. Any CEMP submitted for approval must be in substantial accordance with the outline construction environmental management plan to the extent that it is applicable to that phase.

(2) The construction of any phase of the authorised development must be carried out in accordance with the approved CEMP for that phase.

(3) Pre-commencement establishment of construction compounds, preparation of land for construction, construction area fencing and installation of site drainage must only take place in accordance with a specific plan for such works which substantially accords with the outline construction environmental management plan to the extent that it is applicable to that phase and which has been submitted to and approved by the local planning authority in consultation with the Environment Agency.

(4) For the purposes of requirement 5(1) only “commence” includes any site preparation works comprising site clearance (including vegetation removal, demolition of existing buildings and structures).

#### **Waste management plan**

6. —(1) No phase of the authorised development may commence until a waste management plan for that phase has been submitted to and approved by the local planning authority.

(2) The waste management plan must be in substantial accordance with the outline waste management plan to the extent that it is applicable to that phase.

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

#### **Soil management plan**

7. —(1) No phase of the authorised development may commence until a soil management plan for that phase has been submitted to and approved by the local planning authority in consultation with Environment Agency [and Natural England](#).

(2) The soil management plan must be in substantial accordance with the outline soil management plan to the extent that it is applicable to that phase.

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

#### **Construction traffic management plan (CTMP)**

8.—(1) No phase of the authorised development may commence until a construction traffic management plan (CTMP) covering that phase and in substantial accordance with the outline construction traffic management plan to the extent that it is applicable to that phase has been submitted to and approved by the local planning authority in consultation with the relevant highway authority [or authorities](#) for the highway(s) to which the CTMP for that phase relates.

(2) The CTMP must be implemented as approved.

(3) For the purposes of requirement 8(1) only “commence” includes any site preparation works comprising site clearance (including vegetation removal and demolition of existing buildings and structures).

#### **Operational environmental management plan (OEMP)**

9.—(1) Prior to the date of final commissioning for any phase of the authorised development, an operational environmental management plan (OEMP) (which must be in substantial accordance with the outline operational environmental management plan) for that phase to the extent that it is applicable to that phase has been submitted to and approved by the local planning authority [in consultation with the relevant statutory nature conservation body and Environment Agency](#).

(2) The OEMP must be implemented as approved and maintained throughout the operation of the relevant phase of the authorised development to which the plan relates.

#### **Battery safety management plan (BSMP)**

10.—(1) Prior to the commencement of Work No. 2 a battery safety management plan (BSMP) (which must be in substantial accordance with the outline battery safety management plan to the extent that it is applicable to that phase) must be submitted to and approved by the local planning authority in consultation with Cambridgeshire Fire and Rescue Service [and the Environment Agency](#).

(2) The submitted BSMP must either be in substantial accordance with the outline battery safety management plan to the extent that it is applicable to that phase or detail such changes as the undertaker considers are required.

(3) In the event that the submitted BSMP proposes changes to the outline battery safety management plan the local planning authority must not approve the BSMP until it has consulted with Cambridgeshire Fire and Rescue Service.

(4) The BSMP must be implemented as approved and maintained throughout the construction, maintenance, operation and decommissioning of the authorised development.

#### **Public rights of way**

11.—(1) No phase of the authorised development may commence and no decommissioning may be undertaken until a public rights of way management plan for any sections of public rights of way shown to be temporarily stopped up or diverted on the street works, public rights of way and access plans for that phase and in substantial accordance with the outline public rights of way management plan to the extent that it is applicable to that phase has been submitted to and approved by the local planning authority in consultation with the relevant highway authority.

(2) The plan must be implemented as approved unless otherwise agreed with the local planning authority in consultation with the relevant highway authority.

#### **Operational noise**

12.—(1) No phase of the authorised development may begin operation 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 outline operational environmental management plan are to be complied with for that phase has been submitted to and approved by the local planning authority.

(2) The design as described in the operational noise assessment must be implemented as approved and maintained throughout the operation of the relevant part of the authorised development to which the plan relates.

### **Fencing and other means of enclosure**

**13.—**(1) No phase of the authorised development may commence until written details of all proposed permanent and temporary fences, walls or other means of enclosure of the connection works for that phase have been submitted to and approved by the local planning authority as part of the detailed design approval required by requirement 3(1).

(2) For the purposes of requirement 13(1) only, “commence” includes any site preparation works.

(3) Any construction site must remain securely fenced in accordance with the approved details at all times during construction of the authorised development.

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

(5) Any approved permanent fencing must be completed before completion of the authorised development.

(6) No site preparation works are to be commenced until written details of all proposed temporary fences, walls or other means of enclosure for the site preparation works have been submitted to and approved by the local planning authority.

(7) Any proposed permanent or temporary fences, walls or other means of enclosure must be carried out in accordance with the approved details.

### **Surface water management plan**

**14.—**(1) No phase of the authorised development may commence until a surface water management plan management plan for that phase has been submitted to and approved by the local planning authority for that phase in consultation with the relevant lead local flood authority [and the Environment Agency](#).

(2) The surface water management plan management plan must be in substantial accordance with the outline surface water management plan management plan to the extent that it is applicable to that phase.

(3) The surface water management plan management plan must be implemented as approved for each phase unless otherwise agreed with the local planning authority in consultation with the relevant lead local flood authority.

### **Archaeology**

**15.—**(1) No phase within the authorised development, and no part of the site preparation works for that phase, may commence until an archaeological written scheme of investigation (WSI) for that phase has been submitted to and approved by the local planning authority in consultation with the county archaeologist.

(2) Any archaeological works or programme of archaeological investigation carried out under the approved WSI must be carried out by an organisation registered with the Chartered Institute for Archaeologists or by a member of that Institute, and the nominated organisation and its relevant specialists will be identified and agreed within the WSI.

(3) Any archaeological works must be carried out in accordance with the approved WSI, including post-excavation analysis, reporting, publication and archiving.

(4) No phase within the authorised development, and no part of the site preparation works for that phase, may commence until an archaeological mitigation strategy for that phase (which must be in substantial accordance with the outline archaeological mitigation strategy to the extent that it is applicable to that phase) has been submitted to and approved by the local planning authority in consultation with the county archaeologist and Historic England.

(5) The archaeological mitigation strategy must be implemented as approved unless otherwise agreed with the local planning authority in consultation with the county archaeologist and Historic England.

### **Heritage enhancement**

16.—(1) No phase within the authorised development may commence operation until a heritage enhancement strategy for that phase has been submitted to and approved by the local planning authority in consultation with the county archaeologist. The heritage enhancement strategy must be in substantial accordance with the outline heritage enhancement strategy to the extent that it is applicable to that phase.

(2) The heritage enhancement strategy must be implemented as approved unless otherwise agreed with the local planning authority in consultation with the county archaeologist and Historic England.

### **Construction hours**

17.—(1) Unless otherwise agreed with the local planning authority and subject to sub-paragraph (2), no construction works are to take place except between the hours of—

- (a) 08:00 to 18:00 Monday to Friday; and
- (b) 08:00 to 13:00 on Saturday,

with no construction works to take place on public holidays or bank holidays.

(2) The following works are permitted outside the hours referred to in sub-paragraph (1)—

- (a) emergency works; and
- (b) works which do not cause noise that is audible at the boundary of the Order limits and do not give rise to any materially new or materially different environmental effects compared to those identified in the environmental statement.

(3) Any emergency works carried out under sub-paragraph (2)(a) must be notified to the local planning authority within 72 hours of their commencement.

(4) Save for emergency works, works under sub-paragraph (2) must be carried out in accordance with the approved scheme.

### **Decommissioning and restoration**

18.—(1) Within 3 months of the date that the undertaker decides to decommission any part of the solar farm works and grid connection works before the 40th anniversary of the date of final commissioning of the each phase of Work No. 1 as notified by the undertaker pursuant to requirement 2 (phases of authorised development and date of final commissioning), the undertaker must submit a decommissioning environmental management plan and a decommissioning traffic management plan for that part.

(2) The plans must be submitted to the local planning authority for that part (or both local planning authorities where that part falls within both administrative areas of Bedford Borough Council and Huntingdonshire District Council) for approval.

(3) Decommissioning must commence no later than 40 years following the date of final commissioning that is the subject of the last notice given by the undertaker pursuant to requirement 2(3).

(4) The undertaker must provide notice to the local planning authority once any part of Work No. 1 stops generating electricity for more than 6 months. If, by expiry of the period of 12 continuous months beginning with the date of the notice, and unless otherwise agreed in writing by the undertaker and the relevant local planning authority, that part of the authorised development does not re-generate electricity, then within 3 months the undertaker must submit to the local planning authority for that part (or both local planning authorities where that part falls within both the administrative areas of Bedford Borough Council and Huntingdonshire District Council) for approval a decommissioning environmental management plan and a decommissioning traffic management plan for that part.

(5) The decommissioning environmental management plan submitted and approved must be in substantial accordance with the relevant part of the outline decommissioning environmental management plan.

(6) No decommissioning works may be carried out until the local planning authority or both local planning authorities (as applicable) has/have approved the decommissioning environmental management plan and a decommissioning traffic management plan submitted in relation to such works in consultation with the [relevant statutory nature conservation body](#), Environment Agency [and, in respect of the decommissioning traffic management plan only, National Highways](#).

(7) The decommissioning environmental management plan and decommissioning traffic management plan must be implemented as approved.

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

### **Skills, supply chain and employment**

19.—(1) No part of the authorised development may commence until a skills, supply chain and employment plan in relation to that part to the extent that it is applicable to that part has been submitted to and approved by the local planning authority.

(2) The skills, supply chain and employment plan must be in substantial accordance with the outline skills, supply chain and employment plan.

(3) Any plan under this paragraph must identify opportunities for individuals and businesses to access employment and supply chain opportunities associated with that part of the authorised development and the means for publicising such opportunities.

(4) The skills, supply chain and employment plan must be implemented as approved and maintained throughout the operation of the relevant part of the authorised development to which the plan relates.

### **Requirement for written approval**

20. Where the approval, agreement or confirmation of the Secretary of State, local planning authority or another person is required under a requirement that approval, agreement or confirmation must be given in writing.

### **Amendments to approved details**

21.—(1) With respect to any requirement which requires the authorised development to be carried out in accordance with the details approved by the local planning authority, the approved details must be carried out as approved unless an amendment or variation has previously been approved in writing by the local planning authority in accordance with sub-paragraph (2).

(2) Any amendments to or variations from the approved details must be in substantial accordance with the principles and assessments set out in the environmental statement. Such agreement may only be given in relation to immaterial changes where it has been demonstrated to the local planning authority that the subject matter of the agreement sought is unlikely to give rise to any materially new or materially different environmental effects compared to those identified in the environmental statement.

(3) The approved details must be taken to include any amendments that may subsequently be approved in writing by the local planning authority.

### **Consultation**

22. Where the local planning authority is required by this Order or other statute to consult with another person or body prior to discharging a requirement, the undertaker must consult with such person or body prior to making an application to discharge the requirement.

## **PART 2**

### **PROCEDURE FOR DISCHARGE OF REQUIREMENTS**

#### **Interpretation**

23. In this Part of this Schedule, “relevant authority” means—

- (a) any body, other than the Secretary of State, responsible for giving any consent, agreement or approval required by a requirement included in Part 1 of this Schedule, or for giving any consent, agreement or approval further to any document referred to in any such requirement; or
- (b) the local authority in the exercise of its functions set out in sections 60 (control of noise on construction sites) and 61 (prior consent for work on construction sites) of the Control of Pollution Act 1974<sup>(a)</sup> subsequently referred to as “the 1974 Act”.

### **Applications made under requirements**

**24.**—(1) Where an application has been made to the relevant authority for any consent, agreement or approval required by a requirement, or for any consent, agreement or approval further to any document referred to in any such requirement, the relevant authority must give notice to the undertaker of its decision on the application within a period of eight weeks beginning with the later of—

- (a) the day immediately following that on which the application is received by the relevant authority; or
- (b) where further information is requested under paragraph 25, the day immediately following that on which the further information has been supplied by the undertaker,

or such longer period that is agreed in writing between the undertaker and the relevant authority.

(2) In determining any application made to the relevant authority for any consent, agreement or approval required by a requirement contained in Part 1 of this Schedule, 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 conditions the relevant authority must provide its reasons for that decision with the notice of the decision.

(3) In the event 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.

### **Further information regarding requirements**

**25.**—(1) In relation to any application referred to in paragraph 24, the relevant authority may request such further information from the undertaker as it considers necessary to enable it to consider the application.

(2) If the relevant authority considers that further information is necessary and the requirement concerned does not specify that consultation with a consultee is required, the relevant authority must, within ten business days of receipt of the application, notify the undertaker in writing specifying the further information required.

(3) If the requirement concerned specifies that consultation with a consultee is required, the relevant authority must issue the application to the consultee within five business days of receipt of the application, and notify the undertaker in writing specifying any further information requested by the consultee within five business days of receipt of such a request.

(4) If the relevant authority does not give the notification within the period specified in sub-paragraph (2) or (3) it (and the consultee, as the case may be) is deemed to have sufficient information to consider the application and is not entitled to request further information without the prior agreement of the undertaker.

### **Appeals**

**26.**—(1) Where a person (“the applicant”) makes an application to a relevant authority, the applicant may appeal to the Secretary of State in the event that—

<sup>(a)</sup> 1974 c. 40. Section 61 was amended by Schedule 7 to the Building Act 1984 (c. 55), Schedule 15 to the Environmental Protection Act 1990 (c. 43) and Schedule 24 to the Environment Act 1995 (c. 25).

- (a) the relevant authority refuses an application for any consent, agreement or approval required by—
  - (i) a requirement contained in Part 1 of this Schedule; or
  - (ii) a document referred to in any requirement contained in Part 1 of this Schedule;
- (b) the relevant authority grants such an application subject to conditions;
- (c) the relevant authority issues a notice further to sections 60 (control of noise on construction sites) or 61 (prior consent for work on construction sites) of the 1974 Act;
- (d) on receipt of a request for further information pursuant to paragraph 25 of this Schedule, the applicant 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
- (e) on receipt of any further information requested, the relevant authority notifies the applicant that the information provided is inadequate and requests additional information which the applicant considers is not necessary for consideration of the application.

(2) The appeal process is as follows—

- (a) any appeal by the applicant must be made within 42 days of the date of the notice of the decision or determination, or (where no determination has been made) the expiry of the time period set out in paragraph 24(1), giving rise to the appeal referred to in sub-paragraph (1);
- (b) the applicant 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 specified under the relevant requirement;
- (c) as soon as is practicable after receiving the appeal documentation, the Secretary of State must appoint a person to consider the appeal (“the appointed person”) and must notify the appeal parties of the identity of the appointed person and the address to which all correspondence for the attention of the appointed person should be sent;
- (d) the relevant authority and any consultee (if applicable) must submit their written representations together with any other representations to the appointed person in respect of the appeal within ten business days of the start date specified by the appointed person and must ensure that copies of their written representations and any other representations as sent to the appointed person are sent to each other and to the applicant on the day on which they are submitted to the appointed person;
- (e) the applicant must make any counter-submissions to the appointed person within ten business days of receipt of written representations pursuant to sub-paragraph (d) above; and
- (f) the appointed person must make a decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable after the end of the ten day period for counter-submissions under sub-paragraph (e).

(3) The appointment of the appointed 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 the appointed person to consider the appeal the appointed person must as soon as practicable notify the appeal parties in writing specifying the further information required, the appeal party from whom the information is sought, and the date by which the information is to be submitted.

(5) Any further information required pursuant to sub-paragraph (4) must be provided by the party from whom the information is sought to the appointed person and to the other appeal parties by the date specified by the appointed person. The appointed person must notify the appeal parties of the revised timetable for the appeal on or before that day. The revised timetable for the appeal must require submission of written representations to the appointed person within ten business days of the date specified by the appointed person, but must otherwise be in accordance with the process and time limits set out in sub-paragraphs (2)(d) to (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 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 the appointed person in the first instance.

(7) The appointed person may proceed to a decision on an appeal taking into account such written representations as have been sent within the relevant time limits and in the sole discretion of the appointed person such written representations as have been sent outside of 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 the appointed person 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 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 a judicial review.

(10) If an approval is given by the appointed person pursuant to this Part of this Schedule, it is deemed to be an approval for the purpose of Part 1 of this Schedule 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 are to be met by the applicant.

(12) On application by the relevant authority or the applicant, the appointed person may give directions as to the costs of the appeal 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 relevant guidance on the Planning Practice Guidance website or any official circular or guidance which may from time to time replace it.

## Fees

27.—(1) Where an application is made to the local planning authority for written consent, agreement or approval in respect of a requirement, the fee prescribed under regulation 16(1)(b) of the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012(a) (as may be amended or replaced from time to time) is to apply and must be paid to the local planning authority for each application.

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

- (a) the application being rejected as invalidly made; or
- (b) the local planning authority failing to determine the application within eight weeks from the relevant date in paragraph 24(1) unless—
  - (i) within that period the undertaker agrees, in writing, that the fee is to be retained by the local planning authority and credited in respect of a future application; or
  - (ii) a longer period of time for determining the application has been agreed pursuant to paragraph 24(1) of this Schedule.

## SCHEDULE 3

Article 8

### 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 and so far as the provisions still in force are incompatible with the powers contained within this Order—

- (a) Bedford Level Act 1663(b);

(a) S.I. 2012/2920, amended by S.I. 2013/2153, S.I. 2014/357, S.I. 2014/643, S.I. 2017/1314, S.I. 2019/1154 and S.I. 2023/1197.

(b) 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.

- (b) Hundred Foot River and Ouse: Bedford Level Act 1756**(a)**;
- (c) Bedford Level: Drainage Act 1757**(b)**;
- (d) Isle of Ely, Suffolk, Norfolk Drainage Act 1759**(c)**;
- (e) Bedford Level Act 1789**(d)**;
- (f) Bedford Level (Cam, Ouse and Mildenhall Rivers) Drainage Act 1800**(e)**;
- (g) Bedford Level (Mildenhall River) Drainage Act 1807**(f)**;
- (h) Isle of Ely (Mildenhall River) Drainage Act 1807**(g)**;
- (i) Bedford Level Drainage and Ouse Navigation Act 1819**(h)**;
- (j) Fen Drainage Act 1823**(i)**;
- (k) Bedford Level Drainage Act 1827**(j)**;
- (l) Norfolk Drainage Act 1834**(k)**;
- (m) Burwell Drainage and Lodes Navigation Act 1841**(l)**;
- (n) Fen Lands Drainage Act 1843**(m)**;
- (o) South Level and Eau Brink Act 1893**(n)**;
- (p) Canal Tolls and Charges (Burwell Fen &c.) Order Confirmation Act 1896**(o)**;
- (q) River Great Ouse (Flood Protection) Act 1949**(p)**;
- (r) Ely Ouse-Essex Water Act 1968**(q)**;

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).

- (a) 1756 c. 22.
- (b) 1757 c. 18.
- (c) 1759 c. 32.
- (d) 1789 c. 22.
- (e) 1800 c. xc.
- (f) 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).
- (g) 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).
- (h) 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).
- (i) 1823 c. ciii. Repealed in part by section 3 of the Fen Lands Drainage Act 1843 (c. lxviv). 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).
- (j) 1827 c. xlvi. 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).
- (k) 1843 c. lxiii.
- (l) 1841 c. lviii.
- (m) 1843 c. lxvi.
- (n) 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).
- (o) 1896 c. lxxx.
- (p) 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).
- (q) 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).

- (s) Anglian Water Authority Act 1977(a); and  
 (t) Swaffham Internal Drainage Board Byelaws.

## SCHEDULE 4

Article 10

### STREETS SUBJECT TO STREET WORKS

1. In this Schedule—

“Cable works” means works to place, retain and maintain underground apparatus.

<i>(1) Area</i>	<i>(2) Street</i>	<i>(3) Description of the street works</i>	<i>(4) Relevant highway authority / authorities</i>
Pertenhall	Public Right of Way – Pertenhall 29 Footpath	Cable works beneath the width of the street comprising a length of 470m as shown between points marked SW1-1 on sheet 1 and SW1-2 on sheets 1 and 3 of the street works, public rights of way and access plans	<a href="#">Bedford Borough Council</a>
Pertenhall	Public Right of Way – Pertenhall 18 Footpath	Cable works beneath the width of the street as shown with reference SW5 on sheets 1 and 3 of the street works, public rights of way and access plans	<a href="#">Bedford Borough Council</a>
Bolnhurst and Keysoe	Public Right of Way – Bolnhurst and Keysoe 37 Bridleway	Cable works beneath the width of the street comprising a length of 1340m as shown between points marked SW2-1 on sheet 1 and SW2-2 on sheet 2 of the street works, public rights of way and access plans	<a href="#">Bedford Borough Council</a>
Bolnhurst and Keysoe	Public Right of Way – Bolnhurst and Keysoe 32 Footpath	Cable works beneath the width of the street as shown with reference SW3 on sheet 1 of the street works, public rights of way and access plans	<a href="#">Bedford Borough Council</a>
Bolnhurst and Keysoe	Public Right of Way – Bolnhurst and Keysoe 40 Bridleway	Cable works beneath the width of the street as shown with reference SW4 on sheet 2 of the street works, public rights of way	<a href="#">Bedford Borough Council</a>

(a) 1977 c. i.

		and access plans	
Bolnhurst and Keysoe	Public Right of Way – Bolnhurst and Keysoe 35 Footpath	Cable works beneath the width of the street as shown with reference SW6 on sheet 3 of the street works, public rights of way and access plans	<a href="#">Bedford Borough Council</a>
Pertenhall	B660 Kimbolton Road	Cable works beneath the width of the street as shown with references SW7 and SW8 on sheet 3 of the street works, public rights of way and access plans	<a href="#">Bedford Borough Council</a>
Little Staughton	Public Right of Way – Little Staughton 26 Footpath	Cable works beneath the width of the street as shown with reference SW9 on sheet 3 of the street works, public rights of way and access plans	<a href="#">Bedford Borough Council</a>
Bolnhurst and Keysoe	Public Right of Way – Bolnhurst and Keysoe 13 Footpath	Cable works beneath the width of the street as shown with references SW10 on sheets 3 and 4, and SW11 and SW12 on sheet 4 of the street works, public rights of way and access plans	<a href="#">Bedford Borough Council</a>
Bolnhurst and Keysoe	Public Right of Way – Bolnhurst and Keysoe 47 Footpath	Cable works beneath the width of the street as shown with reference SW13 on sheet 4 of the street works, public rights of way and access plans	<a href="#">Bedford Borough Council</a>
Little Staughton	Public Right of Way – Little Staughton 8 Footpath	Cable works beneath the width of the street as shown with reference SW14 on sheet 5 and sheet 6 of the street works, public rights of way and access plans	<a href="#">Bedford Borough Council</a>
Little Staughton	Great Staughton Road	Cable works beneath the width of the street as shown with references SW15 and SW16 on sheet 5 of the street works, public rights of way and access plans	<a href="#">Bedford Borough Council (for Great Staughton Road west of Spring Hill Road)</a> <a href="#">Cambridgeshire County Council (for Great Staughton Road east of Spring Hill Road)</a>
Little Staughton	Green End	Cable works beneath the width of the street as shown with	<a href="#">Bedford Borough Council</a>

		references SW17 on sheet 5, SW18 on sheets 5 and 6, and SW19 on sheet 6 of the street works, public rights of way and access plans	
Little Staughton	Public Right of Way – Little Staughton 4 Footpath	Cable works beneath the width of the street as shown with references SW20 and SW21 on sheet 6 of the street works, public rights of way and access plans	<a href="#">Bedford Borough Council</a>
Little Staughton	Public Right of Way – Little Staughton 1 Footpath	Cable works beneath the width of the street as shown with reference SW22 on sheets 5 and 7 of the street works, public rights of way and access plans	<a href="#">Bedford Borough Council</a>
Great Staughton	Spring Hill Road	Cable works beneath the width of the street as shown with reference SW23 on sheets 5 and 7 of the street works, public rights of way and access plans	<a href="#">Bedford Borough Council</a>
Great Staughton	Public Right of Way – Great Staughton 231/2 Footpath	Cable works beneath the width of the street as shown with reference SW24 on sheets 7 and 8 of the street works, public rights of way and access plans	<a href="#">Cambridgeshire County Council</a>
Great Staughton	Moor Road	Cable works beneath the width of the street as shown with reference SW25 on sheets 9 and 10 of the street works, public rights of way and access plans	<a href="#">Cambridgeshire County Council</a>
Hail Weston	Public Right of Way – Hail Weston 112/7 Bridleway	Cable works beneath the width of the street comprising a length of 90m as shown between points marked SW26-1 on sheet 10 and SW26-2 on sheets 10 and 11 of the street works, public rights of way and access plans	<a href="#">Cambridgeshire County Council</a>
Hail Weston	Public Right of Way – Hail Weston 112/8	Cable works beneath the width of the street	<a href="#">Cambridgeshire County Council</a>

	Footpath	comprising a length of 90m as shown with reference SW27 on sheets 10 and 11 of the street works, public rights of way and access plans	
Hail Weston	B645	Cable works beneath the width of the street as shown with reference SW28 on sheet 10 of the street works, public rights of way and access plans	<a href="#">Cambridgeshire County Council</a>
Hail Weston	Public Right of Way – Hail Weston 112/5 Footpath	Cable works beneath the width of the street as shown with reference SW29 on sheet 11 of the street works, public rights of way and access plans	<a href="#">Cambridgeshire County Council</a>
Staploe	Public Right of Way – Staploe 16 Footpath	Cable works beneath the width of the street as shown with reference SW30 on sheet 12 of the street works, public rights of way and access plans	<a href="#">Bedford Borough Council</a>
Staploe	Duloe Lane	Cable works beneath the width of the street as shown with reference SW31 on sheet 13 of the street works, public rights of way and access plans	<a href="#">Bedford Borough Council</a>
Staploe	Public Right of Way – Staploe 4 Footpath	Cable works beneath the width of the street as shown with reference SW32 on sheet 13 of the street works, public rights of way and access plans	<a href="#">Bedford Borough Council</a>
Staploe	Bushmead Road	Cable works beneath the width of the street as shown with reference SW33 on sheet 14 of the street works, public rights of way and access plans	<a href="#">Bedford Borough Council</a>
Staploe	Public Right of Way – Staploe 8A Footpath	Cable works beneath the width of the street as shown with reference SW34 on sheet 14 of the street works, public rights of way and access plans	<a href="#">Bedford Borough Council</a>

SCHEDULE 5

Article 12

ALTERATION OF STREETS

PART 1

PERMANENT ALTERATION OF LAYOUT

<i>(1) Area</i>	<i>(2) Street</i>	<i>(3) Description of alterations</i>
Pertenhall	B660 Kimbolton Road	Works for the provision of a permanent means of access shown shaded orange on sheet 3 of the street works, public rights of way and access plans, reference AS-1
Little Staughton	Great Staughton Road	Works for the provision of a permanent means of access shown shaded orange on sheet 5 of the street works, public rights of way and access plans, reference AS-2
Little Staughton	Great Staughton Road	Works for the provision of a permanent means of access shown shaded orange on sheet 5 of the street works, public rights of way and access plans, reference AS-3
Little Staughton	Green End	Works for the provision of a permanent means of access shown shaded orange on sheet 6 of the street works, public rights of way and access plans, reference AS-4
Little Staughton	Green End	Works for the provision of a permanent means of access shown shaded orange on sheet 6 of the street works, public rights of way and access plans, reference AS-5
Little Staughton	Spring Hill Road	Works for the provision of a permanent means of access shown shaded orange on sheet 7 of the street works, public rights of way and access plans, reference AS-6
Great Staughton	Great Staughton Road	Works for the provision of a permanent means of access shown shaded orange on sheet 7 of the street works, public rights of way and access plans, reference AS-7
Great Staughton	Moor Road	Works for the provision of a permanent means of access shown shaded orange on sheet 9 of the street works, public rights of way and access plans,

		reference AS-8
Hail Weston	B645	Works for the provision of a permanent means of access shown shaded orange on sheet 10 of the street works, public rights of way and access plans, reference AS-9

## PART 2

### TEMPORARY ALTERATION OF LAYOUT

<i>(1) Area</i>	<i>(2) Street</i>	<i>(3) Description of alterations</i>
Great Staughton	Moor Road	Works for the provision of a temporary means of access shown shaded light green on sheets 9 and 10 of the street works, public rights of way and access plans, reference AST-1
Staploe	Duloe Lane	Works for the provision of a temporary means of access shown shaded light green on sheet 13 of the street works, public rights of way and access plans, reference AST-2
Staploe	Bushmead Road	Works for the provision of a temporary means of access shown shaded light green on sheet 14 of the street works, public rights of way and access plans, reference AST-3

## SCHEDULE 6

Article 15

### TEMPORARY PROHIBITION OR RESTRICTION OF USE OF STREETS AND PUBLIC RIGHTS OF WAY AND AUTHORISING VEHICULAR USE ON PUBLIC RIGHTS OF WAY

## PART 1

### TEMPORARY ALTERATION, PROHIBITION, DIVERSION OR RESTRICTION OF THE USE OF STREETS AND PUBLIC RIGHTS OF WAY

<i>(1) Area</i>	<i>(2) Street or public right of way subject to temporary prohibition or restriction of use</i>	<i>(3) Extent of temporary alteration, prohibition, diversion or restriction of use of street or public right of way</i>
Pertenhall	Public Right of Way – Pertenhall 2 Footpath	Temporary management including temporary stopping up over the public right of way comprising a length of 15m at the point marked 1 on sheet 1 of the streets, public rights of way and access plans.
Pertenhall	Public Right of Way – Pertenhall 26 Bridleway	Temporary management including temporary stopping up

		over the public right of way comprising a length of 350m between the point marked 3 on sheets 1 and 3, and the point marked 4 on sheet 3 of the streets, public rights of way and access plans.
Pertenhall	Public Right of Way – Pertenhall 29 <a href="#">Bridleway</a> <a href="#">Footpath</a>	Temporary management including temporary stopping up over the public right of way comprising a length of 455m between the point marked 1 on sheet 1, and the point marked 2 on sheets 1 and 3 of the streets, public rights of way and access plans.
Bolnhurst and Keysoe	Public Right of Way – Bolnhurst and Keysoe 37 Bridleway	Temporary management including temporary stopping up over the public right of way comprising a length of 1,670m between the point marked 4 on sheet 3, and the point marked 10 on sheet 2 of the streets, public rights of way and access plans.
Little Staughton	Public Right of Way – Little Staughton 4 Footpath	Temporary management including temporary stopping up over the public right of way comprising a length of 150m between the points marked 19 and 20 on sheet 6 of the streets, public rights of way and access plans.
Hail Weston	Public Right of Way – Hail Weston 112/7 Bridleway	Temporary management including temporary stopping up over the public right of way comprising a length of 280m between the points marked 25 and 26 on sheet 10 of the streets, public rights of way and access plans.
Hail Weston	Public Right of Way – Hail Weston 112/8 Footpath	Temporary management including temporary stopping up over the public right of way comprising a length of 410m between the point marked 25 on sheet 10, and the point marked 28 on sheets 10 and 11 of the streets, public rights of way and access plans.

## PART 2

### AUTHORISING PERMANENT USE OF MOTOR VEHICLES ON PUBLIC RIGHTS OF WAY

<i>(1) Area</i>	<i>(2) Public right of way</i>	<i>(3) Measures</i>
<a href="#">Pertenhall</a>	<a href="#">Public Right of Way – Pertenhall 2 Footpath</a>	<a href="#">Motor vehicles authorised by the undertaker may pass along or cross the length of the public</a>

		<a href="#"><u>right of way between the point marked PMV-1 on sheet 1 and the point marked PMV-2 on sheets 1 and 3 of the streets, public rights of way and access plans shown shaded blue.</u></a>
Pertenhall	Public Right of Way – Pertenhall 29 Footpath	Motor vehicles authorised by the undertaker may pass along or cross the length of the public right of way between the point marked PMV-1 on sheet 1 and the point marked PMV-2 on sheets 1 and 3 of the streets, public rights of way and access plans shown shaded blue.
Pertenhall	Public Right of Way – Pertenhall 26 Bridleway	Motor vehicles authorised by the undertaker may pass along or cross the length of the public right of way between the point marked PMV-3 on sheets 1 and 3, and the point marked PMV-4 on sheet 3 of the streets, public rights of way and access plans shown shaded blue.
Bolnhurst and Keysoe	Public Right of Way – Bolnhurst and Keysoe 37 Bridleway	Motor vehicles authorised by the undertaker may pass along or cross the length of the public right of way between the point marked PMV-4 on sheet 3, and the point marked PMV-4 on sheet 2 of the streets, public rights of way and access plans shown shaded blue.
Little Staughton	Public Right of Way – Little Staughton 4 Footpath	Motor vehicles authorised by the undertaker may pass along or cross the length of the public right of way between the points marked PMV-6 and PMV-7 on sheet 6 of the streets, public rights of way and access plans shown shaded blue.
Hail Weston	Public Right of Way – Hail Weston 112/7 Bridleway	Motor vehicles authorised by the undertaker may pass along or cross the length of the public right of way between the points marked PMV-8 on sheets 10 and 11, and the point marked PMV-9 on sheet 10 of the streets, public rights of way and access plans shown shaded blue.
Hail Weston	Public Right of Way – Hail Weston 112/8 Footpath	Motor vehicles authorised by the undertaker may pass along or cross the length of the public right of way between the point marked PMV-9 on sheet 10, and the point marked PMV-10 on sheets 10 and 11 of the streets, public rights of way and access plans shown shaded blue.

SCHEDULE 7  
ACCESS TO WORKS

Article 14

PART 1

PROVISION OF PERMANENT MEANS OF ACCESS

<i>(1) Area</i>	<i>(2) Street</i>	<i>(3) Description of means of access</i>
Pertenhall	Public Right of Way – Pertenhall 29 Footpath	Motor vehicles authorised by the undertaker may pass along or cross the length of the public right of way between the point marked PMV-1 on sheet 1 and the point marked PMV-2 on sheets 1 and 3 of the streets, public rights of way and access plans shown shaded blue.
Pertenhall	Public Right of Way – Pertenhall 26 Bridleway	Motor vehicles authorised by the undertaker may pass along or cross the length of the public right of way between the point marked PMV-3 on sheets 1 and 3, and the point marked PMV-4 on sheet 3 of the streets, public rights of way and access plans shown shaded blue.
Bolnhurst and Keysoe	Public Right of Way – Bolnhurst and Keysoe 37 Bridleway	Motor vehicles authorised by the undertaker may pass along or cross the length of the public right of way between the point marked PMV-4 on sheet 3, and the point marked PMV-4 on sheet 2 of the streets, public rights of way and access plans shown shaded blue.
Little Staughton	Public Right of Way – Little Staughton 4 Footpath	Motor vehicles authorised by the undertaker may pass along or cross the length of the public right of way between the points marked PMV-6 and PMV-7 on sheet 6 of the streets, public rights of way and access plans shown shaded blue.
Hail Weston	Public Right of Way – Hail Weston 112/7 Bridleway	Motor vehicles authorised by the undertaker may pass along or cross the length of the public right of way between the points marked PMV-8 on sheets 10 and 11, and the point marked PMV-9 on sheet 10 of the streets, public rights of way and access plans shown shaded blue.
Hail Weston	Public Right of Way – Hail Weston 112/8 Footpath	Motor vehicles authorised by the undertaker may pass along or

		cross the length of the public right of way between the point marked PMV-9 on sheet 10, and the point marked PMV-10 on sheets 10 and 11 of the streets, public rights of way and access plans shown shaded blue.
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## PART 2

### PROVISION OF TEMPORARY MEANS OF ACCESS

<i>(1) Area</i>	<i>(2) Street</i>	<i>(3) Description of means of access</i>
Little Staughton	Spring Hill Road	Provision of a temporary means of access to the authorised development between points marked A11-1 and A11-2 on sheets 5 and 7 of the street works, public rights of way and access plans.
Great Staughton	Moor Road	Provision of a temporary means of access to the authorised development between points marked A14-1 and A14-2, and A15-1 and A15-2, on sheets 9 and 10 of the street works, public rights of way and access plans.
Staploe	Duloe Lane	Provision of a temporary means of access to the authorised development between points A17-1 and A17-2, and A18-1 and A18-2, on sheet 13 of the street works, public rights of way and access plans.
Staploe	Bushmead Road	Provision of a permanent means of access to the authorised development between points A19-1 and A19-2 on sheet 14 of the street works, public rights of way and access plans.

## SCHEDULE 8

Article 17

### TRAFFIC REGULATION MEASURES

#### PART 1

##### Temporary Speed Limits

<i>(1) Area</i>	<i>(2) Road name, number and length</i>	<i>(3) Temporary speed limit</i>
Pertenhall	B660 Kimbolton Road From a point 55 metres in a generally southerly direction from its junction with the access	40 miles per hour

	road leading to Manor Farm Solar Array (reference TSL1-A) for a distance of 135 metres in a generally southerly direction (to reference TSL1-B) and coloured green on sheet 3 of the traffic regulations plans	
Little Staughton	Great Staughton Road From a point 445 metres in a generally westerly direction of its junction with Green End and Little Staughton Road (reference TSL2-A) for a distance of 860 metres in a generally easterly direction (to reference TSL2-B) and coloured green on sheet 5 of the traffic regulations plans	40 miles per hour
Little Staughton	Green End From a point 85 metres in a generally southerly direction of its junction with the access road leading to Rectory Farm (reference TSL3-A) for a distance of 435 metres in a generally southerly direction (to reference TSL3-B) and coloured green on sheets 5 and 6 of the traffic regulations plans	30 miles per hour
Little Staughton	Spring Hill Road From its junction with Great Staughton Road (reference TSL4-A) for a distance of 490 metres in a generally southerly direction (to reference TSL4-B) and coloured green on sheets 5, 6 and 7 of the traffic regulations plans	30 miles per hour
Great Staughton	Moor Road From its junction with the access road leading to Roman Field Cottage (reference TSL5-A) for a distance of 145 metres in a generally northerly direction (to reference TSL5-B) and coloured green on sheets 8 and 9 of the traffic regulations plans	30 miles per hour
Staploe	Duloe Lane From a point 465 metres in a generally westerly direction from its junction with Monarch Road (reference TSL6-A) for a distance of 195 metres in a generally westerly direction (to reference TSL6-B) and coloured green on sheet 13 of the traffic regulations plans	30 miles per hour
Staploe	Bushmead Road From a point 230 metres in a generally westerly direction	30 miles per hour

	from its junction with Monarch Road (reference TSL7-A) for a distance of 170 metres in a generally westerly direction (to reference TSL7-B) and coloured green on sheet 14 of the traffic regulations plans	
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## PART 2

### Temporary Suspension of Weight Restriction

<i>(1) Area</i>	<i>(2) Extent of temporary suspension of weight restriction</i>
Hail Weston	<del>B645 Suspension of existing 18 tonne restriction for a distance of 3,650 metres between points marked SWL1-A and SWL1-B and hatched blue on sheets 10, 11 and 12 of the traffic regulations plans</del>

## PART 3

### Temporary Traffic Signals

<i>(1) Area</i>	<i>(2) Extent of temporary traffic signal control</i>
Pertenhall	B660 Kimbolton Road An area of existing highway from its junction with the access road leading to Manor Farm Solar Array for a distance of 105 metres in a generally southerly direction and including the two means of access to the authorised development (reference TTM1), coloured orange on sheet 3 of the traffic regulations plans
Pertenhall	B660 Kimbolton Road An area of existing highway from a point 230 metres generally in a south-westerly direction from its junction with the access road leading to Manor Farm Solar Array for a distance of 415 metres in a generally south-westerly direction (reference TTM2), coloured orange on sheet 3 of the traffic regulations plans
Little Staughton	Great Staughton Road An area of existing highway from a point 125 metres generally in a westerly direction from its junction with Little Staughton Road and Green End for a distance of 185 metres in a generally westerly direction and including the two means of access to the authorised development (reference TTM3), coloured orange on sheet 5 of the traffic regulations plans
Little Staughton	Great Staughton Road An area of existing highway from a point 220 metres generally in an easterly direction from its junction with Little Staughton Road and Green End for a distance of 330 metres in a generally easterly direction and including the two means of access to the authorised development (reference TTM4), coloured orange on sheet 5 of the traffic regulations plans

	regulations plans
Little Staughton	Great Staughton Road An area of existing highway for a distance of 25 metres in each direction from its junction with Spring Hill Road (reference TTM8), coloured orange on sheets 5 and 7 of the traffic regulations plans
Little Staughton	Green End An area of existing highway from a point 100 metres generally in a southerly direction from its junction with Great Staughton Road for a distance of 135 metres in a generally southerly direction (reference TTM5), coloured orange on sheet 5 of the traffic regulations plans
Little Staughton	Green End An area of existing highway from a point 85 metres generally in a southerly direction from its junction with the access road leading to Rectory Farm for a distance of 150 metres in a generally southerly direction and including the two means of access to the authorised development (reference TTM6), coloured orange on sheets 5 and 6 of the traffic regulations plans
Little Staughton	Green End An area of existing highway from a point 20 metres generally in a south-easterly direction from its junction with the access road leading to Lodge Farm for a distance of 50 metres in a generally south-easterly direction and including the means of access to the authorised development (reference TTM7), coloured orange on sheet 6 of the traffic regulations plans
Little Staughton	Spring Hill Road An area of existing highway from its junction with Great Staughton Road for a distance of 380 metres in a generally southerly direction and including the two means of access to the authorised development (reference TTM9), coloured orange on sheets 5 and 7 of the traffic regulations plans
Great Staughton	Moor Road An area of existing highway from a point 30 metres generally in a northerly direction from its junction with the access road leading to Roman Field Cottage for a distance of 110 metres in a generally northerly direction and including the two means of access to the authorised development (reference TTM10), coloured orange on sheets 8 and 9 of the traffic regulations plans
Hail Weston	B645 An area of existing highway from a point 340 metres generally in a north-westerly direction from its junction with the access road leading to Pastures Farm for a distance of 220 metres in a generally north-westerly direction and including the means of access to the authorised development (reference TTM11), coloured orange on sheet 10 of the traffic regulations plans
Staploe	Duloe Lane

	An area of existing highway from a point 480 metres generally in a westerly direction from its junction with Monarch Road for a distance of 130 metres in a generally westerly direction and including the two means of access to the authorised development (reference TTM12), coloured orange on sheet 13 of the traffic regulations plans
Staploe	Bushmead Road An area of existing highway from a point 250 metres generally in a westerly direction from its junction with Monarch Road for a distance of 110 metres in a generally westerly direction and including the two means of access to the authorised development (reference TTM13), coloured orange on sheet 14 of the traffic regulations plans

## SCHEDULE 9

Article 23

### LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED

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 road widening and to remove impediments (including vegetation) to such access;
- (b) install, use, support, protect, inspect, alter, remove, replace, refurbish, reconstruct, retain, renew, improve and maintain security fencing, gates, boundary treatment, public rights of way and any other ancillary apparatus and any other works as necessary;
- (c) 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;
- (d) restrict and remove the erection of buildings or structures, restrict the altering of ground levels, restrict and remove vegetation and restrict 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, refurbish, reconstruct, retain, renew, improve and maintain sewers, drains, pipes, ducts, mains, conduits, services, flues and to drain into and manage waterflows in any drains, watercourses and culverts.

“cable rights” means rights over land to—

- (a) install, use, support, protect, inspect, alter, remove, replace, retain, renew, improve and maintain electrical underground cables, earthing cables, optical fibre cables, data cables, telecommunications cables and other services, works associated with such cables including bays, cable jointing chambers, 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 vegetation and restrict 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 Eaton Socon substation;
- (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;
- (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; and
- (d) install, use, support, protect, inspect, alter, remove, replace, retain, renew, improve and maintain soft landscaping measures.

“vegetation maintenance rights” means rights over land to install, use, support, protect, inspect, alter, remove, replace, retain, renew, improve and maintain vegetation for all purposes in connection with the authorised development;

“solar PV rights” means install, use, support, protect, inspect, alter, remove, replace, retain, renew, improve and maintain a ground mounted solar photovoltaic generating station including solar PV modules and mounting structures, inverters, transformers, switchgears, electrical and communication cables, and all associated infrastructure, services and works.

<i>(1) Plot number(s)</i>	<i>(2) Work No.</i>	<i>(3) Purpose for which rights may be acquired and restrictive covenants imposed</i>
11-2, 12-5, 12-6, 12-7, 12-8, 12-9, 13-1, 13-2, 13-6, 13-7, 13-8, 13-9, 13-10, 14-8, 14-9, 14-10, 14-11, 14-12, 14-13, 14-15, 14-18, 14-20	4	cable rights
5-3, 5-6, 7-11, 9-5, 9-6, 10-1, 10-2	6	cable rights
2-3	8	vegetation maintenance rights
14-14, 14-16, 14-17, 14-19	4 and 5	cable rights and substation connection rights
13-4, 14-4, 14-7	4 and 9	cable rights and access rights
3-6	6, 8 and 9	cable rights, vegetation maintenance rights, and access rights
2-2, 3-7	6 and 8	cable rights and vegetation maintenance rights
5-2, 5-5, 5-7, 6-1, 7-3, 9-3	6 and 9	cable rights and access rights
3-8	1, 6, 7 and 8	solar PV rights, cable rights, access rights, and vegetation maintenance rights
3-1, 3-2, 3-3, 3-5	6	cable rights, and access rights
7-8, 7-9, 7-10	6	access rights
10-15	6	access rights
10-16	6 and 9	access rights

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

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right 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 modifications set out in sub-paragraph (2).

(2) For section 5A(5A) (relevant valuation date) of the 1961 Act, substitute—

(5A) If—

- (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 10 of Schedule 10 to the East Park Energy 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 11 of Schedule 10 to the East Park Energy 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 sub-section (3)(a) to have entered on that land where it entered on that land for the purpose of exercising that right.

### **Application of Part 1 of the 1965 Act**

4. —(1) Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act, as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act to the acquisition of land under article 21 (compulsory acquisition of land) and as modified by article 28 (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 23 (compulsory acquisition of rights)—

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

5. —(1) The modifications referred to in paragraph 4(a) are as follows—

(2) References in the 1965 Act to land are, in the appropriate contexts, to be read (according to the requirements of the particular context) as referring to, or as including references to—

- (a) 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.

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(a) 1973 c. 26.

6. For section 7 of the 1965 Act (measure of compensation in the case of severance) substitute—

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

7. 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 (persons without power to sell their interests);
- (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 so modified as 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.

8. Section 11 (powers of entry)(a) of the 1965 Act is so modified as 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 21 (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(b) (powers of entry: further notices of entry), 11B(c) (counter-notice requiring possession to be taken on specified date), 12(d) (penalty for unauthorised entry) and 13(e) (refusal to give possession to acquiring authority) of the 1965 Act is modified correspondingly.

9. 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.

10. Section 22 (interests omitted from purchase) of the 1965 Act 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.

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

- (a) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), 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 4 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 paragraph (4) of Schedule 16 to the Housing and Planning Act 2016 (c. 22).
- (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.

## SCHEDULE 2A

Ref

# COUNTER-NOTICE REQUIRING PURCHASE OF LAND

### Introduction

1.—(1) This Schedule applies where an acquiring authority serves 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 25 (application of the 1981 Act) of the East Park Energy Order 202[●] in respect of the land to which the notice to treat relates.

(2) But see article 26(3) (acquisition of subsoil only) East Park Energy 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 3 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 6 weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.

(2) If the acquiring authority withdraws the notice to treat under this paragraph they must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawal of the notice.

(3) Any dispute as to the compensation is to be determined by the Upper Tribunal.

## SCHEDULE 11

Article 30

### LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1) Plot reference number shown on the land and crown land plans</i>	<i>(2) Purpose for which temporary possession may be taken</i>
3-4, 5-1, 5-4, 6-2, 7-1, 7-2, 7-4, 7-7, 9-1, 9-2, 9-4, 10-18, 13-3, 13-5, 14-2, 14-3, 14-5, 14-6	Temporary use (including access) to facilitate the construction of Work Nos. 1 to 10

## SCHEDULE 12

Article 41

### REMOVAL OF HEDGEROWS

<i>(1) Area</i>	<i>(2) Reference</i>	<i>(3) Extent of removal</i>
Bedford Borough Council	V01	Removal of part of the hedgerow shown approximately within the area identified by the orange hatch on the hedgerows plans (Sheet 4 of 14), reference V01
Bedford Borough Council	V02	Removal of part of the hedgerow shown approximately within the area identified by the orange hatch on the hedgerows plans (Sheet 5 and 6 of 14), reference V02
Bedford Borough Council	V03	Removal of part of the hedgerow shown approximately within the area identified by the orange hatch on the hedgerows plans (Sheet 5 and 6 of 14), reference V03
Bedford Borough Council	V04	Removal of part of the hedgerow shown approximately within the area identified by the

		orange hatch on the hedgerows plans (Sheet 5 and 6 of 14), reference V04
Bedford Borough Council	V05	Removal of part of the hedgerow shown approximately within the area identified by the orange hatch on the hedgerows plans (Sheet 5 and 6 of 14), reference V05
Bedford Borough Council	V06	Removal of part of the hedgerow shown approximately within the area identified by the orange hatch on the hedgerows plans (Sheet 5 of 14), reference V06
Bedford Borough Council	V07	Removal of part of the hedgerow shown approximately within the area identified by the orange hatch on the hedgerows plans (Sheet 5 and 7 of 14), reference V07
Bedford Borough Council	V08	Removal of part of the hedgerow shown approximately within the area identified by the orange hatch on the hedgerows plans (Sheet 5 and 7 of 14), reference V08
Huntingdonshire District Council	V09	Removal of part of the hedgerow shown approximately within the area identified by the orange hatch on the hedgerows plans (Sheet 7 of 14), reference V09
Huntingdonshire District Council	V10	Removal of part of the hedgerow shown approximately within the area identified by the orange hatch on the hedgerows plans (Sheet 9 and 10 of 14), reference V10
Huntingdonshire District Council	V11	Removal of part of the hedgerow shown approximately within the area identified by the orange hatch on the hedgerows plans (Sheet 11 of 14), reference V11
Bedford Borough Council	V12	Removal of part of the hedgerow shown approximately within the area identified by the orange hatch on the hedgerows plans (Sheet 12 of 14), reference V12
Bedford Borough Council	V13	Removal of part of the hedgerow shown approximately within the area identified by the orange hatch on the hedgerows plans (Sheet 13 of 14), reference V13

## PROTECTIVE PROVISIONS

## PART 1

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

1. For the protection of the utility undertakers referred to in this Part of this Schedule, the following provisions have effect, unless specific provision to the contrary is made in this Schedule 13 or 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 1989 Act), 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(a);
- (d) in the case of a sewerage undertaker—
  - (i) any drain or works vested in the utility undertaker under the Water Industry Act 1991; and
  - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,

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

“functions” includes powers and duties;

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

“utility undertaker” means—

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

(a) 1991 c.56.

(b) 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).

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

4. 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.

5.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that the utility undertaker's apparatus is relocated or diverted, that apparatus may 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 may not be extinguished until alternative apparatus has been constructed and is in operation, and access to it has been provided, to the reasonable satisfaction of the utility undertaker in question in accordance with sub-paragraphs (2) to (7).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to the utility undertaker in question written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order a utility undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the utility undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, the utility undertaker in question must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 43 (arbitration).

(5) The utility undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 43 (arbitration) and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(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.

6.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 43 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the

opinion of the arbitrator less favourable on the whole to the utility undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to that utility undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

7.—(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 5(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 6 apply as if the removal of the apparatus had been required by the undertaker under paragraph 5(2).

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

8.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to an affected 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 5(2).

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

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

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 43 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the utility undertaker in question by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

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

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus

where such extension is required in consequence of the execution of any such works as are referred to in paragraph 5(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.

**9.**—(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 5(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.

**10.** 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

**11.** For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the operator.

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

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

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

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

“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

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(a)2003 c. 21.

(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 32 (statutory undertakers) is subject to Part 10 of Schedule 3A (undertaker’s 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.

(4) Any difference arising between the undertaker and the operator under this paragraph must be referred to and settled by arbitration under article 43 (arbitration).

**15.** This Part of this Schedule does not apply to—

(a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 of the 1991 Act; or

(b) any damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised development.

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

## PART 3

### FOR THE PROTECTION OF THE DRAINAGE AUTHORITIES

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

**18.** In this Part—

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

“drainage authority” means the drainage board concerned within the meaning of section 23 of the Land Drainage Act 1991(a);

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(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.

“drainage work” means any watercourse including any land that provides or is expected to provide flood storage capacity for any watercourse and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage, flood defence, sea defence or tidal monitoring excluding the existing flood defence;

“ordinary watercourse” has the meaning given in the Land Drainage Act 1991;

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

“specified work” means so much of any work or operation authorised by this Order as is in, on, under, over or within ~~16 metres~~ the watercourse of a drainage work or is otherwise likely to—

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

**19.**—(1) Before beginning to construct any 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 within 28 days of the submission of the plans reasonably require.

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the drainage authority or determined under paragraph 21.

(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 if required by the drainage authority under sub-paragraph (1)) or, in the case of a refusal, if it is not accompanied by a statement of the grounds of refusal; and
- (c) may be given subject to such reasonable requirements as the drainage authority may make for the protection of any drainage work.

(4) The drainage authority 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).

**20.** Without limiting paragraph 19, 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—

- (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.

**21.**—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the drainage authority under paragraph 20, must be constructed—

- (a) without unreasonable delay in accordance with the plans approved or deemed to have been approved or settled under this Part; 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 7 days after the date on which it is brought into use.

(3) If the drainage authority reasonably requires, the undertaker must construct all or part of the protective works so that they are in place before the construction of the specified work.

(4) If any part of a specified work or any protective work required by the drainage authority is constructed otherwise than in accordance with the requirements of this Part, the drainage authority may by notice in writing require the undertaker at the undertaker's expense to comply with the requirements of this Part or (if the undertaker so elects and the drainage authority 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 drainage authority reasonably requires.

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

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

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

(2) If any drainage work that the undertaker is liable to maintain is not maintained to the reasonable satisfaction of the drainage authority, the drainage authority 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 drainage authority 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 drainage authority reasonably requires.

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

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

(5) This paragraph does not apply to—

- (a) drainage works that are vested in the drainage authority or that the drainage authority or another person is liable to maintain and is not prevented by this Order from so doing; and
- (b) any obstruction of a drainage work for the purpose of a work or operation authorised by this Order and carried out in accordance with the provisions of this Part.

**23.** If by reason of the construction of any specified work or of the failure of any such work the efficiency of any drainage works for flood defence purpose is impaired, or the drainage work is otherwise damaged, the impairment or damage must be made good by the undertaker 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.

**24.** The undertaker must indemnify the drainage authority in respect of all costs, charges and expenses that the drainage authority may reasonably incur, have to pay or may sustain—

- (a) in the examination or approval of plans under this Part;

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

**25.—(1)** Without limiting the other provisions of this Part, the undertaker must indemnify the drainage authority in respect of all claims, demands, proceedings, costs, damages, expenses or loss that may be made or taken against, recovered from or incurred by, the drainage authority by reason of—

- (a) any damage to any drainage work so as to impair its efficiency for the purposes of flood defence;
- (b) any raising or lowering of the water table in land adjoining the authorised development or any sewers, drains and watercourses; or
- (c) any flooding or increased flooding of any such land,

that is caused by the construction of any specified work or any act or omission of the undertaker, its contractors, agents or employees whilst engaged on the work.

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

**26.** The fact that any work or thing has been executed or done by the undertaker in accordance with a plan approved or deemed to be approved by the 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.

**27.** Any dispute between the undertaker and the drainage authority under this Part, if the parties agree, must be determined by arbitration under article 43 (arbitration).

## PART 4

### FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

**28.—(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;

“emergency” means an occurrence which presents a risk of—

- (a) serious flooding
- (b) serious detrimental impact on drainage
- (c) serious harm to the environment

“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 given in section 113 of the Water Resources Act 1991;

“non-tidal main river” has the meaning given in paragraph 2(1) of Part 1 of Schedule 25 to the Environmental Permitting (England and Wales) Regulations 2016;

“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 involving a non-tidal main river;
- (c) any distance of a drainage work and 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 or other surface waters
  - (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—

- (d) 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
- (e) 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.

### **Submission and approval of plans**

**29.**—(1) Before beginning to construct any specified work, the undertaker must submit to the Agency plans of the specified work and such further particulars available to it as the Agency may within 28 days of the 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 39.

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

- (a) must not be unreasonably withheld or delayed;
- (b) subject to sub-paragraph (5), is deemed to have been refused if it is neither given nor refused within 2 months of the submission of the plans or such later date as is agreed between the Agency and the undertaker and if further particulars have been requested pursuant to sub paragraph (1) the period between the making of this request and the provision of further particulars in response to it shall not be taken into account in the calculation of the 2 months for the purposes of this sub-paragraph ; 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 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, the Agency must provide reasons for the grounds of that refusal.

### **Construction of protective works**

**30.** Without limiting paragraph 29 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**

**31.**—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the Agency under paragraph 30, 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 7 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**

**32.**—(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) 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 39.

#### **Maintenance of works**

**33.**—(1) Subject to sub-paragraph (5) the undertaker must from the commencement of the construction of the specified works maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation 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 (4) 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) 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 39.

(5) 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.

(6) 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.

### **Remediating impaired drainage work**

**34.** 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**

**35.** 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 occurred within 24 hours of or as soon as reasonably practicable after the undertaker becomes aware of such obstruction.

### **Free passage of fish**

**36.—(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) 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 the notice served under 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) 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**

**37.—**(1) The undertaker indemnifies the Agency in respect of all costs, charges and expenses which the Agency may reasonably 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.

**38.—**(1) The undertaker is responsible for and indemnifies the Agency against all costs and losses, liabilities, claims and demands not otherwise provided for in this Schedule which may be reasonably incurred or suffered by the Agency by reason of, or arising out 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 (2)—

- (a) “costs” includes—
  - (i) expenses and charges;
  - (ii) staff costs and overheads;
  - (iii) legal costs;
- (b) “losses” includes physical damage.
- (c) “claims” and “demands” include as applicable—
  - (i) costs (within the meaning of sub-paragraph (2(i)) incurred in connection with any claim or demand;
  - (ii) any interest element of sums claimed or demanded;
- (d) “liabilities” includes—
  - (i) contractual liabilities;
  - (ii) tortious liabilities (including liabilities for negligence or nuisance);
  - (iii) liabilities to pay statutory compensation or for breach of statutory duty;
  - (iv) liabilities to pay statutory penalties imposed on the basis of strict liability (but does not include liabilities to pay other statutory penalties).

(3) 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 and that agreement must not be unreasonably withheld or delayed.

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

(5) 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.

(6) 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

39. 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 43 (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 the department of Energy, Security and Net Zero 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 5

### FOR THE PROTECTION OF NATIONAL GAS TRANSMISSION PLC AS GAS UNDERTAKER

## Application

40.—(1) For the protection of National Gas as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and National Gas.

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and National Gas, where the benefit of this Order is transferred or granted to another person under article 5 (consent to transfer benefit of Order)—

- (a) any agreement of the type mentioned in subparagraph (1) has effect as if it had been made between National Gas and the transferee or grantee (as the case may be); and
- (b) written notice of the transfer or grant must be given to National Gas on or before the date of that transfer or grant.

(3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to National Gas (but without prejudice to 50(3)b).

## Interpretation

41. In this Part of this Schedule—

“acceptable credit provider” means a bank or financial institution with a credit rating that is not lower than: (i) “A-” if the rating is assigned by Standard & Poor’s Ratings Group or Fitch Ratings; and “A3” if the rating is assigned by Moody’s Investors Services Inc.;

“acceptable insurance” means general third party liability insurance effected and maintained by the undertaker with a combined property damage and bodily injury limit of indemnity of not less than £50,000,000.00 (fifty million pounds) per occurrence or series of occurrences arising out of one event. Such insurance shall be maintained (a) during the construction period of the specified works; and (b) after the construction period of the specified works in respect of any use and maintenance of the authorised development by or on behalf of the undertaker which constitute specified works and arranged with an insurer whose security/credit rating meets the same requirements as an “acceptable credit provider”, such insurance shall include (without limitation)—

- (a) a waiver of subrogation and an indemnity to principal clause in favour of National Gas
- (b) pollution liability for third party property damage and third party bodily damage arising from any pollution/contamination event with a (sub)limit of indemnity of not less than £10,000,000.00 (ten million pounds) per occurrence or series of occurrences arising out of one event or £20,000,000.00 (twenty million pounds) in aggregate;

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

“apparatus” means any gas mains, pipes or other apparatus belonging to or maintained by National Gas 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 National Gas for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised works” has the same meaning as is given to the term “authorised development” in article 2 (interpretation) of this Order;

“commence” and “commencement” in this part of this Schedule has the same meaning as in article 2 (interpretation) of this Order save that for the purposes of this Part of this Schedule shall include 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 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;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by National Gas (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for National Gas’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” shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of National Gas: construct, use, repair, alter, inspect, renew or remove the apparatus;

“National Gas” 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;

“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;

“parent company” means a parent company of the undertaker acceptable to and which shall have been approved by National Gas acting reasonably;

“specified works” means any of the authorised works undertaken in association with the authorised works 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 46(2) or otherwise; and/or
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 46(2) or otherwise; and/or
- (c) includes any of the activities that are referred to in paragraph 8 of T/SP/SSW/22 (National Gas’s policies for safe working in proximity to gas apparatus “Specification for safe working in the vicinity of National Gas, High pressure Gas pipelines and associated installation requirements for third parties”).

## **On Street Apparatus**

42. Except for paragraphs 43 (apparatus of National Gas in stopped up streets), 48 (retained apparatus: protection of National Gas as gas undertaker), 49 (expenses) and 50 (indemnity) of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of National Gas, the other provisions of this Schedule do not apply to apparatus in

respect of which the relations between the undertaker and National Gas are regulated by the provisions of Part 3 of the 1991 Act.

#### **Apparatus of National Gas in stopped up streets**

43.—(1) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 15 (temporary stopping up of streets and public rights of way), National Gas is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway 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 that highway.

#### **Protective works to buildings**

44. The undertaker, in the case of the powers conferred by article 19 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Gas (such consent not to be unreasonably withheld or delayed).

#### **Acquisition of land**

45.—(1) Regardless of any provision in this Order or anything shown on the land and crown land plans or contained in the book of reference to the Order, the undertaker may 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 and/or apparatus of National Gas otherwise than by agreement (such agreement not to be unreasonably withheld or delayed).

(2) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the specified works (or in such other timeframe as may be agreed between National Gas 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 National Gas or affect the provisions of any enactment or agreement regulating the relations between National Gas and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as National Gas reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Gas and the undertaker acting reasonably and which must be no less favourable on the whole to National Gas unless otherwise agreed by National Gas, and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such specified works.

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

(4) Any agreement or consent granted by National Gas under paragraph 48 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).

#### **Removal of apparatus**

46.—(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 National Gas 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 National Gas in accordance with sub-paragraph (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 National Gas advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or

constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Gas reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to National Gas to its reasonable satisfaction (taking into account paragraph 47(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, National Gas must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances to assist the undertaker 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 National Gas to use its compulsory purchase powers to this end unless it elects to do so.

(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 National Gas and the undertaker or in default of agreement settled by arbitration in accordance with this Order.

(5) National Gas must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with this Order, and subject to a written diversion agreement having been entered into between the parties, which is not be unreasonably withheld, and the grant to National Gas 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) The provisions of this paragraph 46 only apply to the extent that the apparatus to be removed by the undertaker forms part of National Gas' undertaking and has not already been abandoned or decommissioned by National Gas and any existing rights in respect of the abandoned or decommissioned apparatus have been surrendered.

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

47.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for National Gas 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 National Gas and must be no less favourable on the whole to National Gas than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by National Gas (such agreement not to be unreasonably withheld or delayed).

(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 National Gas 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 54 (Arbitration) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to National Gas as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

#### **Retained apparatus: protection of National Gas as gas undertaker**

48.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Gas a plan in respect of those works.

(2) In relation to works which will or may be situated on, over, under or within (i) 15 metres measured in any direction of any apparatus, or (ii) involve embankment works within 15 metres of any apparatus the plan to be submitted to National Gas 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 specified works to which sub-paragraphs (1) and (2) apply until National Gas has given written approval of the plan so submitted.

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

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (6) provided that any conditions are communicated to the undertaker within a period of 28 days beginning with the date on which a plan is submitted to National Gas in accordance with sub-paragraph (1); and,
- (b) must not be unreasonably withheld or delayed.

(5) In relation to any specified work to which sub-paragraphs (1) and/or (2) apply, National Gas 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 and National Gas must notify the undertaker of such modifications within a period of 28 days beginning with the date on which the plan required under sub-paragraph (2) has been submitted to National Gas.

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

(7) Where National Gas 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 National Gas' reasonable satisfaction prior to the commencement of any specified works for which protective works are required and National Gas must give notice of its requirement for such works within 28 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(8) If National Gas 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 40 to 42 and 45 to 47 apply as if the removal of the apparatus had been required by the undertaker under paragraph 46(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 42 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 (1) where it needs to carry out emergency works as defined in section 52 of the 1991 Act but in that case it must give to National Gas 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 National Gas's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Gas, 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 shall implement an appropriate ground mitigation scheme save that National Gas 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 49.

## Expenses

49.—(1) Save where otherwise agreed in writing between National Gas and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to National Gas within 30 days of receipt of an itemised VAT invoice or claim from National Gas all charges, costs and expenses (but always excluding any consequential or indirect loss) reasonably and properly incurred by National Gas 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 specified works including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by National Gas in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Gas as a consequence of National Gas;
  - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 46(3); or
  - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Gas;
- (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 53 (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 National Gas 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 National Gas 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 National Gas 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**

**50.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any specified works authorised by this Part of this Schedule or in consequence of the construction, use maintenance or failure of any of the specified works 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, 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 specified works) or property of National Gas, or there is any interruption in any service provided, or in the supply of gas, by National Gas, or National Gas 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 National Gas the cost reasonably and properly incurred by National Gas in making good such damage or restoring the supply; and
- (b) indemnify National Gas for any other expenses, loss, demands, proceedings, damages, claims, penalties or costs incurred by or recovered from National Gas, by reason or in consequence of any such damage or interruption or National Gas becoming liable to any third party as aforesaid other than arising from any default of National Gas.

(2) The fact that any act or thing may have been done by National Gas on behalf of the undertaker or in accordance with a plan approved by National Gas or in accordance with any requirement of National Gas 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 National Gas 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) shall impose any liability on the undertaker in respect of—

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of National Gas, its officers, servants, contractors or agents;
- (b) any specified works and/or any other works authorised by this Part of this Schedule carried out by National Gas 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 8 (consent to transfer benefit of 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 sub-section 3(b) will be subject to the full terms of this Part of this Schedule including this paragraph 50; and/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) National Gas must give the undertaker reasonable written notice of any such third party claim or demand as soon as reasonably practicable after National Gas became aware of any such claims or demands, and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without the prior 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).

(5) National Gas 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 its own behalf from its own funds.

(6) National Gas must use all 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 Gas'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 National Gas's control and if reasonably requested to do so by the undertaker National Gas must provide an explanation of how the claim has been minimised, where relevant. The undertaker will only be liable under this paragraph for claims reasonably and properly incurred by National Gas.

(7) The undertaker must not commence construction (and not to permit the commencement of such construction) of the specified works on any land owned by National Gas or in respect of which National Gas has an easement or wayleave for its apparatus or any other interest or to carry out any works within 15 metres of National Gas's apparatus unless and until National Gas is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to National Gas that it shall maintain such acceptable insurance for the construction period of the specified works from the proposed date of commencement of construction of the specified works) and National Gas has confirmed the same in writing to the undertaker.

(8) In the event that the undertaker fails to comply with Paragraph 50(7) of this Part of this Schedule, nothing in this Part of this Schedule shall prevent National Gas from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

### **Enactments and agreements**

51. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between National Gas 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 National Gas 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**

52.—(1) Where in consequence of the proposed construction of any part of the specified works, the undertaker or National Gas requires the removal of apparatus under paragraph 46(2) or National Gas makes requirements for the protection or alteration of apparatus under paragraph 48, the undertaker must use its reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the specified works and taking into account the need to ensure the safe and efficient operation of National Gas's undertaking and National Gas shall use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever National Gas'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**

53. If in consequence of the agreement reached in accordance with paragraph 45(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 National Gas to maintain or use the apparatus no less effectively than was possible before such obstruction.

### **Arbitration**

54. Any difference or dispute arising between the undertaker and National Gas under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Gas, be determined by arbitration in accordance with article 43 (arbitration).

### **Notices**

55. Notwithstanding article 40 (service of notices), any plans submitted to National Gas by the undertaker pursuant to paragraph 48 must be submitted using the LSBUD system (<https://lsbud.co.uk/>)

or such other address as National Gas may from time to time appoint instead for that purpose and notify to the undertaker in writing.

## SCHEDULE 14 ARBITRATION RULES

Article 43

### **Primary objective**

1. —(1) The primary objective of these arbitration rules is to achieve a fair, impartial, final and binding award on the substantive difference between the parties (save as to costs) within 4 months from the date the arbitrator is appointed pursuant to article 43 (arbitration) of this Order.

(2) The arbitration will be 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 and/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 responding 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 element(s) of the Claimant’s claim, 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 report(s) (if submitted by the Claimant) and explanations of the objections.

(4) Within 7 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 difference(s) 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 2 days of delivery of the last submission, request a hearing giving specific reasons why it considers a hearing is required.

(4) Within 7 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 expert(s) 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 expert(s) in response to the arbitrator's questions. Prior to the hearing in relation to the expert(s)—

- (a) at least 28 days before a hearing, the arbitrator must provide a list of issues to be addressed by the expert(s);
- (b) if more than one expert is called, they must 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 7 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 4 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 and/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(a), save where modified by these Rules 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 and/or procedure 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, but 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 and/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 any arbitration are to take place in public, unless agreed otherwise by the arbitrator on application from one or both of the parties.

(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 15

Article 39

### DOCUMENTS TO BE CERTIFIED

<i>(1) Documents</i>	<i>(2) Application Document Reference</i>	<i>(3) Revision number</i>
book of reference	EN010141/DR/4.3	P01
design parameters and principles statement	EN010141/DR/7.1	P01
environmental statement	EN010141/DR/6.1	P01

(a) 1996 c.23.

	EN010141/DR/6.2 EN010141/DR/6.3 EN010141/DR/6.4	
hedgerows plan	EN010141/DR/2.9	P01
land and crown land plans	EN010141/DR/2.2	P01
outline archaeological mitigation strategy	EN010141/DR/7.15	P01
outline battery safety management plan	EN010141/DR/7.10	P01
outline construction environmental management plan	EN010141/DR/7.3	P01
outline construction traffic management plan	EN010141/DR/7.4	P01
outline decommissioning environmental management plan	EN010141/DR/7.6	P01
outline heritage enhancement strategy	EN010141/DR/7.16	P01
outline landscape and ecological management plan	EN010141/DR/7.7	P01
outline operational environmental management plan	EN010141/DR/7.5	P01
outline public rights of way management plan	EN010141/DR/7.8	P01
outline skills, supply chain and employment plan	EN010141/DR/7.11	P01
outline soil management plan	EN010141/DR/7.9	P01
outline surface water management plan	EN010141/DR/7.13	P01
outline waste management plan	EN010141/DR/7.12	P01
street works, public rights of way and access plans	EN010141/DR/2.4	P01
traffic regulation measures plan	EN010141/DR/2.5	P01
works plan	EN010141/DR/2.3	P01

### **EXPLANATORY NOTE**

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

This Order grants development consent for, and authorises the construction, operation, maintenance and decommissioning of a solar generating station and battery energy storage facility together with associated development. This Order imposes requirements in connection with the development and authorises the compulsory purchase of land (including rights in land) and the right to use land and to override easements and other rights.

A copy of the plans and book of reference referred to in this Order and certified in accordance with article 39 (certification of plans, etc.) may be inspected free of charge during working hours at [●].