EAST PARK
ENERGY

East Park Energy

EN010141

Applicant Response to Eaton Socon Power Limited

Document Reference: EN010141/DR/8.64

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

July 2026
Version P01

EAST PARK ENERGY

Planning Act 2008

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APFP Regulation Reference:	Regulation 5(2)(q)
Planning Inspectorate Scheme Reference:	EN010141
Application Document Number:	EN010141/DR/8.64
Author:	Burges Salmon LLP

Version	Date	Status
P01	July 2026	Deadline 5

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1.0 EATON SOCON POWER LIMITED RELEVANT REPRESENTATION

1.1.1 Eaton Socon Power Limited ("ESPL") submitted a relevant representation into the examination on 14 January 2026 [RR-329] through its legal advisers, Eversheds Sutherland (International) LLP. ESPL objected to the inclusion of its interests in the DCO, with the request that all its interests be removed from the DCO, Book of Reference, Land Plan and Works Plan. ESPL stated that "in the absence of protections, there must be no powers of compulsory acquisition or temporary possession or related powers to carry out works, over any of its land interests". It was stated that this was "imperative to safeguarding ESPL's own solar and BESS project". As noted in RR-329, ESPL is a wholly owned subsidiary of AGR Power Limited ("AGR").

1.1.2 ESPL has stated that its private rights are "protected under statute" and that the Applicant's project "risks sterilisation of the ESPL's project".

1.1.3 It is noted that ESPL have stated that they have a lease over the main site of their permission, which includes the panel area and BESS site, described as the "Main Site Lease". In addition, they have an option agreement for an easement for the connection route, described as the "Cable Easement Option". Separately, they have an option agreement for an easement for the National Grid access road, described as the "Access Easement Option". These terms are described in RR-329.

1.1.4 In paragraph 4.1 of RR-329, ESPL states that its grounds of objection relate to the viability of the ESPL Project, stating that "the ESPL Project is not viable unless it can connect to the grid and necessary access rights to the Site can be maintained". ESPL states that "the acquisition of new rights in the Overlap Land, including the potential extinguishment, suspension or overriding of AGR's interests, and exercise of the related powers under the DCO for works to deliver the grid connection from the East Park Project to the Eaton Socon Substation, risk sterilising the entirety of the ESPL Project.". The remainder of section 4 of RR-329 addresses the implications of such "sterilisation", and provides a justification for why such “sterilisation” does not have a legal or policy basis.

1.1.5 ESPL’s relevant representation included the following by way of a request to resolve their concerns:

i) Firstly, they requested that all compulsory acquisition rights and temporary possession powers in the “Overlap Land” (so defined in RR-329), be removed from the DCO on the basis of an inference, in paragraph 5.2, that the land is not required.
ii) ESPL then states that, in the event that the land is retained in the DCO, it should be subject to a legally binding commitment that no rights to exercise the powers of compulsory acquisition are to be exercised without ESPL’s approval.

1.1.6 In addition, as set out in paragraph 5.5, RR-329 contains the following “imperative” requests:

i) That all works details in relation to the grid corridor for the East Park Project are submitted to and approved by ESPL in order to ensure that the ESPL Project is fully protected;
ii) The works details must include details of the nature and location of all works related to the grid connection and provide for adequate offset distances from the ESPL access routes and grid connection corridor in order to safeguard ESPL infrastructure from any physical damage or loss of efficiency;
iii) That the programme for the carrying out of the approved works details for the grid corridor for the East Park Project is submitted to and agreed with ESPL in order to avoid disruption to the construction and operation of the ESPL Project;
iv) That all construction or operational traffic management arrangements within the vicinity of the ESPL Project must be submitted to and approved by ESPL;

v) That in the event of any damage to ESPL's infrastructure, or any interruption in any service provided, the Applicant must: (a) bear and pay the cost reasonably incurred by ESPL in making good such damage or restoring the supply; and (b) indemnify ESPL for all expenses, loss, damages, penalty or costs incurred by ESPL, by reason or in consequence of any such damage or interruption (including for the avoidance of doubt any indirect or consequential loss or loss of profits);

vi) Before carrying out any works in the grid connection corridor, the Applicant (or any contractor carrying out such works on its behalf) must put in place a policy of insurance for a level of cover (and subject to such other terms) as is agreed in writing with ESPL;

vii) The Applicant must pay all reasonable fees, costs, charges and expenses incurred by ESPL in relation to it carrying out its functions under any of the aforementioned protections, including the reasonable costs incurred by ESPL in engaging and retaining such external experts, consultants and contractors.

1.1.7 The Applicant's position in response to the above is considered in full in section 4 of this note.

2.0 UPDATES SINCE THE APPLICANT'S RESPONSE TO RELEVANT REPRESENTATIONS

2.1.1 The Applicant, at Deadline 1, submitted its responses to relevant representations. These were published into the Examination on 10 April 2026. The Applicant will not rehearse the entirety of that response in this document, but it is important to note that one fundamental change of fact has occurred since 10 April 2026, which is that, from 22 June 2026, the Gas and Electricity Markets Authority (Ofgem) granted Eaton Socon Power Limited (company number 12921574) an electricity generation licence pursuant to section 6 of the Electricity Act 1989. This means that, where the Applicant had previously stated that ESPL was understood not to be eligible for the protections of Schedule 13, Part 1, that is no longer the case.

2.1.2 On 14 April 2026, in response to the Applicant's relevant representation, the Applicant received from AGR a draft set of protective provisions and a draft side agreement. The Applicant considered these provisions and, in the context of ESPL not at that time being a statutory undertaker and in the spirit of co-operation, sought to agree a co-operation agreement that substantially dealt with the concerns raised by AGR in its written correspondence dated 14 April 2026. In reviewing the documents provided by ESPL, the Applicant considered that these did not adequately deal with the circumstances in which both schemes were in the course of construction simultaneously. As such, the Applicant returned a set of heads of terms for a co-operation agreement which would set out the necessary protections sought by ESPL, as well as secure ongoing co-operation in relation to the construction of the two projects and, if required, agree the form of a future crossing agreement.

2.1.3 ESPL rejected the Applicant's heads of terms and instead insisted on its draft form of protective provisions and side agreement. The Applicant acknowledged this and provided ESPL with comments on the protective provisions and side agreement. In recognition of the fact that ESPL was not then a statutory undertaker, the Applicant was content to negotiate a set of protective provisions, but only on the basis that these provisions would form part of a private treaty, proportionate to the level of overlap and interaction between ESPL's Project and the Scheme, and to the fact that both the ESPL Project and the Scheme overlap in an area of land corresponding to a National Grid substation. In other words, given that ESPL did not have a higher statutory protection, protective provisions on the face of the order were not considered necessary, as that would amount to a statutory restriction on the operation of the DCO.

2.1.4 The Applicant received a response to its amendments to the draft form of protective provisions on 13 July 2026. It was clear to the Applicant on the return of these provisions that the parties are not in a position where it is likely that they will come to a voluntary agreement. In the meantime, the Applicant noted that it appeared that the factual position in relation to ESPL's status as a statutory undertaker had changed, and that ESPL was now protected automatically, by virtue of its status as an electricity undertaker, by Schedule 13, Part 1 of the DCO.

2.1.5 The Applicant, therefore, submits the following, which demonstrates that the Part 1 provisions adequately protect ESPL's undertaking, and that the provisions requested by ESPL go beyond that which is required to ensure that there is no serious detriment to the carrying on of the undertaking by ESPL.

3.0 ASSESSMENT OF STATUTORY REQUIREMENT

3.1.1 We have considered below the tests of section 127 and 138 of the 2008 Act. For the avoidance of doubt, whilst a generation licence qualified AGR for protection under Schedule 13, Part 1, it does not mean that AGR are protected by the tests set out in section 127 or 138 of the 2008 Act. Section 127 and 138 function to protect “statutory undertakers” as defined by those sections.

3.1.2 Section 127 defines statutory undertakers as having the meaning given by section 8 of the Acquisition of Land Act 1981 and also includes undertakers which are deemed to be statutory undertakers for the purposes of that Act by virtue of another enactment, or those who are statutory undertakers for the purposes of section 16(1) and (2) of the 1981 Act. Schedule 16 of the Electricity Act 1989 makes clear that for the purposes of the Acquisition of Land Act 1981, only those licence holders who are entitled to exercise powers under Schedule 3 of the Electricity Act 1989 are deemed to be statutory undertakers. Section 10 confirms that only those who hold a transmission licence, electricity system operator licence, or distribution licence are empowered to exercise powers under Schedule 3 of the Electricity Act 1989.

3.1.3 Section 138 states that statutory undertakers are persons who are, or are deemed to be, statutory undertakers for the purpose of any provision of Part 11 of Town and Country Planning Act 1990. Section 262 Town and Country Planning Act 1990 confirms that any holder of a licence under section 6 of the Electricity Act 1989 shall be deemed to be a statutory undertaker only in specific circumstances under the 1990 Act. Due to the construction of section 138 of the 2008 Act, that it is a person who is a statutory undertaker for the purpose of any provision of Part 11. It is considered that a generation licence under section 6 is sufficient to be considered a statutory undertaker for the purposes of section 138.

3.1.4 Whilst Section 127 remains a useful test against which to calibrate any decision, it is important to note that the test of “serious detriment” is not considered by the Applicant to apply. Instead, the relevant test is one of "necessity" as determined by section 138 Planning Act 2008. The Applicant has continued to refer to the test of "serious detriment" below, however, to demonstrate that the requests of ESPL are disproportionate to even this higher, irrelevant test.

3.1.5 The implication of the above is that Schedule 13, Part 1, provides sufficient protection for ESPL and arguably goes beyond the statutory requirements that the undertaker must meet in order for the Secretary of State to make a decision.

Assessment of section 127 and 138

3.1.6 Section 127 of the Planning Act 2008 ("the 2008 Act") applies to land (statutory undertakers' land) if:

i) the land has been acquired by statutory undertakers for the purposes of their undertaking;

ii) a representation has been made about an application for an order granting development consent before the completion of the examination of the application, and the representation has not been withdrawn,

iii) the Secretary of State, as a result of the representation, is satisfied that:

   a. the land is used for the purposes of carrying on the statutory undertakers' undertaking, or
   b. an interest in the land is held for those purposes.

3.1.7 For the purpose of Section 127 of the 2008 Act, "land" includes any interest in or right over land (as defined in Section 159 of the 2008 Act).

3.1.8 If the representations made have not been withdrawn and the Secretary of State is satisfied that the land or an interest in the land is used for the purposes of carrying on a statutory undertaking, then the DCO may include provisions authorising the compulsory acquisition of land or a right over statutory undertakers' land by the creation of a new right over land, and only to the extent that the Secretary of State is satisfied that the requirements of Section 127 of the 2008 Act have been met.

3.1.9 In these circumstances the DCO may only include a provision authorising the compulsory acquisition of statutory undertakers' land or of a right over statutory undertakers' land by creation of a new right over land where the Secretary of State is satisfied that:

i) the land or right may be purchased and not replaced without serious detriment to the carrying on of the undertaking; or
ii) it can be replaced with other land belonging to, or available for acquisition by, the undertaker without serious detriment to the carrying on of the undertaking

3.1.10 There is no statutory definition of 'serious detriment'. However, the test for 'serious detriment' is wide and holistic and is taken to mean more than a mere disadvantage. In the Examiner's Recommendation Report in the Lake Lothing (Lowestoft) Third Crossing Development Consent Order 2020, the inspector recognised, at paragraph 8.5.138, that 'serious detriment is a matter of judgement on the scale of impact on the undertaking and that the decision maker should take a holistic approach.'

3.1.11 Section 138 of the 2008 Act applies to land if:

i) there subsists over the land a relevant right, or
ii) there is on, under or over the land relevant apparatus.

3.1.12 Section 138 provides that a DCO may include provision for the extinguishment of the relevant right, or the removal of the relevant apparatus only if the Secretary of State is satisfied that the extinguishment or removal is necessary for the purpose of carrying out the development to which the DCO relates.

3.1.13 The DCO includes the power for the Applicant to extinguish the rights of, remove or reposition the apparatus belonging to the statutory undertakers, and as such the Applicant believes that Section 138 of the 2008 Act is engaged.

3.1.14 The Applicant considers that the test of necessity is demonstrated in the **Statement of Reasons [REP4-004]**, which sets out which work numbers occur in each plot number. The **Land and Rights Tracker [REP4-006]** summarises which plots in the **Book of Reference [REP3-017]** apply to each statutory undertaker. Cross-referencing these plots with the Statement of Reasons, the Examining Authority and Secretary of State will be able to determine which works are required in each plot and why the right is therefore necessary. It should also be noted that all protective provisions for any statutory undertaker contain controls regarding the removal of apparatus, to ensure that any such exercise of the rights in the Order would be subject to the consent of the relevant statutory undertaker.

3.1.15 Government guidance from the Ministry of Housing, Communities and Local Government and the Department for Levelling Up, Housing and Communities on the content required for the DCO of a nationally significant infrastructure project states that [emphasis added]:

3.1.16 *"Applicants should expect to agree the form of protective provisions with the relevant parties for inclusion in the draft DCO prior to submitting the application for development consent. Where agreement on protective provisions has not been reached during the pre-application stage, applicants should include their preferred drafting taking into account the standard protective provisions commonly used by the relevant party (usually statutory undertakers) and endorsed in recent DCO decisions. […]*

3.1.17 *Most statutory undertakers have now developed their own preferred form of protective provisions which is very helpful to the preparation of the draft DCO. However, these must be adapted as necessary, so they accurately reflect the proposed development.* ***<u>They should also not simply negate other provisions of the DCO, particularly concerning proposed compulsory acquisition of statutory undertakers' land.</u>***

3.1.18 *Examining Authorities are expected to ensure that the final form of a recommended DCO contains protective provisions which are bespoke to the application under consideration."*

3.1.19 necessary. It should also be noted that all protective provisions for any statutory undertaker contain controls regarding the removal of apparatus, to ensure that any such exercise of the rights in the Order would be subject to the consent of the relevant statutory undertaker.

3.1.20 Government guidance from the Ministry of Housing, Communities and Local Government and the Department for Levelling Up, Housing and Communities on the content required for the DCO of a nationally significant infrastructure project states that [emphasis added]:

> *"Applicants should expect to agree the form of protective provisions with the relevant parties for inclusion in the draft DCO prior to submitting the application for development consent. Where agreement on protective provisions has not been reached during the pre-application stage, applicants should include their preferred drafting taking into account the standard protective provisions commonly used by the relevant party (usually statutory undertakers) and endorsed in recent DCO decisions. […]*
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> *Most statutory undertakers have now developed their own preferred form of protective provisions which is very helpful to the preparation of the draft DCO. However, these must be adapted as necessary, so they accurately reflect the proposed development.* ***<u>They should also not simply negate other provisions of the DCO, particularly concerning proposed compulsory acquisition of statutory undertakers' land.</u>***
>
> *Examining Authorities are expected to ensure that the final form of a recommended DCO contains protective provisions which are bespoke to the application under consideration."*

4.0 ESPL PROTECTIVE PROVISIONS AND AGREEMENT

4.1.1 We have considered the extent to which Schedule 13, Part 1 of the draft DCO provides sufficient reassurance to the Secretary of State below.

Table 1: Applicant's Consideration of Schedule 13, Part 1 of the DCO in relation to Section 128 of the 2008 Act

ESPL Relevant Representation	Part 1 Protective Provisions	Commentary
The steps that must be taken by the Applicant are straightforward: it must remove all compulsory acquisition rights and temporary possession powers over the Overlap Land. If the land is not required, it should not be in the DCO. Accordingly, an amended version of the DCO should be submitted with the relevant plot numbers (as listed in the table above) 7 deleted in Schedule 9. The Applicant must also take steps to revise related documents including the Land Plans and Work Plans, in order to omit the Overlap Land. ESPL's interests should also be deleted from the Book of Reference. ESPL considers that this is entirely reasonable and justified given the wide grid connection corridor that the Applicant has retained, and taking into account the maturity of its adjacent ESPL Project, the limited area within grid connection corridor that it occupies, and the substantial threat that the East Park Project represents with respect to the timely and efficient construction, commissioning and operation of the ESPL Project. (paragraph 5.1, 5.2, 5.3)	N/A	The Protective Provisions do not fundamentally exclude the ability to acquire interests in land in which ESPL also have an interest. To note, that would be far beyond the requirement of section 127, and therefore not justified in legislation. As to a general response by the Applicant to the appropriateness of compulsory acquisition rights in the first instance, please refer to the Applicant's response to the relevant representations **[REP1-055]**.
In the event that the land is retained within the draft DCO, that must be subject to a legally binding commitment that no rights to exercise powers of compulsory acquisition may be exercised over plots in which ESPL has an	Article 24(2) of the draft DCO will allow private rights over land to be extinguished where their continuance would be inconsistent with the exercise of the right or compliance with the	The Applicant has sought to agree a co-operation agreement with ESPL that would set out protections regarding the exercise of compulsory acquisition powers, where the exercise of those powers would interfere with

interest without ESPL's approval. That is imperative to safeguarding the ESPL Project. (paragraph 5.4)	restrictive covenant acquired or imposed (as appropriate) under Article 23; Article 24(3) of the draft DCO will allow private rights and restrictive covenants to be suspended insofar 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; Article 24(5) states that those powers do not apply where the right in question is subject to article 32. 1.1 Article 32 contains the rights capable of being exercised over statutory undertakers. This includes the right to acquire new rights, impose restrictive covenants, extinguish rights, and remove or relocate rights and apparatus. Article 32 is subject to Schedule 13. Schedule 13 provides that the Applicant would only be able to acquire, and therefore extinguish, rights over apparatus. 1.2 Part 1, paragraph 4 states that the undertaker **must not acquire any apparatus otherwise than by agreement.** Paragraph 5 states that where the undertaker acquires any interest in any land in which any apparatus is placed or over which access is enjoyed, and the apparatus is required to be removed or diverted, that removal or diversion cannot occur until alternative apparatus has been constructed and is in operation to the satisfaction of the utility undertaker.	the ESPL Project. ESPL have rejected the concept of a co-operation agreement on the basis that they consider that their apparatus will already be in place by the time the East Park Project will be in construction. On that basis, they considered that the functionality of protective provisions would best serve the relationship of the two projects. The protective provisions in Part 1 of Schedule 13 of the draft DCO function to protect built apparatus. On the basis that ESPL consider that they will already have built their infrastructure by the time East Park is exercising the DCO in this area, then it is in relation to apparatus that the protective provisions must function. The Applicant appreciates, and notes, that the protective provisions in Part 1 do not provide an approval mechanism for the acquisition of any interest of ESPL. This means that for the ESPL Access Easement Option that there isn't the same level of protection in this area. The Applicant does not consider that this poses an issue. The access into the Eaton Socon Substation is a National Grid access, and many projects will have equal rights of access over that land without impacting each other. The concern that East Park would sever the access of ESPL's Project is unwarranted. Article 21 states that the undertaker can only acquire so much of the Order land as is required for the authorised development, or to facilitate it or as is incidental to it. There is no rational basis on which an undertaker would be required to sever ESPL's access to facilitate the authorised

		development, and on that basis pay to ESPL the significant value of compensation that would be payable on exercise of that power. ESPL has significant concerns over its grid connection route and access route. These are areas in which it has an option for an easement. Its position is not different to that of any other party connecting into this substation. All works within the National Grid estate would need to be subject to the arrangements stipulated by National Grid as a result of the refurbishment of the substation. ESPL is asking for a level of protection that is far in excess of the reality of the risk posed by East Park.
That all works details in relation to the grid corridor for the East Park Project are submitted to and approved by ESPL in order to ensure that the ESPL Project is fully protected; (paragraph 5.5.1)	Schedule 13, Part 1, Paragraph 5 sets out the requirement for the approval of works where the removal of apparatus is required. Schedule 13, Part 1, Paragraph 7 sets out the requirement for the approval of works where apparatus is being retained. This includes the restriction of starting the execution of works that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker.	The Applicant is not proposing to remove any apparatus of ESPL. The apparatus interface is that of cabling. The Applicant is not able, at this stage, to confirm whether or not the cables of the projects will cross. That is because the ESPL Project has not yet been built, and the final arrangement of the cabling for the Scheme will be subject to the refurbishment of the substation, which is yet to be confirmed by National Grid. However, regardless of any crossing, any works that are near to apparatus of ESPL require the approval of ESPL, where ESPL is able to insist on reasonable requirements for that work.
The works details must include details of the nature and location of all works related to the	Schedule 13, Part 1, Paragraph 7(1) sets out that the undertaker would need to submit to	Paragraph 7(1) will satisfy the requirement for details to include the nature and location of

grid connection and provide for adequate offset distances from the ESPL access routes and grid connection corridor in order to safeguard ESPL infrastructure from any physical damage or loss of efficiency; (paragraph 5.5.2)	ESPL a plan, section and description of the work to be executed. 1.3 ESPL would then, pursuant to paragraph 7(2), be able to insist on reasonable requirements.	works, given that a plan, section and description is provided. The function of paragraph 7(2) is to allow for ESPL to determine, at that time, and in consideration of the actual facts of any interface, the requirements for the works. This could well include offset distances where they are reasonable.
That the programme for the carrying out of the approved works details for the grid corridor for the East Park Project are submitted to and agreed with ESPL in order to avoid disruption to the construction and operation of the ESPL Project; (paragraph 5.5.3)	N/A	The Part 1 provisions do not include terms relating to the approval of a programme of works. On the basis that ESPL has told the Applicant that it considers that it will have already constructed its infrastructure by the time the Applicant exercises the Order, the requirement to approve a programme is neither clear nor proportionate. The Part 1 protective provisions clearly provide protection against disruption to access. Paragraph 7(2) explicitly states that ESPL would be able to provide reasonable requirements to ensure access to its apparatus is secured. On this basis, ESPL would be able to ensure that its access to the grid corridor and main panel area is secured. Given that requirement, the reason for approval of a programme is not established as ESPL have the ability to preserve their access at all times through the protective provisions.
That all construction or operational traffic management arrangements within the vicinity of	N/A	It is unclear on what basis ESPL assert that they must have approval of all “construction or operational traffic management arrangements”.

the ESPL Project must be submitted to and approved by ESPL (paragraph 5.5.4)		Construction traffic will be managed through the CTMP, as secured by requirement 8. That plan is to be approved by the local planning authority in consultation with the relevant highway authority. Operational traffic, to the extent relevant, will be managed through the OEMP secured by requirement 9. ESPL has no authority on which to assert control over the use of public highways. The Applicant is equally entitled to use public highways as any other legal person. Management of that use to ensure no planning impact is a matter for local planning authorities and local highway authorities. To the extent that traffic uses private accesses, the Applicant's comments in reply to paragraph 5.5.3 apply.
That in the event of any damage to ESPL's infrastructure, or any interruption in any service provided, the Applicant must: (a) bear and pay the cost reasonably incurred by ESPL in making good such damage or restoring the supply; and (b) indemnify ESPL for all expenses, loss, damages, penalty or costs incurred by ESPL, by reason or in consequence of any such damage or interruption (including for the avoidance of doubt any indirect or consequential loss or loss of profits); (paragraph 5.5.5)	Schedule 13, Part 1, Paragraph 13 sets out the liability of the undertaker. This confirms that in the event of damage to apparatus, or property, or interruption of service, or the supply of goods, 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,	Part 1 meets the demands of ESPL except for the demand that the indemnity includes indirect and consequential loss, or loss of profits. In this regard, Part 1 is not as categorical. It states that the undertaker must make reasonable compensation to that utility undertaker for other expenses, loss, damages or costs. It should be noted that this should not be regarded as specifically excluding indirect or consequential loss, or loss of profits, but only couching the compensation paid to ESPL as being "reasonable". The Applicant considers that this clause adequately protects ESPL's interest by ensuring that compensation is paid to them in the event

		of damage to apparatus or property, interruption of service or supply of goods. The Applicant does not consider that there is any basis on which to assert that including specific wording for the categoric inclusion of indirect or consequential loss is required in order to meet the tests set out in section 127.
Before carrying out any works in the grid connection corridor, the Applicant (or any contractor carrying out such works on its behalf) must put in place a policy of insurance for a level of cover (and subject to such other terms) as is agreed in writing with ESPL (paragraph 5.5.6)	N/A	Part 1 does not include this provision. Provision of insurance for works is provided by undertakers of DCOs on occasions where the status of the utility apparatus is such that should damage occur, it would be imperative that funds exist for the restoration of that apparatus. This is the reason why insurance provisions are found in protective provisions for highways, gas or railway protective provisions. These protective provisions are dealing with an interface for apparatus that inherently has significant risks to public safety and can generate significant concerns should works not be carried out expeditiously. Insurance can also be insisted on where there is a significant risk of pollution and the landowner would want to ensure that there are funds for remediation. In this case, the interaction between ESPL and the Undertaker would be via a cable crossing in the grid connection corridor. It is not the case that insurance needs to be put in place to ensure that there is no serious detriment to ESPL's undertaking in this instance.

		Firstly, ESPL are not the freeholder of that land, whilst there is minimal risk of a pollution event occurring, any such event would be for the undertaker to resolve with the landowner rather than ESPL. Secondly, the category of risk of a cable crossing is of a distinctly different order to that of works under a railway, or highway, or gas pipeline. The risk posed is not one of overbearing public safety, and whilst in the event of damage or severance of supply works to repair should be done as quickly as possible, that damage or severance is highly unlikely to generate a significant public risk such that insurance needs to be in place. Lastly, in revisiting section 127 of the Planning Act 2008, it is important to note that the test is such that consideration of “serious detriment” would only apply if the interest of ESPL is purchased and not replaced, or otherwise if purchased can be replaced on other land. It is unclear to what extent insurance would aid the aim of either of these tests, given the clear controls in the rest of the agreement on approval of works. The Applicant does note that the provision of insurance would represent a more beneficial position for ESPL. Considering this, it should be noted that the Applicant will be maintaining a general third-party liability insurance policy for the project to capture liabilities across the construction phase. ESPL will not have any powers to approve this insurance policy. The insurance policy would, however, be applicable

		in the event of damage to ESPL infrastructure as a result of the Scheme. The insurance policy is confidential and will not be shared in the examination. On the basis of the above, the Applicant does not consider that there is any basis in legislation or policy that would mean that the Applicant must provide insurance to ESPL.
The Applicant must pay all reasonable fees, costs, charges and expenses incurred by ESPL in relation to it carrying out its functions under any of the aforementioned protections, including the reasonable costs incurred by ESPL in engaging and retaining such external experts, consultants and contractors.	N/a	This is not considered to be necessary in order for the Secretary of State to be satisfied that the compulsory acquisition of land (to the extent even relevant to ESPL) would be capable of being exercised without serious detriment to the carrying on of the undertaking. Whilst protective provisions do often include provisions for the payment of reasonable costs in furtherance of the approvals and reviews contained in the provisions, that is entered into routinely on the basis of ensuring that costs from private development are not passed on to the public purse. This is particularly important with public bodies that have clear statutory duties to protect their undertaking. In this instance, ESPL does not have the same level of discretion compared to a private actor. In this case, ESPL is a private body operating for a project and, as such, would be expected to bear the costs of protecting its apparatus, as the extent to which it wishes to do so is entirely in its own commercial discretion. The Applicant does not consider that there is a policy or

		legislative basis to enforce the payment of costs in this instance. However, regardless of the reasons for cost provisions, the Applicant does not consider that a cost provision is necessary in order to satisfy section 127. Part 1 already functions to provide approval rights and set out reasonable restrictions on the exercise of the Order. The fact that ESPL may incur costs in participating and exercising their rights under the protective provisions is not sufficient for a claim of "serious detriment."

5.0 SUMMARY

5.1.1 ESPL states in RR-329 that the Scheme risks “sterilising” ESPL’s project. The above demonstrates that this is an inaccurate representation of the interface between the two projects. Fundamentally, ESPL’s infrastructure is within a dense and congested infrastructure area where multiple actors are seeking to connect to the Eaton Socon Substation. The Applicant does not consider that it has the ability to sever ESPL’s ability to connect to the grid, as the extinguishment of that right would not be required for the authorised development under article 21. The Applicant is seeking the acquisition of rights only. Even if the Applicant were able to extinguish ESPL’s ability to connect to the grid, such an action would come at such a significant compensation cost that it could never reasonably be seen as commercially viable.

5.1.2 Aside from this, ESPL has asked for a number of protections to be placed in the Order. By virtue of ESPL’s recent grant of an electricity licence pursuant to section 6 of the Electricity Act 1989, ESPL is now a statutory undertaker and will benefit from the standard provisions in Schedule 13, Part 1.

5.1.3 The Applicant considers that Part 1 adequately protects ESPL’s undertaking. Not all of ESPL’s requests are captured by Part 1. The Applicant does not consider that all of ESPL’s requests are proportionate to the interface between the projects, and does not consider that they are necessary to ensure that the statutory tests of section 127 of the Planning Act 2008 are met.

5.1.4 Therefore, the Applicant considers that Schedule 13, Part 1 ensures that the Secretary of State can grant development consent authorising the acquisition of a right over ESPL’s land by the creation of a new right over land on the basis that the right can be purchased without serious detriment to the carrying on of the undertaking, or any detriment to the carrying on of the undertaking, in consequence of the acquisition of the right, can be made good by the undertakers by the use of other land belonging to or available for acquisition by them.