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Tween Bridge Solar Farm

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Planning Act 2008
Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009

APFP Regulation 5(2)(b)

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STATUTORY INSTRUMENTS

202[ ] No. 0000

INFRASTRUCTURE PLANNING

The Tween Bridge Solar Farm Order 202[ ]

Made - - - -	*202[ ]*
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 ("the 2008 Act")(**a**) in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(**b**) for an order granting development consent.

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

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having considered the application together with the documents that accompanied it, and the representations made and not withdrawn, has, in accordance with section 74(2)(**d**) of the 2008 Act made a report and recommendation to the Secretary of State.

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

The Secretary of State, having decided the application, has determined to make an Order granting development consent for the development described in the application on terms that in the opinion of the Secretary of State are not materially different from those proposed in the application.

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

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Tween Bridge Solar Farm Order 202[X] and comes into force on [DATE].

Interpretation

2.—(1) In this Order—

"the 1961 Act" means the Land Compensation Act 1961(**l**);

"the 1965 Act" means the Compulsory Purchase Act 1965(**m**);

"the 1980 Act" means the Highways Act 1980(**n**);

(**a**) 2008 c. 29. Section 37 was amended by section 137(5) of, and paragraph 5 of Schedule 13 to, the Localism Act 2011 (c. 20).
(**b**) S.I. 2009/2264, amended by S.I. 2010/439, S.I. 2010/602, S.I. 2012/635, S.I. 2012/2654, S.I. 2012/2732, S.I. 2013/522, S.I. 2013/755, S.I. 2014/469, S.I. 2014/2381, S.I. 2015/377, S.I. 2015/1682, S.I. 2017/572 and S.I. 2018/378.
(**c**) S.I. 2010/103.
(**d**) As amended by paragraphs 29(1) and (3) of Part 1 of Schedule 13 to the Localism Act 2011 (c. 20).
(**e**) S.I. 2017/572.
(**f**) Section 105(2) was amended by paragraph 50 of Schedule 12 to the Localism Act 2011 (c. 20).
(**g**) As amended by paragraph 55 of Part 1 of Schedule 13 to the Localism Act 2011.
(**h**) A amended by section 160 of the Housing and Planning Act 2016 (c. 22) and section 43 of the Wales Act 2017 (c. 4).
(**i**) As amended by section 140 and paragraph 60 of Part 1 of Schedule 13 to the Localism Act 2011.
(**j**) As amended by paragraph 62 of Part 1 of Schedule 13 to the Localism Act 2011.
(**k**) As amended by paragraph 62 of Part 1 of Schedule 13 to the Localism Act 2011.
(**l**) 1961 c. 33.
(**m**) 1965 c. 56.
(**n**) 1980 c. 66.

"the 1981 Act" means the Compulsory Purchase (Vesting Declarations) Act 1981(**a**);

"the 1984 Act" means the Road Traffic Regulation Act 1984(**b**);

"the 1989 Act" means the Electricity Act 1989(**c**);

"the 1990 Act" means the Town and Country Planning Act 1990(**d**);

"the 1991 Act" means the New Roads and Street Works Act 1991(**e**);

"the 2008 Act" means the Planning Act 2008(**f**);

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

"apparatus" has the same meaning as in section 105(1) (minor definitions) of the 1991 Act except that, unless otherwise provided, it further includes pipelines (and parts of them), aerial markers, cathodic protection test posts, field boundary markers, transformer rectifier kiosks, electricity cables, telecommunications equipment and electricity cabinets;

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

"book of reference" means the document of that name identified in the table at Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the book of reference for the purposes of this Order;

"building" includes any structure or erection or any part of a building, structure or erection;

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

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

"date of final commissioning" means in respect of each phase of the authorised development approved under requirement 3 of Part 1 of Schedule 2 (requirements) the date on which each phase of the authorised development commences operation by generating electricity on a commercial basis but excluding the generation of electricity during commissioning and testing;

"design approach document appendix A: parameters document" means the document of that name identified in the table at Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the design approach document appendix A: parameters document for the purposes of this Order;

"electrical cables" means—

(a) cables of differing types and voltages installed for the purposes of conducting electricity, auxiliary cables, cables connecting to direct current (DC) boxes, earthing cables and optical fibre cables; and

(b) works connected with cable laying including excavations, storage of excavated material, jointing pits, hardstanding adjoining the jointing pits, combiner boxes, fibre bays, cable ducts, cable protections, joint protection, manholes, kiosks, marker posts, underground cable marker, tiles and tape, send and receive pits for horizontal directional drilling, trenching, lighting, and a pit or container to capture fluids associated with drilling;

"electronic transmission" means a communication transmitted—

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

(**a**) 1981 c. 66.
(**b**) 1984 c. 27.
(**c**) 1989 c. 29.
(**d**) 1990 c. 8.
(**e**) 1991 c. 22. Section 48 (3A) was inserted by section 124 of the Local Transport Act 2008 (c. 26). Sections 78(4), 80(4) and 83(4) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).
(**f**) 2008 c. 29.

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

"environmental statement" means the document of that name identified in Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the environmental statement for the purposes of this Order;

"footpath" and "footway" have the same meaning as in the 1980 Act(**a**);

"highway" and "highway authority" have the same meaning as the 1980 Act(**b**);

"land plans" means the plans of that name identified in the table at Schedule 12 (documents and plans to be certified) and which are certified by the Secretary of State as the land plans for the purposes of this Order;

"the landscape and visual mitigation strategy" means the document comprising Figure 6.4 of the environmental statement with document reference number 6.4.6.4;

"maintain" includes inspect, repair, adjust, alter, remove, refurbish, reconstruct, replace and improve any part of, but not remove, reconstruct or replace the whole of, the authorised development and "maintenance" and "maintaining" are to be construed accordingly;

"National Highways" means National Highways Limited (company number 09346363), whose registered office is at Three Snowhill, Snow Hill, Queensway, Birmingham, B4 6GA;

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

"NGET substation" means a 400kV substation to be designed, constructed and operated by NGET connecting the electricity generated by the authorised development to the National Electricity Transmission System and which does not form part of the authorised development;

"Order land" means the land which is within the Order limits and is described in the book of reference;

"Order limits" means the limits shown on the land plans and works plans within which the authorised development may be carried out;

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

"permit scheme" means the Traffic Management (Doncaster Borough Council) Permit Scheme Order 2019, or any subsequent Permit Scheme Order made by the City of Doncaster Council to vary or replace that Order under Part 3 (permit schemes) of the Traffic Management Act 2004, as applicable for the location of the relevant works;

"permitted preliminary works" means all or any of—

(a) pre-construction ecological mitigation (including advanced planting to allow for the early establishment of protective screening);

(b) environmental surveys and monitoring (including infiltration testing), geotechnical surveys, intrusive archaeological surveys (including trenching) and other investigations for the purpose of assessing ground conditions (including the making of boreholes);

(c) removal of plant and machinery;

(d) above ground site preparation for temporary facilities for the use of contractors;

(e) remedial work in respect of any contamination or other adverse ground conditions;

(f) diversion and laying of apparatus;

(g) the provision of temporary means of enclosure and site security for construction;

(h) the temporary display of site notices or advertisements; and

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(**a**) "footpath" and "footway" are defined in section 329(1).
(**b**) "highway" is defined in section 328(1). For "highway authority" see section 1.
(**c**) 1981 c. 67.

(i) site clearance (including vegetation removal and demolition of existing buildings and structures);

"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 plans;

"relevant planning authority" means as regards the operation or enforcement of any provision of this Order or any requirements the planning authority within whose administrative boundary that part of the authorised development relevant to the operation or enforcement of the provision or requirement in question is situated;

"requirements" means those matters set out in Schedule 2 (requirements) and "requirement" means any one of these requirements;

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

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

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

"street works" means the works listed in article 11(1) (street works);

"street works, access and public rights of way plans" means the plans of that name identified in the table at Schedule 12 (documents and plans to be certified) and which are certified by the Secretary of State as the street works, access and public rights of way plans for the purposes of this Order;

"subsidiary" has the same meaning as in section 1159 (meaning of "subsidiary" etc) of the Companies Act 2006(**c**);

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

"trees and hedgerows to be removed or managed plan" means the plan of that name identified in the table at Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the trees and hedgerows to be removed or managed plan for the purposes of this Order;

"undertaker" means RWE Renewables UK Solar and Storage Limited (company number 14539260) whose registered address is Windmill Hill Business Park, Whitehill Way, Swindon, Wiltshire SN5 6PB;

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

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

"works plans" means the plans of that name identified in the table at Schedule 12 (documents and plans to be certified) and which are certified by the Secretary of State as the works plans for the purposes of this Order.

(2) References in this Order to rights over land include references to rights to do or 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

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(**a**) 2003 c. 21.

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

(**c**) 2006 c. 46.

(**d**) Section 121A was inserted by paragraph 70 of Schedule 8 to the 1991 Act, and subsequently amended by section 27 of the Greater London Authority Act 1999 (c. 29); section 1(6) of and paragraphs 70 and 95 o Schedule 1 to the Infrastructure Act 2015; S.I. 1999/1920 and S.I. 2001/1400.

acquired under this Order or over which rights are created and acquired under this Order or is otherwise comprised in this Order.

(3) In this Order, reference to the purposes of the authorised development, or in connection with the authorised development, includes the construction, maintenance, operation and decommissioning of the authorised development.

(4) All distances, directions, capacities and lengths referred to in this Order are approximate and distances between lines or points on a numbered work comprised in the authorised development and shown on the works plans and street works, access and public rights of way plans are to be taken to be measured along that work.

(5) References in this Order to numbered works are references to the works comprising the authorised development as numbered in Schedule 1 (authorised development) and shown on the works plans and a reference in this Order to a work designated by a number, or by a combination of letters and numbers, is a reference to the work so designated in that Schedule and a reference to "Work No. 1" or "numbered work 1" means numbered works 1A to 1E inclusive and the same principle applies to such numbered works that contain letters.

(6) In this Order, the expression "includes" is to be construed without limitation unless the contrary intention appears.

(7) In this Order, references to any statutory body or any registered company listed in article 8 (consent to transfer benefit of Order) includes that body's or that company's successor bodies.

(8) 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 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.

Operation of generating station

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

(2) Except as set out in this Order, this article does not relieve the undertaker of any requirement to obtain any permit or licence under any other legislation that may be required from time to time to authorise the operation of an electricity generating station.

Power to maintain the authorised development

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

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

Maintenance of drainage works

6.—(1) Except where otherwise expressly provided for in this Order and subject to the provisions of Schedule 14 (protective provisions), nothing in this Order, or the construction, maintenance,

operation or decommissioning of the authorised development under it, affects any responsibility for the maintenance of any works connected with the drainage of land, whether that responsibility is imposed or allocated by or under any enactment, or otherwise, unless otherwise agreed in writing between the undertaker and the person having such responsibility.

(2) In this article "drainage" has the same meaning as in section 72 (interpretation) of the Land Drainage Act 1991(**a**).

Benefit of this Order

7. Subject to article 8 (consent to transfer benefit of Order), the provisions of this Order have effect solely for the benefit of the undertaker.

Consent to transfer benefit of Order

8.—(1) Subject to paragraph (3), the undertaker may-

(a) transfer to another person ("the transferee") any or all of the benefit of the provisions of this Order (including any part of the authorised development) and such related statutory rights as may be agreed between the undertaker and the transferee; or

(b) grant to another person ("the lessee") for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order (including any part of the authorised development) 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 (9), 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 under 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;

(b) the transferee or lessee is a holding company or subsidiary of the undertaker;

(c) the time limits for claims for compensation in respect of the acquisition of land or effects upon land under this Order have elapsed and—

(i) no such claims have been made;

(ii) any such claim has been made and has been compromised or withdrawn;

(iii) compensation has been paid in full and final settlement of any such claim;

(iv) payment of compensation into court has taken place in lieu of settlement of any such claim; or

(v) it has been determined by a tribunal or court of competent jurisdiction in respect of any such claim that no compensation is payable

(4) Where the consent of the Secretary of State is not required, the undertaker must notify the Secretary of State in writing before transferring or granting all or any part of the benefit of the provisions of this Order and such statutory rights referred to in paragraph (1).

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

(a) state—

(i) the name and contact details of the person to whom the benefit of the powers will be transferred or granted;

(ii) subject to paragraph (6), the date on which the transfer will take effect;

(iii) the powers to be transferred or granted; and

(**a**) 1991 c. 59. The definition of "drainage" was substituted by paragraphs 191 and 194 of Schedule 22 to the Environment Act 1995 (c. 25).

(iv) pursuant to paragraph (9), the restrictions, liabilities and obligations that will apply to the person exercising the powers transferred or granted; and

(b) where relevant, be accompanied by a plan showing the works or areas to which the transfer or grant relates.

(6) The date specified under sub-paragraph (5)(a)(ii)) must not be earlier than the expiry of 14 days from the date of the receipt of the notification by the Secretary of State.

(7) The notification given under paragraph (4) 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) A copy of any decision by the Secretary of State to approve a transfer or grant under paragraph (3) or the notification of a transfer or grant issued under paragraph (4) shall be provided by the undertaker to the relevant planning authority as soon as reasonably practicable following issuance.

(9) 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.

Application and modification of statutory provisions

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

(a) sections 23 (prohibition of obstructions, etc. in watercourses)(**a**), 30 (authorisation of drainage works in connection with a ditch)(**b**) and 32 (variation of awards)(**c**) of the Land Drainage Act 1991;

(b) the provisions of any byelaws made under section 66 (powers to make byelaws)(**d**) of the Land Drainage Act 1991;

(c) 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**);

(d) the provisions of the Neighbourhood Planning Act 2017(**f**) insofar as they relate to temporary possession of land under articles 33 (temporary use of land for constructing the authorised development) and 34 (temporary use of land for maintaining the authorised development) of this Order;

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

(**b**) Section 30 was amended by S.I. 2013/1036.

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

(**d**) Section 66 was amended by paragraphs 25 and 38 of Schedule 1 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.

(e) regulation 12 (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016(**a**) in respect of a flood risk activity only;

(f) regulation 13 (prohibited activities) of the Town and Country Planning (Tree Preservation) (England) Regulations 2012; and

(g) 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 do not impact on the operation or maintenance of the Stainforth and Keadby Canal unless such an impact is authorised by the provisions of Schedule 14.

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

(3) Notwithstanding the provisions of section 208 (liability) of the 2008 Act, for the purposes of regulation 6 (meaning of "development") of the Community Infrastructure Levey Regulations 2010(**c**) any building comprised in the authorised development is deemed to be—

(a) a building into which people do not normally go; or

(b) a building into which people only go intermittently for the purpose of inspecting or maintaining fixed plant or machinery.

Defence to proceedings in respect of statutory nuisance

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

(a) the defendant shows that the nuisance—

(i) relates to premises used by the undertaker for the purposes of or in connection with the authorised development and that the nuisance is attributable to the purposes of the authorised development in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) of the Control of Pollution Act 1974(**e**); or

(ii) is a consequence of the purposes of the authorised development and that it cannot reasonably be avoided; or

(b) the defendant shows that the nuisance is a consequence of the use of the authorised development and that it cannot be reasonably be avoided.

(2) Section 61(9) (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 purposes of, or in connection with, the authorised development.

(**a**) S.I. 2016/1154. Regulation 12 was amended by S.I. 2018/110.
(**b**) 1967 c. 10.
(**c**) S.I. 2010/948, amended by S.I. 2011/987. There are other amending instruments but none are relevant to this Order.
(**d**) 1990 c. 43.
(**e**) 1974 c. 40.

PART 3

STREETS

Street Works

11.—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets specified in Schedule 4 (streets subject to street works) and may—

(a) break up or open the street, or any sewer, drain or tunnel under it;

(b) drill, tunnel or bore under the street;

(c) place and keep apparatus under the street;

(d) maintain apparatus under the street, change its position or remove it;

(e) repair, replace or otherwise alter the surface or structure of the street or any culvert under the street; and

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

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

(3) Except to the extent that they do not apply by virtue of article 13(6) of this Order or are disapplied or modified by the permit scheme, where the undertaker is not the street authority, the provisions of sections 54 (notice of certain works) to 106 (index of defined expressions) of the 1991 Act apply to any street works carried out under paragraph (1).

Application of permit scheme

12.—(1) The permit scheme applies with the modifications set out in this article to street works carried out under the powers conferred by article 11 (street works), article 14 (power to alter layout, etc., of streets) and article 17 (access to works) of this Order.

(2) For the purposes of this Order—

(a) a permit may not be refused or granted subject to conditions which relate to the imposition of moratoria;

(b) a permit may not be granted subject to conditions where compliance with those conditions would constitute a breach of this Order or where the undertaker would be unable to comply with those conditions through the exercise of the powers conferred by this Order;

(c) a permit may not be refused where the proposed reason for refusal is the inability to impose a condition where that condition would not comply with sub-paragraph (b);

(d) a permit may not be refused on grounds relating to the proposed location of any part of the authorised development; and

(e) where a provisional advance authorisation has been granted to the undertaker in advance of the grant of a permit in relation to the construction of the authorised development, the highway authority may not grant a permit for any other works in the location during the time period to which that provisional advance authorisation relates save that nothing will restrict the ability of the highway authority to grant a permit for immediate works.

(3) Irrespective of anything which is stated to the contrary within the permit scheme, where the undertaker submits an application for a permit in relation to works to streets carried out under article 11 (street works), article 14 (power to alter etc. layout of streets) or article 17 (access to works) of this Order subject to proposed conditions and the highway authority wishes for different conditions to be imposed on the permit, the highway authority must seek to reach agreement with the undertaker on the conditions subject to which the permit is to be granted and provide alternative permit conditions, as appropriate, to the undertaker within 10 working days following

the date on which the application for the permit is made by the undertaker and must not refuse an application for a permit before the end of the period which is five working days following the date on which the alternative permit conditions are provided to the undertaker.

(4) Where the undertaker confirms its agreement to the alternative permit conditions provided by the relevant highway authority pursuant to paragraph (3) before the expiry of five working days following the date on which any such alternative permit conditions are provided to the undertaker, the relevant highway authority must grant the permit subject to those conditions.

(5) Any alternative permit conditions provided by the highway authority in accordance with paragraph (3) must comply with paragraph (2).

(6) Without restricting the undertaker's recourse to any alternative appeal mechanism which may be available under the permit scheme or otherwise, the undertaker may appeal any decision to refuse to grant a permit or to grant a permit subject to conditions pursuant to the permit scheme in accordance with the mechanism set out in Schedule 2 Part 2 (Procedure for discharge of requirements) of this Order in the same way as if it were a requirement.

(7) In this article "immediate works" means emergency works as that term is defined in section 52 (emergency works) of the 1991 Act and urgent works as that term is defined in regulation 3(1) of the Street Works (Registers, Notices, Directions and Designations) (England) Regulations 2007(**a**).

(8) In this article "moratoria" means restrictions imposed under section 58 (restrictions on works following substantial road works) or section 58A (restrictions on works following substantial street works) of the 1991 Act (as modified by the permit scheme).

Application of the 1991 Act

13.—(1) Works executed under this Order in relation to a highway which consists of or includes a carriageway are to be treated for the purposes of Part 3 (street works in England and Wales) of the 1991 Act as major highway works if—

(a) they are of a description mentioned in any of paragraphs (a), (c) to (e), (g) and (h) of section 86(3) (highway authorities, highways and related works) of that Act; or

(b) they are works which, had they been executed by the highway authority, might have been carried out in exercise of the powers conferred by section 64 (dual carriageways and roundabouts) of the 1980 Act or section 184 (vehicle crossings over footways and verges) of that Act.

(2) In Part (3) (street works in England and Wales) 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), or any equivalent or modified provision in the permit scheme (which, together with other provisions of that Act, apply in relation to the carrying out of street works), and any regulations made or code of practice issued or approved under those provisions apply (with all necessary modifications) in relation to the temporary closure, temporary alteration or temporary diversion of a street by the undertaker under article 16 (temporary closure or restriction of streets and public rights of way), whether or not the carrying out of the works or the closure, alteration or diversion constitutes street works within the meaning of that Act.

(4) The provisions of the 1991 Act(**b**) are—

(a) subject to paragraph (5), section 54 (advance notice of certain works);

(b) subject to paragraph (5), section 55 (notice of starting date of works);

(c) section 57 (notice of emergency works);

(d) section 59 (general duty of street authority to co-ordinate works);

(**a**) S.I. 2007/1951.
(**b**) Sections 55, 57, 60, 68 and 69 were amended by the Traffic Management Act 2004 (c. 18).

(e) section 60 (general duty of undertakers to co-operate);

(f) section 68 (facilities to be afforded to street authority);

(g) section 69 (works likely to affect other apparatus in the street);

(h) section 76 (liability for cost of temporary traffic regulation);

(i) section 77 (liability for cost of use of alternative route; and

(j) all provisions of that Act that apply for the purposes of the provisions referred to in sub-paragraphs (a) to (j).

(5) Sections 54 and 55 of the 1991 Act (or any equivalent or modified provision in the permit scheme) as applied by paragraph (4) have effect as if references in section 57 of that Act to emergency works included a reference to a closure, alteration or diversion (as the case may be) required in a case of emergency.

(6) The following provisions of the 1991 Act (including any equivalent or modified provision in the permit scheme) do not apply in relation to any works executed under the powers conferred by this Order—

(a) section 56 (power to give directions as to timing of street works)(**a**);

(b) section 56A (power to give directions as to placing of apparatus)(**b**);

(c) section 58 (restriction on works following substantial road works)(**c**);

(d) section 58A restriction on works following substantial road works)(**d**);

(e) section 73A (power to require undertaker to re-surface street)(**e**);

(f) section 73B (power to specify timing etc. of re-surfacing)(**f**);

(g) section 73C (materials, workmanship and standard of re-surfacing)(**g**);

(h) section 78A (contributions to costs of re-surfacing by undertaker)(**h**); and

(i) schedule 3A (restriction on works following substantial street works)(**i**).

Power to alter layout, etc., of streets

14.—(1) The undertaker may for the purposes of, or in connection with, the authorised development, alter the layout of or carry out any works in, the streets specified in columns (1) and (2) of the table in Schedule 5 (alteration of streets) 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, permanently or temporarily 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 or verge;

(c) make and maintain passing places; and

(d) alter, remove, replace, install and relocate any street furniture, including bollards, lighting columns, road signs and chevron signs.

(**a**) Section 56 was amended by section 43 of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).
(**b**) Section 56A was inserted by section 44 of the Traffic Management Act 2004
(**c**) Section 58 was amended by section 51 of, and Schedule 1 to, the Traffic Management Act 2004
(**d**) Section 58A was amended by section 52 of the Traffic Management Act 2004.
(**e**) Section 73A was inserted by section 55 of the Traffic Management Act 2004.
(**f**) Section 73B was inserted by section 55 of the Traffic Management Act 2004.
(**g**) Section 73C was inserted by section 55 of the Traffic Management Act 2004.
(**h**) Section 78A was inserted by section 57 of the Traffic Management Act 2004.
(**i**) Schedule 3A was inserted by section 52(2) of and Schedule 4 to, the Traffic Management Act 2004.

(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, which may be given subject to reasonable conditions.

(5) If a street authority which receives an application for consent under paragraph (4) fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application was received, it is deemed to have granted consent.

(6) An application for consent under paragraph (4) must include a statement that the provisions of paragraph (5) apply to that application.

(7) If an application for consent under paragraph (4) does not include the statement required under paragraph (6), then the provisions of paragraph (5) will not apply to that application.

(8) An application for consent under paragraph (4) is deemed advance notice under section 54 of the 1991 Act (or provisional advance authorisation for the purposes of the permit scheme) where advance notice or provisional advance authorisation is required.

(9) 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

15.—(1) The permanent alterations to any street pursuant to article 14(1) or (2) (power to alter layout, etc., of streets) must be completed to the reasonable satisfaction of the street authority and, unless otherwise agreed by the street authority, the alterations must be maintained by and at the expense of the undertaker for a period of 12 months from their completion and from the expiry of that period by and at the expense of the street authority.

(2) Subject to paragraph (3), any temporary alterations to any street pursuant to article 14(2) must be completed to the reasonable satisfaction of the street authority and the temporary alterations must be maintained during the period required by and at the expense of the undertaker.

(3) Those restoration works carried out pursuant to article 14(3) must be completed to the reasonable satisfaction of the street authority and must be maintained by the undertaker for a period of 12 months from their completion and from the expiry of that period by and at the expense of the street authority.

(4) In any action against the undertaker in respect of loss or damage resulting from any failure by it to maintain a street under this article, it is a defence (without prejudice to any other defence or the application of the law relating to contributory negligence) to prove that the undertaker had taken such care as in all the circumstances was reasonably required to secure that the part of the street to which the action relates was not dangerous to traffic.

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

(a) the character of the street including the traffic which was reasonably to be expected to use it;

(b) the standard of maintenance appropriate for a street of that character and used by such traffic;

(c) the state of repair in which a reasonable person would have expected to find the street;

(d) whether the undertaker knew, or could reasonably have been expected to know, that the condition of the part of the street to which the action relates was likely to cause danger to users of the street; and

(e) where the undertaker could not reasonably have been expected to repair that part of the street before the cause of action arose, what warning notices of its condition had been displayed,

but for the purposes of such a defence it is not relevant that the undertaker had arranged for a competent person to carry out or supervise the maintenance of that part of the street to which the

action relates unless it is also proved that the undertaker had given that person proper instructions with regard to the maintenance of the street and that those instructions had been carried out.

(6) Paragraphs (2) to (5) do not apply where the undertaker is the street authority for a street in which the works are being carried out.

Temporary closure or restriction of streets and public rights of way

16.—(1) The undertaker may temporarily close, prohibit the use of, restrict the use of, authorise the use of, alter or divert the use by vehicles, or classes of vehicles, or pedestrians of—

(a) the streets set out in columns (1) and (2) of the table in Part 1 (streets to be temporarily closed or restricted) of Schedule 6 (streets and public rights of way to be temporarily closed or restricted) to the extent specified in column (3) of that table; and

(b) the public rights of way set out in columns (1) and (2) of the table in Part 2 (public rights of way to be temporarily closed or restricted) of Schedule 6 to the extent specified in column (3) of that table.

(2) Without prejudice to the specific powers conferred by paragraph (1) and subject to paragraph (5), the undertaker, during and for the purposes of the authorised development, may temporarily close, alter, divert, prohibit the use of, authorise the use of or restrict the use of 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 for the purpose of crossing only the use of motor vehicles on classes of public rights of way where, notwithstanding the provisions of this article, there is otherwise no public right to use motor vehicles; and

(c) subject to paragraph (4), prevent all persons from passing along the street or public right of way.

(3) The undertaker may use any street or public right of way temporarily closed, altered, diverted, prohibited or restricted under the powers conferred by this article and within the Order limits as a temporary working site.

(4) 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 closure, prohibition, restriction, alteration or diversion of a street or public right of way under this article if there would otherwise be no such access.

(5) The undertaker must not temporarily close, prohibit the use of, restrict the use of, authorise the use of, alter or divert—

(a) any street or public right of way specified in paragraph (1) without first consulting the street authority during a period of not less than 28 days; and

(b) any other street or public right of way without the consent of the street authority, such consent not to be unreasonably withheld or delayed but which may be given subject to reasonable conditions.

(6) 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.

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

(8) The undertaker, for the purposes of, or in connection with, the authorised development, may temporarily close, prohibit the use of, authorise the use of, alter or divert any public right of way which is added to the definitive map and statement (within the meaning of the Wildlife and Countryside Act 1981) on or after 12 October 2026~~[insert date]~~.

(9) If a street authority which receives a valid application for consent under sub-paragraph (5)(b) fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application was received, it is deemed to have granted consent.

(10) An application for consent under sub-paragraph 5(b) must include a statement that the provisions of paragraph (9) apply to that application.

(11) If an application for consent under sub-paragraph (5)(b) does not include the statement required under paragraph (10), then the provisions of sub-paragraph (5)(b) will not apply to that application.

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

Access to works

17.—(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 approximate locations specified in Schedule 7 (access to works); and

(b) with the approval of the highway authority, which may be given subject to reasonable conditions, 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.

(2) If the highway authority which receives an application for consent under sub-paragraph (1)(b) fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application was received, it is deemed to have granted consent.

(3) An application for consent under sub-paragraph (1)(b) must include a statement that the provisions of paragraph (2) apply to that application.

(4) If an application for consent under sub-paragraph (1)(b) does not include the statement required under paragraph (3), then the provisions of sub-paragraph (1)(b) will not apply to that application.

Use of private roads

18.—(1) The undertaker may use any private road within the Order limits for the passage of persons or vehicles (with or without materials, plant and machinery) for the purposes of, or in connection with, the authorised development.

(2) The undertaker must compensate the person liable for the repair of a road to which paragraph (1) applies for any loss or damage which that person may suffer by reason of the exercise of the power conferred by paragraph (1).

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

Traffic regulation measures

19.—(1) Subject to the provisions of this article the undertaker may for the purposes of the authorised development, temporarily place traffic signs and signals on any road within the Order limits or which gives access to such a road, or on any road in connection with an instrument made under this article or any other road as reasonably required for conveying information to traffic, 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 the undertaker may make temporary provision for the purposes 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;

(**a**) S.I. 2016/362.

(c) as to prescribed routes for vehicular traffic or the direction or priority of vehicular traffic on any road;

(d) permitting, prohibiting or restricting the use by vehicular traffic or non-vehicular traffic of any road; and

(e) suspending or amending in whole or in part any order made, or having effect as if made, under the 1984 Act.

(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 Amendment) Regulations 2011(**a**) when used in accordance with regulation 3(5) of those regulations.

(4) Before exercising the power conferred by paragraphs (1) or (2) the undertaker must—

(a) consult the chief officer of police in whose area the road is situated; and

(b) obtain the written consent of the traffic authority which may be given subject to reasonable conditions.

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

(a) given not less than 4 weeks' notice in writing of its intention so to do so to the chief officer of police in whose area the road is situated and to the traffic authority; and

(b) not less than 7 days before the provision is to take effect, published the undertaker's intention to make the provision in one or more newspapers circulating in the area in which any road to which the provision relates is situated.

(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 by 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 savings and exemptions to which the provision is subject; and

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

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

(9) An application for consent under sub-paragraph (4)(b) must include a statement that the provisions of paragraph (8) apply to that application.

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

(11) A copy of the instrument referred to in paragraph (7)(a) must be served on the traffic authority as soon as reasonably practicable after being made.

(**a**) S.I. 2011/935
(**b**) 2004 c. 18.

PART 4

SUPPLEMENTAL POWERS

Discharge of water

20.—(1) Subject to paragraphs (3), (4) and (7) the undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

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

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

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

(a) in accordance with plans approved by the person to whom the sewer or drain belongs, but 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) Where the undertaker discharges water into, or makes any opening into, a watercourse, public sewer or drain belonging to or under the control of the drainage authority (as defined in Part 3 of Schedule 14 (protective provisions)), the provisions of Part 3 of Schedule 14 apply in substitution for the provisions of paragraphs (3) and (4).

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

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

(8) In this article—

(a) "public sewer or drain" means a sewer or drain which belongs to Homes England, the Environment Agency, an internal drainage board, a joint planning board, a local authority, a National Park Authority, a sewerage undertaker or an urban development corporation; and

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

(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 sub-paragraph (4)(a) that person is deemed to have granted consent or given approval, as the case may be.

(10) The Environment Agency is deemed to have granted consent under paragraph (3) where the watercourse, public sewer or drain belongs to the Environment Agency and an environmental permit under regulation 12(1)(b) (requirement for an environmental permit) of the 2016 Regulations has been granted in respect of the discharge.

(11) A sewerage undertaker is deemed to have granted consent to the discharge of trade effluent into a public sewer under paragraph (3) where the public sewer belongs to the sewerage

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(**a**) 1991 c. 56.
(**b**) S.I. 2016/1154.

undertaker and consent under section 118 (consent required for discharge of trade effluent into public sewer) of the Water Industry Act 1991 has been granted in respect of the discharge.

Protective works to buildings

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

(2) Protective works may be carried out—

(a) at any time before or during the construction or decommissioning 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 and place on, leave on and remove from the land and building any apparatus and equipment for use in connection with the survey.

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

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

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

(5) Before exercising—

(a) a power under paragraph (1) to carry out protective works to a building;

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

(c) a power under sub-paragraph (4)(a) to enter a building and land within its curtilage; or

(d) a power under sub-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 power and, in a case falling within sub-paragraph (a), (c) or (d), specifying the protective works proposed to be carried out.

(6) Where a notice is served under sub-paragraph (5)(a), (5)(c) or (5)(d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question 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 45 (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 those 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 for that part of the authorised development in the vicinity of the building it appears that the protective works are inadequate to protect the building or structure against damage caused by the construction, use or decommissioning of that part of the authorised development,

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

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

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

(11) 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.

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

(a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building in connection to the authorised development; and

(b) any works the purpose of which is to remedy any damage which has been caused to the building by the construction, operation, maintenance or decommissioning of the authorised development.

Authority to survey and investigate the land

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

(a) survey or investigate the land (including any watercourses, groundwater, static water bodies or vegetation on the land);

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

(c) without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on such land including the making of trial trenches, excavations, or trial holes in such positions on the land for such purposes; and

(d) place on, leave on and remove from the land apparatus and welfare facilities for use in connection with the survey and investigation of land and making of trial holes, excavations, boreholes and trial trenches.

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

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

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

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

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

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

(b) in a private street without the consent of the street authority,

but such consent must not be unreasonably withheld or delayed.

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

(b) under sub-paragraph (4)(b) in the case of a street 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

23.—(1) The undertaker may—

(a) acquire compulsorily so much of the Order land as is required for the authorised development or to facilitate, or as is incidental, to it; and

(b) use any land so acquired for the purpose authorised by this Order or for any other purposes in connection with or ancillary to the undertaking.

(2) This article is subject to article 25 (time limit for exercise of authority to acquire land compulsorily), article 26(2) (compulsory acquisition of rights and imposition of restrictive covenants), article 27 (private rights), article 29 (acquisition of subsoil only), article 30 (power to override easements and other rights), article 32 (rights under or over streets), article 33 (temporary use of land for constructing the authorised development), article 35 (statutory undertakers) and article 46 and Schedule 14 (protective provisions).

(3) The power to compulsorily acquire land conferred under paragraph (1) does not apply to any part of the Order land shown on the land plans as plot numbers 1/A, 1/B, 1/C, 1/D, 1/E, 2/A, 2/B, 3/A, 3/B, 3/C, 3/D, 3/E, 10/21 and 11/25.

Compulsory acquisition of land - incorporation of the mineral code

24.—(1) Parts 2 and 3 of Schedule 2 (minerals) to the Acquisition of Land Act 1981(**a**) are incorporated in this Order subject to the modification that—

(a) sub-paragraph 8(3) is not incorporated;

(b) for the "acquiring authority" substitute "the undertaker";

(c) for "undertaking" substitute "authorised development"; and

(d) for "compulsory purchase order" substitute "this Order".

Time limit for exercise of authority to acquire land compulsorily

25.—(1) After the end of the period of eight years beginning on the day on which this Order comes into force (and subject to article 31 (modification of Part 1 of the Compulsory Purchase Act 1965) and article 27 (Application of the 1981 Act)—

(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

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(**a**) 1981 c. 67.

(b) no declaration is to be executed under section 4 (execution of declaration) of the 1981 Act as applied by article 28 (application of the 1981 Act).

(2) The authority conferred by article 33 (temporary use of land for constructing the authorised development) ceases at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

(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 eight years beginning on the day on which this Order is made.

Compulsory acquisition of rights and imposition of restrictive covenants

26.—(1) Subject to paragraphs (2) to (4) and article 33 (temporary use of land for constructing the authorised development), the undertaker may acquire compulsorily such rights over the Order land or impose such restrictive covenants over the Order land including rights and restrictive covenants for the benefit of a statutory undertaker as may be required for any purpose for which that land may be acquired under article 23 (compulsory acquisition of land), by creating them as well as by acquiring rights and the benefit of restrictions already in existence.

(2) Subject to the provisions of this article, article 27 (private rights) and article 35 (statutory undertakers), in the case of the Order land specified in column (1) of the table in Schedule 8 (land in which only new rights etc. may be acquired) the undertaker's powers of compulsory acquisition under article 23(1) and the creation of rights under paragraph (1) are limited to the acquisition of such new rights and the imposition of restrictive covenants for the purpose specified in relation to that land in column (2) of the table in 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 sub-paragraph 5(8) of Schedule 9 (modification of compensation and compulsory purchase enactments for the creation of new rights and imposition of new restrictive covenants)), where the undertaker creates or acquires an existing right over land or the benefit of a restrictive covenant under paragraph (1) or (2), the undertaker is not required to acquire a greater interest in that land.

(4) Schedule 9 (modification of compensation and compulsory purchase enactments for the creation of new rights and imposition of new restrictive covenants) has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of a restrictive covenant.

(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.

Private Rights

27.—(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, by agreement;

(b) on the date of entry on the land by the undertaker under section 11(1) (power of entry) of the 1965 Act; or

(c) through the grant of a lease of the land,

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 26 (compulsory acquisition of rights and imposition of restrictive covenants) cease to have effect in so far as their continuance would be inconsistent with the exercise of the right or compliance with the restrictive covenant—

(a) as from the date of the acquisition of the right or imposition of the restrictive covenant by the undertaker (whether the right is acquired or the restrictive covenant is imposed 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 and restrictive covenants over land owned by the undertaker that are within the Order land are extinguished at the start of any activity authorised by this Order which interferes with or breaches those rights.

(4) 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.

(5) 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.

(6) 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 35 (statutory undertakers) applies.

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

(a) any notice given by the undertaker before—

(i) the completion of the acquisition of the land or the acquisition of rights 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.

(8) If an agreement referred to in sub-paragraph (7)(b)—

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

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

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.

(9) 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

28.—(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(1) (application of the Act), omit the words "in themselves".

(4) 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."

(5) In section 4 (execution of declaration), for subsection (1) substitute—

"(1) The acquiring authority may execute in respect of any of the land which they are authorised to acquire by the compulsory purchase order a declaration in the prescribed form vesting the land in themselves, or in the case of land or a right that they are authorised to acquire for the benefit of a third party, in the third party in question, from the end of such period as may be specified in the declaration (not being less than 3 months from the date on which the service of notices required by section 6 is completed).".

(6) In section 5(2) (earliest date for execution of declaration) omit the words from "and this subsection" to the end.

(7) In section 5B(1) (extension of time limit during challenge), in subsection (1), 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".

(8) In section 6 (notices after extension of declaration), in subsection (1)(b) for "section 15 of, or paragraph 6 of Schedule 1 to, the Acquisition of Land Act 1981" substitute "section 134 (notice of authorisation of compulsory acquisition) of the Planning Act 2008".

(9) 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)".

(10) In section 8 (vesting and right to enter and take possession), after subsection (3), insert—

"(4) In this section references to the acquiring authority include any third party referred to in section 4(1).".

(11) In section 10 (acquiring authority's liability arising on vesting of the land), in subsection (1), after "vested in an acquiring authority" insert "or a third party".

(12) In section 11 (recovery of compensation overpaid), for subsection (1) substitute—

"(1) This section applies where after the execution of a general vesting declaration a person ("the claimant") claims compensation in respect of the acquisition of an interest in land by virtue of the declaration, and the acquiring authority pay compensation in respect of that interest.".

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

"(2) But see article 29(3) (acquisition of subsoil only) of the Tween Bridge Solar Farm Order 202[], which excludes the acquisition of subsoil only from this Schedule.".

(14) 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 31 (modification of Part 1 of the Compulsory Purchase Act 1965)) to the compulsory acquisition of land under this Order.

Acquisition of subsoil only

29.—(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 23 (compulsory acquisition of land) or article 26 (compulsory acquisition of rights and imposition of restrictive covenants) 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 as modified by Schedule 9 (modification of compensation and compulsory purchase enactments for the creation of new rights and imposition of new restrictive covenants);

(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) do not apply where the undertaker acquires a cellar, vault, arch or other construction forming part of a building.

Power to override easements and other rights

30.—(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, maintenance or decommissioning 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 to which this article applies is interfered with or breached under paragraph (1), unless otherwise agreed, 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

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

(2) In section 4A(1) (extension of time limit during challenge) for "section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order)", 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 29(3) (acquisition of subsoil only) of the Tween Bridge Solar Farm Order 202[ ], which excludes the acquisition of subsoil only from this Schedule."; and

(b) after paragraph 29 insert—

"PART 4

INTERPRETATION

30. In this Schedule, references to entering on and taking possession of land do not include doing so under article 21 (protective works to buildings), article 22 (authority to survey and investigate the land), article 33 (temporary use of land for constructing the authorised development) or article 34 (temporary use of land for maintaining the authorised development) of the Tween Bridge Solar Farm Order 202[ ]."

Rights under or over streets

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

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

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

(a) any subway or underground building; or

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

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

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

Temporary use of land for constructing the authorised development

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

(a) enter on and take temporary possession of any 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 (including means of access), 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 under the requirements in 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 is not required to serve notice under paragraph (3) where the undertaker has identified a potential risk to the safety of any of—

(a) the authorised development or any of its parts;

(b) the public; or

(c) the surrounding environment,

and in such circumstances, the undertaker may enter the land under paragraph (1) subject to giving such period of notice as is reasonably practicable in the circumstances.

(5) 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.

(6) 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, unless otherwise agreed by the owners of the land, 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 fencing or boundary treatments installed by the undertaker to replace or enhance existing fencing or boundary treatments;

(c) remove any measures installed over or around statutory undertakers' apparatus to protect that apparatus from the authorised development;

(d) remove or reposition any apparatus installed for or belonging to statutory undertakers or necessary mitigation works;

(e) remove any drainage works installed by the undertaker under this article;

(f) 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), Schedule 5 (alteration of streets) or Schedule 7 (access to works); or

(g) restore the land on which any works have been carried out under sub-paragraph (1)(f) insofar as the works relate to mitigation works identified in the environmental statement or required pursuant to the requirements in Schedule 2 (requirements).

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

(8) Any dispute as to a person's entitlement to compensation under paragraph (7), or as to the amount of the compensation, must be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(9) Nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (7).

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

(11) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

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

(13) Paragraph (1) does not authorise the undertaker to take temporary possession of the Order land referred to in article 23(3).

Temporary use of land for maintaining the authorised development

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

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

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

(c) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

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

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

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

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

(4) The undertaker is not required to serve notice under paragraph (3) where the undertaker has identified a potential risk to the safety of any of—

(a) the authorised development or any of its parts;

(b) the public; or

(c) the surrounding environment,

and in such circumstances, the undertaker may enter the land under paragraph (1) subject to giving such period of notice as is reasonably practicable in the circumstances.

(5) 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.

(6) 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.

(7) 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.

(8) Any dispute as to a person's entitlement to compensation under paragraph (7), or as to the amount of the compensation, must be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(9) Nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the maintenance of the authorised development, other than loss or damage for which compensation is payable under paragraph (7).

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

(11) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

(12) In this article "the maintenance period" means the period of five years beginning with the date of final commissioning of the part of the authorised development for which temporary possession is required under this article except in relation to landscaping where "the maintenance period" means such period as set out in the landscape and ecological management plan which is approved by the planning authority pursuant to requirement 8 beginning with the date on which that part of the landscaping is completed.

(13) Paragraph (1) does not authorise the undertaker to take temporary possession of the Order land referred to in article 23(3).

Statutory undertakers

35.—(1) Subject to the provisions of Schedule 14 (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 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.

(2) Paragraph (1)(b) has no effect in relation to apparatus in respect of which the following provisions apply—

(a) Part 3 (street works in England and Wales) of the 1991 Act; and

(b) article 37 (apparatus and rights of statutory undertakers in stopped up streets).

(3) Subject to paragraph (4), where the power in paragraph (1)(b) is exercised in relation to any Order land in respect of which the undertaker takes temporary possession under article 33 (temporary use of land for carrying out the authorised development), the undertaker may only extinguish rights or restrictive covenants in respect of apparatus belonging to statutory undertakers removed or decommissioned where—

(a) the undertaker, in agreement with the statutory undertaker, gives a notice to the landowner of the rights or restrictive covenants proposed to be extinguished; and

(b) that notice has been provided prior to giving up temporary possession under article 33.

(4) The extinguishment of a right or restrictive covenant under paragraph (3) does not—

(a) relieve the need for the undertaker to comply with, or otherwise affect the application of, article 33(6) of this Order; or

(b) give rise to any cause of action relating to the presence on or in the land of any foundations and the undertaker is not required to remove foundations when giving up temporary possession.

No double recovery

36. Compensation is not payable in respect of the same matter both under this Order and under any other enactment, any contract or any rule of law, or under two or more different provisions of this Order.

Apparatus and rights of statutory undertakers in closed streets

37. Where a street is altered or diverted or its use is temporarily prohibited or restricted under article 11 (street works), article 14 (power to alter layout, etc., of streets), article 15 (construction and maintenance of altered streets) or article 16 (temporary closure or restriction 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 14 (protective provisions), as if this Order had not been made.

Acquisition of wayleaves, easements and other rights

38. Schedule 10 (acquisition of wayleaves, easements and other rights) has effect.

Recovery of costs of new connections

39.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 35 (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 35 (statutory undertakers), any person who is—

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

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

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

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

(4) In this article—

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

(b) "public utility undertaker" has the same meaning as in the 1980 Act.

(**a**) 2003 c. 21.

PART 6

MISCELLANEOUS AND GENERAL

Application of landlord and tenant law

40.—(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 purposes of the authorised development, or any part of it,

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

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

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

(a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;

(b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or

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

Operational land for purposes of the 1990 Act

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

Felling or lopping of trees and removal of hedgerows

42.—(1) Subject to paragraph (2) and article 43 (trees subject to tree perseveration orders), the undertaker may fell, lop or prune any tree or shrub within or overhanging land within the Order limits or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub from—

(a) obstructing or interfering with the purposes 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 vehicles to the extent necessary for the purposes 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, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(4) The undertaker may, for the purposes of, or in connection with, the authorised development and subject to paragraph (2), undertake works to or remove any hedgerows within the Order limits that may be required.

(5) Without prejudice to the generality of paragraph (4), the undertaker may, for the purposes of, or in connection with, the authorised development and subject to sub-paragraph (2)(a)—

(a) remove the length of hedgerows specified in column (2) of the table in Schedule 11, Part 1 (removal of hedgerows) and shown on the trees and hedgerows to be removed or managed plan; and

(b) remove the length of important hedgerows specified in column (2) of the table in Schedule 11, Part 2 (removal of important hedgerows) and shown on the trees and hedgerows to be removed or managed plan.

(6) The undertaker may not pursuant to paragraphs (1) and (4) fell, lop or prune a tree or remove hedgerows within the extent of the publicly maintainable highway without the prior consent of the highway authority, which may be given subject to reasonable conditions.

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

"(k) or for the carrying out of development which has been authorised by the Tween Bridge Solar Farm Order 20[•]."

(8) In this article "hedgerow" has the same meaning as in the Hedgerows Regulations 1997.

Trees subject to tree preservation orders

43.—(1) Subject to paragraph (2), the undertaker may fell, lop or prune any tree that is subject to a tree preservation order within or overhanging land within the Order limits 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 purposes 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.

Certification of plans and documents, etc.

44.—(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 12 (documents and plans to be certified) for certification that they are true copies of the documents referred to in this Order.

(2) Where any plan or document set out in Schedule 12 is required to be amended to reflect the terms of the Secretary of State's decision to make the Order, that plan or document in the form amended to the Secretary of State's satisfaction is the version of the plan or document required to be certified under paragraph (1).

(3) 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.

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

Arbitration

45.—(1) Except where otherwise expressly provided for in this Order, and unless otherwise agreed in writing between the parties, any difference under any provision of this Order, is to be referred to and settled in arbitration in accordance with the rules set out in Schedule 13 (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) The parties must use reasonable endeavours to settle any difference to which paragraph (1) applies through negotiations undertaken in good faith by senior representatives of the parties.

(3) Any matter for which the consent or approval of the Secretary of State is required under any provision of this Order is not subject to arbitration.

Protective Provisions

46. Schedule 14 (protective provisions) has effect.

Service of notices

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

(a) by post;

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

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

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

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

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

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

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

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

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

(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;

(**a**) 1978 c. 30.

(c) the notice or document is legible in all material respects; and

(d) the notice or document is in a form sufficiently permanent to be used for subsequent reference.

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

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

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

(a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and

(b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than seven days after the date on which the notice is given.

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

(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 that it would be if served, given or supplied by means of a notice or document in printed form.

Guarantees in respect of payment of compensation

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

(a) a guarantee, the form and amount of which has been approved by the Secretary of State in respect of the liabilities of the undertaker to pay compensation pursuant to the provisions referred to in paragraph (2); or

(b) an alternative form of security, the form and amount of which has been approved by the Secretary of State in respect of the liabilities of the undertaker to pay compensation pursuant to the provisions referred to in paragraph (2).

(2) The provisions are—

(a) article 23 (compulsory acquisition of land);

(b) article 24 (compulsory acquisition of rights and imposition of restrictive covenants);

(c) article 27 (private rights);

(d) article 29 (acquisition of subsoil only);

(e) article 30 (power to override easements and other rights);

(f) article 32 (rights under or over streets);

(g) article 33 (temporary use of land for constructing the authorised development);

(h) article 34 (temporary use of land for maintaining the authorised development); and

(i) article 35 (statutory undertakers).

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

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

Planning permission

49.—(1) If planning permission is issued under the 1990 Act for development any part of which is within the Order limits following the publication of this Order that is—

(a) not itself a nationally significant infrastructure project under the 2008 Act or part of such a project; and

(b) required to complete or enable the construction, use, operation or decommissioning of any part of the development authorised by this Order,

then the carrying out, use, operation or decommissioning of such development in accordance with the terms of the planning permission is not to constitute a breach of the terms of this Order.

(2) To the extent that development granted planning permission under the 1990 Act is inconsistent with authorised development which is carried out under this Order, the development which is the subject matter of the planning permission may be carried out or used notwithstanding that inconsistency and is deemed not to be a breach of this Order and may not be enforced against under the 1990 Act by reason of such inconsistency.

(3) Development carried out, operated or used in accordance with the grant of planning permission under the 1990 Act that is inconsistent with the authorised development under this Order is deemed not to constitute a breach of this Order, and does not prevent the undertaker carrying out the authorised development granted development consent under this Order.

(4) Where the undertaker identifies an inconsistency between a planning permission and this Order which engages the provisions of paragraphs (2) or (3) as the case may be, it must notify the relevant planning authority as soon as reasonably practicable about the existence of the inconsistency, and how the undertaker is proceeding in view of that inconsistency in accordance with this article.

(5) In this article—

(a) "inconsistency" means a circumstance in which a physical conflict exists, or one in which development is no longer capable of being physically implemented or otherwise operated in accordance with the permission or consent granted; and

(b) "planning permission" means planning permission granted under the 1990 Act including planning permission deemed to be granted under article 3 (permitted development) of and Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015(**a**).

Requirements, appeals, etc.

50.—(1) Where an application is made to, or a request is made of, the relevant planning authority or any other relevant person for any consent, agreement or approval required or contemplated by any of the provisions of this Order:

(a) such consent, agreement or approval must, to be validly given, be given in writing and must not be unreasonably withheld or delayed; and

(b) any refusal must be accompanied by a statement of the reasons for refusal.

(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 included in Part 1 (requirements) of that Schedule, and any document referred to in any requirement in that Part 1.

(3) Save for applications made pursuant to Part 2 (procedure for discharge of requirements) of Schedule 2 (requirements) and where stated to the contrary if, within ten weeks (or such longer period as may be agreed between the undertaker and the relevant consenting authority in writing) after the application or request has been submitted to a consenting authority it has not notified the

(**a**) S.I. 2915/596

undertaker of its refusal and the grounds of refusal, it is deemed to have approved the application or request.

(4) Where any application is made as described in paragraph (1), the undertaker must include a statement in such application that refers to the timeframe for consideration of the application and the consequences of failure to meet that timeframe as prescribed by paragraph (3).

Signatory text

Name
Address Parliamentary Under Secretary of State
Date Department for Energy Security and Net Zero

SCHEDULES

SCHEDULE 1 Article 3

AUTHORISED DEVELOPMENT

1.—(1) In this Schedule—

"energy storage" means equipment used for the storage of electrical energy;

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

"mounting structure" means a frame or rack made of galvanised steel or other material designed to support the solar modules and mounted on piles driven into the ground, piles inserted into a pre-drilled hole, a pillar attaching to a steel ground screw, or pillars fixed to a concrete foundation;

"panel areas" means panel areas A to E shown labelled as Work Nos. 1A to 1E on the works plans;

"permissive paths" means new access tracks, within the Order limits following the indicative routes shown on the landscape and visual mitigation strategy, made available for use by pedestrians only with the consent of the owner of the land over which it runs, and which may be withdrawn or modified by the landowner at any time;

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

"solar station" means a station comprising centralised inverters, transformers and switchgear with each component for each solar station either—

(a) located outside on a permeable or concrete foundation; or

(b) housed together within a container on a permeable or concrete foundation;

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

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

"transformer" means a structure containing an electrical device to transform electricity by increasing or reducing the voltage.

(2) In the City of Doncaster and the unitary authority area of North Lincolnshire a nationally significant infrastructure project as defined in sections 14 and 15 of the 2008 Act and associated development under section 115(1)(b) of the 2008 Act.

The nationally significant infrastructure project comprises 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 with a gross electrical output capacity of over 50 megawatts comprising—

Work No. 1A, 1B, 1C, 1D, and 1E: being panel areas A to E, comprising—

(a) solar modules; and

(b) solar stations,

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

Work No. 2— works including—

(a) works to lay electrical cables and temporary construction laydown areas for electrical cables, including—

(i) electrical cables connecting Work No. 1A, 1B, 1C, 1D, and 1E to one another and to Work No. 4A, 4B, 4C, 4D, 4E, 4F, and 4G and Work No. 5A, 5B, 5C and 5D;

(ii) electrical cables connecting Work No. 4A, 4B, 4C, 4D, 4E, 4F 4G and Work No. 5A, 5B, 5C, and 5D to Work No.4H; and

(iii) electrical cables, within the Order limits, for the purposes of connecting Work No.4H to the NGET substation.

(b) fencing, gates, boundary treatment and other means of enclosure;

(c) improvement, maintenance and use of existing private tracks;

(d) laying down of internal access tracks, ramps, means of access, footpaths, permissive paths, crossing of watercourses, and roads, including the laying and construction of drainage infrastructure, signage and information boards;

(e) works for the provision of security and monitoring measures such as CCTV columns, lighting columns and lighting, cameras, weather stations, communication infrastructure and perimeter fencing; and

(f) works required for crossing, moving re-routing or over/undergrounding of existing utility assets (including water, gas, sewer pipes, electricity distribution/transmission cabling, telecommunications etc.).

Work No. 3— works to create, enhance and maintain green infrastructure and habitat management, including—

(a) soft landscaping including planting;

(b) landscape and biodiversity mitigation and enhancement measures including, tree and hedgerow planting;

(c) habitat creation and management including earthworks, landscaping, means of enclosure and the laying and construction of drainage infrastructure;

(d) earth works;

(e) laying down of permissive paths, signage and information boards;

(f) hard standing and hard landscaping;

(g) drainage and irrigation infrastructure and improvements or extensions to existing irrigation systems;

(h) fencing, gates, boundary treatment and other means of enclosure; and

(i) improvement, maintenance and use of existing private tracks.

Work No. 4— development of onsite substations, including—

(a) **Work No. 4A, 4B, 4C, 4D, 4E, 4F and 4G**: works comprising—

(i) onsite 132 kilovolt substations;

(ii) shunt reactors;

(iii) control buildings or containers;

(iv) lightning conductor towers;

(v) communications towers;

(vi) welfare facilities;

(vii) hardstanding areas;

(viii) electrical cables; and

(ix) works for the provision of security, including security fencing.

(b) **Work No. 4H**: works comprising—

(i) 400 kilovolt substation;

(ii) cable switchgear and electrical equipment, transformers, reactive compensation equipment, filters and cooling equipment;

(iii) shunt reactor;

(iv) control building or container;

(v) lightning conductor tower;

(vi) communications tower;

(vii) electrical cables;

(viii) control and welfare buildings;

(ix) hardstanding area;

(x) access gates and tracks;

(xi) works for the provision of security including security fencing; and

(xii) other associated equipment, structures and buildings including noise attenuation works.

Work No. 5— a battery energy storage system (BESS) facility comprising—

Work No. 5A, 5B, 5C and 5D: being the BESS compounds, including—

(a) battery energy storage cells;

(b) auxiliary transformers and associated bunding;

(c) power conversion system units including inverters, switchgear, transformers and ancillary equipment;

(d) heating, ventilation and air conditioning (HVAC) or liquid cooling systems;

(e) monitoring and control systems;

(f) fire safety infrastructure comprising fire suppression system;

(g) a water storage structure for the purposes of firefighting comprising fire water tanks and fire water containment;

(h) containers or similar structures to house spare parts and materials required for the day to day operation of the BESS facility; and

(i) structures, containers or enclosures housing all or any of (a) to (h) siting on a reinforced concrete foundation slabs, concrete piling or concrete pads or plinths on a permeable foundation.

Work No. 6— *Number not used.*

Work No. 7— temporary construction and decommissioning laydown areas, compounds and access tracks, including—

(a) areas of hardstanding;

(b) car parking;

(c) site and welfare offices and workshops;

(d) security infrastructure, including cameras, perimeter fencing and lighting;

(e) site drainage and waste management infrastructure (including sewerage);

(f) electricity, water, waste water and telecommunications connections;

(g) works to improve existing farm access from public highway, and install temporary traffic lights, banksmen or other measures to manage traffic;

(h) works to excavate and store soil, clear vegetation and obstacles, level, shape and prepare surface for construction track to be installed;

(i) storage of equipment and materials including waste skips;

(j) civils investigations and works to reinforce ground with weight-bearing support infrastructure, maintain integrity of structures beneath road surface; and

(k) creation of temporary construction access tracks, laydown and working areas.

Work No. 8— works to facilitate access to Work Nos. 1 to 5 and Work No. 7, including—

(a) creation of accesses from or across the public highway;

(b) enhancement of existing access from the public highway;

(c) creation and maintenance of passing places;

(d) creation of visibility splays;

(e) removal of vegetation; and

(f) works to widen and surface the public highway and private means of access.

In connection with and in addition to Work Nos. 1 to 5 and Works Nos 7 to 8 further associated development comprising such other works or operations as may be necessary or expedient for the purposes of or in connection with the authorised development, and which are within the Order limits and fall within the scope of the work assessed by the environmental statement, including—

(a) works 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;

(b) haul roads, ramps, watercourses and other temporary crossings, vehicular and pedestrian means of access including the creation of new tracks and paths, widening, upgrades, alterations and improvements or existing roads tracks and paths and install temporary traffic lights, banksmen or other measures to manage traffic;

(c) fencing, gates, boundary treatments and other means of enclosure;

(d) earthworks, bunds, embankments, trenching and swales;

(e) working sites in connection with the construction of the authorised development including construction laydown areas, compounds and spoil storage and associated control measures;

(f) works, improvements or extensions to the existing drainage and irrigation system and works to alter the position and extent of such irrigation system;

(g) irrigation infrastructure, surface water drainage systems, runoff outfalls, sustainable drainage system ponds, storm water attenuation systems including storage basins, oil water separators, including channelling and culverting and works to existing drainage networks;

(h) electrical, gas, water, foul water drainage and telecommunications infrastructure connections, diversions and works to, and works to alter the position of, such services and utilities connections;

(i) works to alter the course of, or otherwise interfere with, non-navigable rivers, streams or watercourses including the temporary closure of non-navigable rivers, streams or watercourses for installation of culverts, drainage and other features to cross non-navigable rivers, streams or watercourses;

(j) works for the provision of security and monitoring measures such as control buildings, containers or structures, CCTV columns and CCTV, lighting columns and lighting, cameras, lightning protection masts, weather stations, communication infrastructure, and perimeter fencing;

(k) containers or structures to house spare parts and materials required for the day to day operation of the authorised works;

(l) improvement, maintenance, repair and use of existing streets, private tracks and access roads;

(m) laying down, maintenance and repair of new internal access tracks, ramps, means of access, cycle routes and roads, signage and information boards;

(n) temporary footpath diversions and footpath enhancement;

(o) landscaping;

(p) temporary storage of materials prior to installation;

(q) site establishments and preparation works including site clearance (including vegetation removal, demolition of existing buildings and structures); earthworks (including soil stripping and storage and site levelling) and excavations; the alteration of the position of services and utilities; and works for the protection of buildings and land; and

(r) tunnelling, boring and drilling works,

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

SCHEDULE 2

Article 3

REQUIREMENTS

PART 1

REQUIREMENTS

Interpretation

1. In this Schedule—

"both relevant planning authorities" means City of Doncaster Council and North Lincolnshire Council each being the relevant planning authority for part of the authorised development;

"business day" means a day other than Saturday or Sunday, which is not Christmas Day, Good Friday or a bank holiday under section 1 (bank holidays) of the Banking and Financial Dealings Act 1971(**a**);

"internal drainage board" has the same meaning as in section 1 of the Land Drainage Act 1991;

"lead local flood authority" has the same meaning as in section 6(7) of the Flood and Water Management Act 2010;

"outline battery safety management plan" means the plan of that name identified in the table at Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the outline battery safety management plan for the purposes of this Order;

"outline construction environmental management plan" means the document of that name identified in the table at Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the outline construction environmental management plan for the purposes of this Order;

"outline construction traffic management plan" means the document of that name identified in the table at Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the outline construction traffic management plan for the purposes of this Order;

"outline decommissioning environmental mitigation plan" means the document of that name identified in the table at Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the outline decommissioning environmental mitigation plan for the purposes of this Order;

"outline ecological construction management plan" means the document of that name identified in the table at Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the outline ecological construction management plan for the purposes of this Order;

"outline operational environmental management plan" means the document of that name identified in the table at Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the outline operational environmental management plan for the purposes of this Order;

"outline landscape ecological management plan" means the document of that name identified in the table at Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the outline landscape ecological management plan for the purposes of this Order;

(**a**) 1971 c.80.

"outline soil management plan" means the document of that name identified in the table at Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the outline soil management plan for the purposes of this Order

"outline supply chain, employment and skills plan" means the document of that name identified in the table at Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the outline supply chain, employment and skills plan for the purposes of this Order; and

"phase" means a defined section or part of the authorised development, the extent of which is shown in a scheme submitted to and approved by the relevant planning authority under requirement 3 (phases of the authorised development and date of final commissioning) of this Schedule.

Time limits

2.—(1) The authorised development must begin no later than the expiration of five years beginning with the date this Order comes into force.

(2) If any proceedings are begun to challenge the validity of this Order, the period specified in paragraph (1) is extended by—

(a) a period equivalent to the period beginning with the day the application is made and ending on the day it is withdrawn or finally determined; or

(b) if shorter, one year.

(3) An application is not finally determined for the purposes of sub-paragraph (2)(a) if an appeal in respect of the application—

(a) could be brought (ignoring any possibility of an appeal out of time with permission); or

(b) has been made and not withdrawn or finally determined.

Phasing of the authorised development and date of final commissioning

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

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

(3) Notice of the date of final commissioning with respect to each phase of Work No. 1 must be given to the relevant planning authority or both relevant planning authorities (as applicable) within 15 working days of the date of final commissioning for that phase.

(4) Nothing shall prevent the undertaker and the relevant planning authority or both relevant planning authorities (where applicable) agreeing from time to time to amend the written scheme setting out the proposed phases of construction.

(5) The agreed written scheme may contain flexibility and optioneering for different proposed phases of construction provided that the undertaker notifies the relevant planning authority or both relevant planning authorities (where applicable) of the final intended phasing prior to commencement.

Requirement for written approval

4. Where any approval, agreement or confirmation is required under any requirement, that approval, agreement or confirmation must be provided in writing by the relevant planning authority or both relevant planning authorities (as applicable).

Approved details and amendments to them

5.—(1) With respect to the plans and documents certified under article 44 (certification of plans and documents, etc.) and any plans, details or schemes which have been approved pursuant to any requirement (together the "approved documents, plans, details or schemes"), the undertaker may submit to the relevant planning authority or both relevant planning authorities (as applicable) for approval any amendments to any of the approved documents, plans, details or schemes and, following approval by the relevant planning authority or both relevant planning authorities (as applicable), and the relevant approved documents, plans, details or schemes are to be taken to include the amendments as so approved pursuant to this paragraph.

(2) Approval under paragraph (1) for the amendments to any of the approved documents, plans, details or schemes must not be given except where it has been demonstrated to the satisfaction of the relevant planning authority or both relevant planning authorities (as applicable) that the subject matter of the approval sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

Detailed design approval

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

(a) the layout;

(b) scale;

(c) proposed finished ground levels;

(d) external appearance;

(e) hard surfacing materials;

(f) vehicular and pedestrian access, parking and circulation areas;

(g) refuse or other storage units, signs and lighting;

(h) drainage, water, power and communications cables and pipelines; and

(i) programme for landscaping works,

relating to that phase have been submitted and approved in writing by the relevant planning authority or both relevant planning authorities (as applicable).

(2) The details submitted must accord with—

(a) the design approach document appendix A: parameters document;

(b) the landscape and visual mitigation strategy;

(c) the LEMP for that phase; and

(d) the WSI for that phase.

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

(4) For the purposes of paragraph (2)—

(a) "LEMP" means a landscape and ecology management plan approved in accordance with requirement 8; and

(b) "WSI" means a written scheme of investigation approved in accordance with requirement 12,

whether such approval is given prior to or concurrently with the approval of details pursuant to sub-paragraph (1).

Battery safety management plan

7.—(1) No part of Work Nos. 5A, 5B, 5C or 5D may commence until a battery safety management plan ("BSMP") for that work has been submitted to and approved by the relevant planning authority or both relevant planning authorities (as applicable) following consultation by the undertaker on that BSMP with the South Yorkshire Fire and Rescue or the Humberside Fire and Rescue Service (as applicable) and the Environment Agency (in respect of its functions).

(2) The BSMP for the relevant work submitted under paragraph (1) must be substantially in accordance with the outline battery safety management plan.

(3) The BSMP for the relevant work must prescribe measures to facilitate safety during the construction, operation and decommissioning of that work including the transportation of new, used and replacement battery cells both to and from the authorised development.

(4) The BSMP for the relevant work must be implemented as approved and maintained throughout the construction, operation and decommissioning of Work Nos. 5A, 5B, 5C and 5D.

Landscape and ecology management plan

8.—(1) No phase of the authorised development may commence until a written landscape and ecology management plan for that phase has been submitted to and approved by the relevant planning authority or both relevant planning authorities (as applicable) following consultation by the undertaker on that landscape and ecology management plan with the Environment Agency (in respect of its functions), Natural England (in respect of its functions) and National Highways (in respect of its functions).

(2) The written landscape and ecology management plan submitted under paragraph (1) must be substantially in accordance with—

(a) the outline landscape ecological management plan;

(b) the outline ecological construction management plan; and

(c) the landscape and visual mitigation strategy.

(3) The landscape and ecological management plan for the relevant phase must include details of—

(a) the extent to which the relevant phase contributes to ensuring that the authorised development overall achieves a minimum of 20% biodiversity net gain in habitat units, 100% biodiversity net gain in hedgerow units and 10% biodiversity net gain in watercourse units during its operational lifetime using the statutory biodiversity metric published by the Department of Environment, Food and Rural Affairs on 12 February 2024 to calculate those percentages;

(b) how the landscaping and ecological measures for the relevant phase will be managed and maintained during the operational life of the authorised development to the date on which the decommissioning environmental management plan relevant to that phase is implemented pursuant to requirement 19 (decommissioning and restoration); and

(c) the final routing and specification for any permissive path to be provided within a relevant phase.

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

(5) For the purposes of sub-paragraph (1), "commence" includes any permitted preliminary works involving pre-construction ecological mitigation and site clearance.

Fencing and other means of enclosure

9.—(1) No phase of the authorised development may commence until written details of all proposed temporary fences, walls or other means of enclosure, including those set out in the outline construction environmental management plan, for that phase have been submitted to and approved by the relevant planning authority or both relevant planning authorities (as applicable) following consultation by the undertaker with National Highways (in respect of its highway functions).

(2) No phase of the authorised development may commence until written details of all permanent fences, walls or other means of enclosure for that phase have been submitted to and approved by the relevant planning authority or both relevant planning authorities (as applicable).

(3) For the purposes of sub-paragraph (1), "commence" includes any permitted preliminary works.

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

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

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

Soil Management

10.—(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 relevant planning authority or both relevant planning authorities (as applicable).

(2) Any soil management plan submitted for approval under paragraph (1) must be substantially in accordance with the outline soil management plan.

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

Surface and foul water drainage

11.—(1) No phase of the authorised development may commence until details of the surface water drainage strategy and (if any) foul water drainage system (including means of pollution control) for that phase have been submitted to and approved by the relevant planning authority or both relevant planning authorities (as applicable), following consultation by the undertaker with the relevant internal drainage board, the relevant lead local flood authority, the Environment Agency, Yorkshire Water (in respect of its water undertaker functions), Severn Trent Water (in respect of its sewerage undertaker functions) and National Highways (in respect of its highway functions).

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

Archaeology

12.—(1) No phase of the authorised development may commence until a written scheme of investigation for that phase has been submitted to and approved by the relevant planning authority or both relevant planning authorities (as applicable).

(2) The written scheme of investigation for each phase submitted under paragraph (1) must be substantially in accordance with the outline archaeological mitigation strategy.

(3) The scope of works detailed in the written scheme of investigation for each phase must be implemented as approved.

(4) For the purposes of this paragraph "outline archaeological mitigation strategy" means the document comprising Appendix 8.6 of the environmental statement with document reference number 6.3.8.6.

(5) Unless otherwise agreed in writing by the relevant planning authority, for the purposes of sub-paragraph (1) "commence" includes any permitted preliminary works involving intrusive archaeological surveys (including trenching) and other investigations for the purpose of assessing ground conditions (including the making of boreholes).

Controlled site

13.—(1) No part of Work Nos. 1A and 1B may commence until following consultation by the undertaker with the relevant licensing authority the undertaker has confirmed to the relevant planning authority or both relevant planning authorities (as applicable) that—

(a) no controlled site is located within any phase comprising Work Nos. 1A and 1B and that no licence under the 1986 Act is required in respect of the carrying out of Work Nos. 1A and 1B;

(b) a controlled site is located within a phase comprising either Work No. 1A, Work No 1B or Works Nos. 1A and 1B and that a licence under the 1986 Act has been obtained in respect of the carrying out of the relevant work within the controlled site ("the licenced works"); or

(c) a controlled site is located within a phase comprising either Work No. 1A, Work No 1B or Works Nos. 1A and 1B and that a licence under the 1986 Act has not been obtained in respect of the carrying out of the relevant work within the controlled site ("the non-licenced works").

(2) If the undertaker makes a confirmation under sub-paragraph (1)(b) then the date of the final commissioning of the licenced works must not take place until a controlled site interpretation scheme has been submitted to and approved by the relevant planning authority or both relevant planning authorities (as applicable) and the undertaker has carried out the controlled site interpretation scheme.

(3) If the undertaker makes a confirmation under sub-paragraph (1)(c) then no part of the non-licenced works may commence until details of a controlled site exclusion area have been submitted to and approved by the relevant planning authority or both relevant planning authorities (as applicable) following consultation by the undertaker with the relevant licensing authority.

(4) No part of the non-licenced works is to be constructed within the approved controlled site exclusion area.

(5) For the purposes of this paragraph—

"the 1986 Act" means the Protection of Military Remains Act 1986;

"controlled site" has the same meaning as in section 9(1) of the 1986 Act;

"controlled site interpretation scheme" means a scheme which—

(a) sets out the location, design and content of an interpretation board and commemorative plaque relating to the history of the relevant aircraft crash that took place within the limits of the licenced works as shown on the works plans; and

(b) includes an explanation of how the scheme will work with and be consistent with the detailed landscape and ecology management plan that has been approved pursuant to requirement 8 in respect of a phase of the authorised development that includes the licenced works; and

"the relevant licensing authority" means the Secretary of State for Defence.

Construction environmental management plan

14.—(1) No phase of the authorised development may commence until a construction environmental management plan for that phase has been submitted to and approved by the relevant planning authority or both relevant planning authorities (as applicable) following consultation by the undertaker with the Environment Agency (in respect of its functions).

(2) The construction environmental management plan submitted under paragraph (1) must be substantially in accordance with the outline construction environmental management plan.

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

(4) For the purposes of sub-paragraph (1), the term "commence" includes any permitted preliminary works involving remedial works in respect of contamination.

Operational environmental management plan

15.—(1) Prior to the date of final commissioning for any phase, an operational environmental management plan for that phase must be submitted to and approved by the relevant planning authority or both relevant planning authorities (as applicable).

(2) The operational environmental management plan submitted under paragraph (1) must be substantially in accordance with the outline operational environmental management plan.

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

Construction traffic management plan

16.—(1) No phase of the authorised development may commence until a construction traffic management plan for that phase has been submitted to and approved by the highway authority including National Highways in respect of matters which relate to the strategic road network.

(2) The construction traffic management plan submitted under paragraph (1) must be substantially in accordance with the outline construction traffic management plan.

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

Operational noise

17.—(1) No part of Work Nos 1, 4 and 5 may commence until an operational noise assessment containing details of how the design of the relevant work has incorporated mitigation, where necessary, to ensure the operational noise rating levels do not exceed the typical background sound levels, as set out in Table 13.11 of Chapter 13 of the environmental statement but subject to paragraph 13.4.18 of Chapter 13 of the environmental statement, has been submitted to and approved by the relevant planning authority or both relevant planning authorities (as applicable).

(2) The design as described in the operational noise assessment must be implemented as approved and shall be maintained for the period specified in the assessment.

Skills, supply chain and employment

18.—(1) No phase of the authorised development may commence until a supply chain, employment and skills plan in relation to that phase has been submitted to and approved by the relevant planning authority or both relevant planning authorities (as applicable).

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

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

Decommissioning and restoration

19.—(1) Subject to paragraph (2), not less than 6 months before the 40 year period referred to in paragraph (3), a decommissioning environmental management plan in respect of each relevant part of the authorised development approved under requirement 3(1) (Phasing of the authorised development and date of final commissioning) must be submitted to the relevant planning authority or both relevant planning authorities (as applicable) for approval following consultation by the undertaker with National Highways (in respect of its highway functions) and the Environment Agency (in respect of its functions).

(2) In respect of Work No. 4H any decommissioning environmental management plan for that work shall be submitted under paragraph (1) at the same time as the submission of the decommissioning environmental management plan for the final part of Work No.1 to be decommissioned.

(3) The date of decommissioning for any part of the authorised development must begin no later than 40 years following the date of final commissioning of the part of the authorised development that is subject to the last notice given by the undertaker pursuant to requirement 3(3).

(4) Any decommissioning environmental management plan submitted under paragraph (1) must be substantially in accordance with the outline decommissioning environmental management plan.

(5) Any decommissioning environmental management plan submitted under paragraph (1) must include a resource management plan that includes details of proposals to minimise the use of natural resources and unnecessary materials.

(6) No decommissioning works for any relevant part must be carried out until the relevant planning authority or both relevant planning authorities (as applicable) has approved the decommissioning environmental management plan submitted under paragraph (1) in relation to that part.

(7) Any decommissioning environmental management plan submitted and approved pursuant to paragraph (1) must be implemented as approved.

(8) Within 28 days of ceasing operations at any part of the authorised development the undertaker must notify the relevant planning authority or both relevant planning authorities (as applicable) in writing of the date it ceased operations for that part.

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

Public rights of way

20.—(1) The undertaker must not exercise the power conferred by article 16(1) and 16(2) (temporary closure or restriction of streets and public rights of way) of this Order in relation to any public right of way within any phase of the authorised development until the scope of the pre-commencement condition survey for the extents of any such public right of ways within that part have been submitted to and approved by the highway authority.

(2) The condition survey must be carried out substantially in accordance with the scope approved pursuant to paragraph (1) and the outcomes of the survey must be submitted to the highway authority.

(3) The undertaker must not exercise the powers conferred by article 16(1) and 16(2) (temporary closure or restriction of streets and public rights of way) of this Order in relation to any public right of way within any phase of the authorised development until a reinstatement plan for the extents of any such public rights of ways within that part has been submitted to and approved by the highway authority.

(4) The reinstatement plan to be submitted pursuant to paragraph (3) must include details of—

(a) the works to reinstate any such public rights of way in accordance with the condition survey approved pursuant to paragraph (1); and

(b) timeline for any such reinstatement works

(5) Any reinstatement works must be carried out substantially in accordance with the reinstatement plan approved pursuant to paragraph (3).

Connection to the national electricity transmission system

21. No phase of the authorised development may commence until details of the following have been submitted to and approved by the relevant planning authority—

(a) written evidence that consent is in place for the construction of electrical cable for the purposes of connecting Work No.4H to the national electricity transmission system; or

(b) written evidence that such consent is not required.

Consultation

22.—(1) In relation to any provision of this Schedule requiring details to be submitted to the relevant planning authority for approval following consultation by the undertaker with another party, the undertaker must provide such other party with not less than 28 days for any response to the consultation and thereafter the details submitted to the relevant planning authority for approval must be accompanied by a summary report.

(2) For the purposes of sub-paragraph (1) "summary report" means a report setting out—

(a) the consultation undertaken by the undertaker to inform the details submitted for approval under a requirement of this Schedule;

(b) copies of any representations made by the consultee about the details proposed to be submitted for approval; and

(c) how the undertaker has had regard to those representations in finalising the details submitted for approval.

PART 2

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

Applications made under Part 1

1.—(1) Where an application has been made to the relevant planning authority for any consent, agreement or approval required by a requirement (including consent, agreement or approval in respect of part of a requirement included in this Order), the relevant planning authority must give notice in writing 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 planning authority;

(b) the day immediately following that on which further information has been supplied by the undertaker under paragraph 2 (further information regarding requirements); or

(c) such other period that is agreed in writing between the undertaker and the relevant planning authority.

(2) In determining any application made to the relevant planning authority for any consent, agreement or approval required by a requirement included in this Order, the relevant planning authority may—

(a) give or refuse its consent, agreement or approval; or

(b) give its consent, agreement or approval subject to reasonable conditions,

(c) and where consent, agreement or approval is refused or granted subject to conditions the discharging authority must provide its reasons for that decision with the notice of the decision.

(3) Subject to sub-paragraphs (4) and (5), in the event that the relevant planning authority does not determine an application within the period set out in sub-paragraph (1), the relevant planning authority is deemed to have granted all parts of the application (without any condition or qualification) at the end of that period.

(4) Any application made to the discharging authority pursuant to sub-paragraph (1) must include a statement to confirm whether it is likely that the subject matter of the application will give rise to any materially new or materially different environmental effects compared to those in the environmental statement and, if it will, then the application must be accompanied by information setting out what those effects are.

(5) Sub-paragraph (3) does not apply where an application is accompanied by a statement pursuant to sub-paragraph (4) that the subject matter of such application is likely to give rise to

materially new or materially different environmental effects compared to those in the environmental statement.

(6) For deemed consent under sub-paragraph (3) to apply to any application for consent under sub-paragraph (1), the application must include a statement that the provisions of sub-paragraph (3) apply to that application.

(7) If an application for consent under sub-paragraph (1) does not include the statement required under sub-paragraph (6), then the provisions of sub-paragraph (3) will not apply to that application.

Further information regarding requirements

2.—(1) In relation to any application made under this Schedule 2, the relevant planning authority may request such further information from the undertaker as it considers necessary to enable it to consider the application.

(2) In the event the relevant planning authority considers such further information to be necessary the relevant planning authority must, within ten business days of receipt of the application, notify the undertaker in writing specifying the further information required and (if applicable) to which part of the application it relates.

(3) In the event that the relevant planning authority does not give such notification within the period specified in sub-paragraph (2) the relevant planning authority is deemed to have sufficient information to consider the application and is not subsequently entitled to request further information without the prior agreement of the undertaker.

(4) Where further information is requested under this paragraph in relation to part only of an application, that part is treated as separate from the remainder of the application for the purposes of calculating the time periods referred to in paragraph 1 (applications made under Part 1) and in sub-paragraph (2).

Appeals

3.—(1) The undertaker may appeal to the Secretary of State in the event that the relevant planning authority—

(a) refuses an application for any consent, agreement or approval required under this Order or grants it subject to conditions;

(b) 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;

(c) on receipt of a request for further information under paragraph 2, the undertaker considers that either the whole or part of the specified information requested by the relevant planning authority is not necessary for consideration of the application; or

(d) on receipt of any further information requested under paragraph 2, the relevant planning authority notifies the undertaker 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 applicable under sub-paragraph (1) is as follows—

(a) any appeal by the undertaker must be made within 42 days of the event under sub-paragraph (1);

(b) the undertaker must submit the appeal documentation to the Secretary of State and must on the same day provide copies of the appeal documentation to the relevant planning authority;

(c) the Secretary of State must appoint a suitably qualified person to consider the appeal ("the appointed person") as soon as is practicable after the submission under sub-paragraph (b) but in any event no longer than 21 days from submission under that sub-paragraph and must notify the appeal parties of the identity of the appointed person, a start date and the address to which all correspondence for their attention should be sent;

(d) the relevant planning authority must submit their written representations to the appointed person in respect of the appeal within 10 business days of the start date 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 undertaker on the day on which they are submitted to the appointed person;

(e) the undertaker must make any counter-submissions to the appointed person within ten business days of receipt of written representations under sub-paragraph (d); and

(f) the appointed person must make a decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable but in any event no longer than 10 business days from receipt of counter-submissions under sub-paragraph (e).

(3) The appointment of the appointed person under 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 under 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.

(6) The appointed person must notify the appeal parties of the revised timetable for the appeal on or before that day.

(7) The revised timetable for the appeal must require submission of written representations to the appointed person within 10 business days of the agreed date but must otherwise be in accordance with the process and time limits set out in sub-paragraphs (2)(c) to (f).

(8) On an appeal under this paragraph, the appointed person may—

(a) allow or dismiss the appeal; or

(b) reverse or vary any part of the decision or request of the relevant planning 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.

(9) 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.

(10) 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.

(11) The decision of the appointed person on an appeal is final and binding on the parties unless proceedings are brought by a claim for a judicial review.

(12) Except where a direction is given under sub-paragraph (13) requiring some or all the costs of the appointed person to be paid by the relevant planning authority, the reasonable costs of the appointed person must be met by the undertaker.

(13) The appointed person may give directions as to the costs of the appeal and as to the parties by whom the costs are to be paid.

(14) 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 Appeals (March 2014) or any circular or such guidance which may from time to time replace it.

Fees

4.—(1) Where an application is made to the relevant planning authority for written consent, agreement or approval in respect of a requirement, a fee is to apply and must be paid to the relevant planning authority for each application.

(2) The fee payable for each application under sub-paragraph (1) is as follows—

(a) a fee of £2,578 for the first application for the discharge of each of the requirements 3 (phasing of the authorised development and date of final commissioning), 5 (approved details and amendments to them), 6 (detailed design approval), 7 (battery safety management plan), 8 (landscape and ecology management plan), 10 (soil management), 11 (surface water and foul drainage), 12 (archaeology), 14 (construction environmental management plan), 15 (operational environmental management plan), 16 (construction traffic management plan) and 19 (decommissioning and restoration).

(b) a fee of £588 for each subsequent application for the discharge of each of the requirements listed in sub-paragraph (a) and any application under requirement 6 (detailed design approval) in respect of the requirements listed in paragraph (a); and

(c) a fee of £298 for any application for the discharge of—

(i) any other requirements not listed in paragraph (a);

(ii) any application under requirement 5 (approved details and amendments to them) in respect of requirements not listed in paragraph (a); and

(iii) any approval required by a document referred to by any requirement or a document approved pursuant to any requirement.

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

(a) the application being rejected as invalidly made; or

(b) the relevant planning authority failing to determine the application within the relevant period in paragraph 1(1) unless—

(i) within that period the undertaker agrees, in writing, that the fee is to be retained by the relevant planning authority and credited in respect of a future application; or

(ii) a longer period of time for determining the application has been agreed pursuant to paragraph 1(1)(c) of this Schedule.

(4) The fees specified in sub-paragraph (2) shall be adjusted on each anniversary of the date this Order comes into force by a percentage equal to the index value of the Consumer Price Index (I) most recently published prior to that anniversary, provided that in no event shall any annual adjustment exceed 5%.

SCHEDULE 3

Article 9

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 purposes of, or in connection with, the authorised development and so far as the provisions still in force are incompatible with the powers contained within this Order—

(a) Stainforth and Keadby Canal Act 1793(**a**) including any byelaws made thereunder;

(b) Sheffield and South Yorkshire Navigation Act 1889(**b**) including any byelaws made thereunder; and

(c) Sheffield and South Yorkshire Navigation Act 1903(**c**) including any byelaws made thereunder.

(**a**) 1793 c. cxvii.
(**b**) 1889 c. cxc.
(**c**) 1903 c. cv.

SCHEDULE 4

Article 11

STREETS SUBJECT TO STREET WORKS

(1) *Area*	*(2)* *Street subject to street works*	*(3)* *Description of the street works*
Parish of Thorne	Moor Edges Road	Works for the provision of resurfacing for the length of 95 metres and the full width of the street between the points SWR1-A to SWR1-B and delineated in orange on Sheet 1 of the street works, access and public rights of way plans.
Parish of Thorne	Moor Edges Road	Works for the provision of resurfacing for the length of 81 metres and the full width of the street between the points SWR2-A to SWR2-B and delineated in orange on Sheet 2 of the street works, access and public rights of way plans.
Parish of Thorne	Green Bank	Cable Works beneath the full width of street within a length of 26 metres as shown between points CA1-A to CA1-B and delineated in pink on Sheets 2 and 5 of the street works, access and public rights of way plans.
Parish of Thorne	Green Bank	Works for the provision of resurfacing for the length of 26 metres and the full width of the street between the points SWR3-A to SWR3-B and delineated in orange on Sheets 2 and 5 of the street works, access and public rights of way plans.
Parish of Crowle and Ealand	Crook O'Moor Track	Works for the provision of resurfacing for the length of 447 metres and the full width of the street between the points SWR4-A to SWR4-B and delineated in orange on Sheet 3 of the street works, access and public rights of way plans.
Parish of Crowle and Ealand	Crook O'Moor Track	Cable Works beneath the full width of street within a length of 447 metres as shown between points CA2-A to CA2-B and delineated in pink on Sheet 3 of the street works, access and public rights of way

		plans.
Parish of Crowle and Ealand	Crook O'Moor Track	Works for the provision of resurfacing for the length of 1240 metres and the full width of the street between the points SWR4-B to SWR4-C to SWR4-D and delineated in orange on Sheet 4 of the street works, access and public rights of way plans.
Parish of Crowle and Ealand	Crook O'Moor Track	Cable Works beneath the full width of street within a length of 1068 metres as shown between points CA2-B to CA2-C and delineated in pink on Sheet 4 of the street works, access and public rights of way plans.
Parish of Crowle and Ealand	Marsh Road	Cable Works beneath the full width of street within a length of 528 metres as shown between points CA3-A to CA3-B and delineated in pink on Sheet 4 of the street works, access and public rights of way plans.
Parish of Crowle and Ealand	Marsh Road	Works for the provision of resurfacing for the length of 528 metres and the full width of the street between the points SWR5-A to SWR5-B and delineated in orange on Sheet 4 of the street works, access and public rights of way plans.
Parish of Crowle and Ealand	Marsh Road	Works for the provision of resurfacing for the length of 898 metres and full width of the street between the points SWR5-B to SWR5-C and delineated in orange on Sheet 4 of the street works, access and public rights of way plans.
Parish of Crowle and Ealand	Cross Street	Works for the provision of resurfacing for the length of 50 metres and the full width of the street between the points SWR6-A to SWR6-D to SWR6-B and delineated in orange on Sheet 4 of the street works, access and public rights of way plans.
Parish of Crowle and Ealand	Commonside and Cross Street	Works for the provision of resurfacing for the length of 28 metres and the full width of the street between the points SWR6-C to SWR6-D and

		delineated in orange on Sheet 4 of the street works, access and public rights of way plans.
Parish of Crowle and Ealand	Cross Street and Windsor Road	Works for the provision of resurfacing for the length of 48 metres and the full width of the street between the points SWR6-D to SWR6-E and delineated in orange on Sheet 4 of the street works, access and public rights of way plans.
Parish of Crowle and Ealand	High Street	Works for the provision of resurfacing for the length of 72 metres and the full width of the street between the points SWR7-A to SWR7-E to SWR7-B and delineated in orange on Sheet 4 of the street works, access and public rights of way plans.
Parish of Crowle and Ealand	Wharf Road	Works for the provision of resurfacing for the length of 29 metres and the full width of the street between the points SWR7-B to SWR7-C and delineated in orange on Sheet 4 of the street works, access and public rights of way plans.
Parish of Crowle and Ealand	Fieldside	Works for the provision of resurfacing for the length of 29 metres and the full width of the street between the points SWR7-B to SWR7-D and delineated in orange on Sheet 4 of the street works, access and public rights of way plans.
Parish of Crowle and Ealand	Godnow Road	Works for the provision of resurfacing for the length of 55 metres and the full width of the street between the points SWR7-E to SWR7-F and delineated in orange on Sheet 4 of the street works, access and public rights of way plans.
Parish of Crowle and Ealand	Godnow Road	Works for the provision of resurfacing for the length of 90 metres and the full width of the area between the points SWR8-A to SWR8-C to SWR8-B and delineated in orange on Sheet 4 of the street works, access and public rights of way plans.
Parish of Crowle and Ealand	Windsor Road	Works for the provision of resurfacing for the length of 39 metres and the full width of the street between the points

		SWR8-C to SWR8-D and delineated in orange on Sheet 4 of the street works, access and public rights of way plans.
Parish of Thorne	Green Bank	Works for the provision of resurfacing for the length of 776 metres and the full width of the street between the points SWR3-B to SWR3-C and delineated in orange on Sheet 5 of the street works, access and public rights of way plans.
Parish of Thorne	Green Bank	Cable Works beneath the full width of street within a length of 776 metres as shown between points CA1-B to CA1-C and delineated in pink on Sheets 5 and 8 of the street works, access and public rights of way plans.
Parish of Thorne	Green Bank	Works for the provision of resurfacing for the length of 50 metres and the full width of the street between the points SWR9-A to SWR9-B and delineated in orange on Sheets 5 and 8 of the street works, access and public rights of way plans.
Parish of Thorne	High Levels Bank	Works for the provision of resurfacing for the length of 50 metres and the full width of the street between the points SWR10-A to SWR10-B and delineated in orange on Sheets 5 and 8 of the street works, access and public rights of way plans.
Parish of Thorne	High Levels Bank	Cable Works beneath the full width of street within a length of 82 metres as shown between points CA4-A to CA4-B and delineated in pink on Sheets 6 and 10 of the street works, access and public rights of way plans.
Parish of Thorne	High Levels Bank	Works for the provision of resurfacing for the length of 82 metres and the full width of the street between the points SWR11-A to SWR11-B and delineated in orange on Sheets 6 and 10 of the street works, access and public rights of way plans.
Parish of Hatfield	Tudworth Road	Works for the provision of

		resurfacing for the length of 98 metres and the full width of the street between the points SWR12-A to SWR12-C to SWR12-B and delineated in orange on Sheet 7 of the street works, access and public rights of way plans.
Parish of Hatfield	Sandtoft Road	Works for the provision of resurfacing for the length of 63 metres and the full width of the street between the points SWR12-C to SWR12-D and delineated in orange on Sheet 7 of the street works, access and public rights of way plans.
Parish of Thorne and Parish of Hatfield	Sandtoft Road	Works for the provision of resurfacing for the length of 50 metres and the full width of the street between the points SWR13-A to SWR13-B and delineated in orange on Sheet 7 of the street works, access and public rights of way plans.
Parish of Thorne and Parish of Hatfield	Sandtoft Road	Cable Works beneath the full width of street within a length of 50 metres as shown between points CA5-A to CA5-B and delineated in pink on Sheet 7 of the street works, access and public rights of way plans.
Parish of Belton	Jaque's Bank	Works for the provision of resurfacing for the length of 60 metres and the full width of the street between the points SWR14-A to SWR14-B and delineated in orange on Sheets 6 and 10 of the street works, access and public rights of way plans.
Parish of Thorne and Parish of Hatfield	Low Levels Bank	Cable Works beneath the full width of street within a length of 27 metres as shown between points CA7-A to CA7-B and delineated in pink on Sheets 7, 8 and 9 of the street works, access and public rights of way plans.
Parish of Thorne and Parish of Hatfield	Low Levels Bank	Works for the provision of resurfacing for the length of 27 metres and the full width of the street between the points SWR15-A to SWR15-B and delineated in orange on Sheets 7, 8 and 9 of the street works, access and public rights of way

		plans.
Parish of Thorne and Parish of Hatfield	Low Levels Bank	Cable Works beneath the full width of street within a length of 360 metres as shown between points CA8-A to CA8-B and delineated in pink on Sheets 7 and 9 of the street works, access and public rights of way plans.
Parish of Thorne and Parish of Hatfield	Low Levels Bank	Works for the provision of resurfacing for the length of 360 metres and the full width of the street between the points SWR16-A to SWR16-B and delineated in orange on Sheets 7 and 9 of the street works, access and public rights of way plans.
Parish of Thorne and Parish of Hatfield	High Levels Bank	Cable Works beneath the full width of street within a length of 260 metres as shown between points CA9-A to CA9-B and delineated in pink on Sheet 8 of the street works, access and public rights of way plans.
Parish of Thorne and Parish of Hatfield	High Levels Bank	Works for the provision of resurfacing for the length of 260 metres and the full width of the street between the points SWR17-A to SWR17-B and delineated in orange on Sheet 8 of the street works, access and public rights of way plans.
Parish of Thorne and Parish of Hatfield	Crow Tree Bank	Works for the provision of resurfacing for the length of 10 metres and the full width of the street between the points SWR18-A to SWR18-B and delineated in orange on Sheet 8 of the street works, access and public rights of way plans.
Parish of Thorne and Parish of Hatfield	Crow Tree Bank	Cable Works beneath the full width of street within a length of 15 metres as shown between points CA10-A to CA10-B and delineated in pink on Sheets 8 and 9 of the street works, access and public rights of way plans.
Parish of Thorne and Parish of Hatfield	Crow Tree Bank	Works for the provision of resurfacing for the length of 15 metres and the full width of the street between the points SWR19-A to SWR19-B and delineated in orange on Sheets

		8 and 9 of the street works, access and public rights of way plans.
Parish of Thorne and Parish of Hatfield	Low Levels Bank	Cable Works beneath the full width of street within a length of 1359 metres as shown between points CA8-B to CA8-C and delineated in pink on Sheet 9 of the street works, access and public rights of way plans.
Parish of Thorne and Parish of Hatfield	Low Levels Bank	Works for the provision of resurfacing for the length of 1359 metres and the full width of the street between the points SWR16-B to SWR16-C and delineated in orange on Sheet 9 of the street works, access and public rights of way plans.
Parish of Thorne and Parish of Hatfield	Moor Lane	Cable Works beneath the full width of street within a length of 258 metres as shown between points CA11-A to CA11-B and delineated in pink on Sheet 9 of the street works, access and public rights of way plans.
Parish of Thorne and Parish of Hatfield	Moor Lane	Works for the provision of resurfacing for the length of 258 metres and the full width of the street between the points SWR20-A to SWR20-B and delineated in orange on Sheet 9 of the street works, access and public rights of way plans.
Parish of Thorne and Parish of Hatfield	North of Low Levels Bank	Cable Works beneath the full width of street within a length of 214 metres as shown between points CA12-A to CA12-B and delineated in pink on Sheets 9 and 10 of the street works, access and public rights of way plans.
Parish of Thorne and Parish of Hatfield	North of Low Levels Bank	Cable Works beneath the full width of street within a length of 28 metres as shown between points CA12-B to CA12-C and delineated in pink on Sheet 10 of the street works, access and public rights of way plans.
Parish of Hatfield and Parish of Belton	High Levels Bank	Cable Works beneath the full width of street within a length of 49 metres as shown between points CA13-A to CA13-B and delineated in pink on Sheet 10 of the street works, access and

		public rights of way plans.
Parish of Hatfield and Parish of Belton	High Levels Bank	Works for the provision of resurfacing for the length of 49 metres and the full width of the street between the points SWR21-A to SWR21-B and delineated in orange on Sheet 10 of the street works, access and public rights of way plans.
Parish of Belton	High Levels Bank	Cable Works beneath the full width of street within a length of 276 metres as shown between points CA14-A to CA14-B and delineated in pink on Sheet 10 of the street works, access and public rights of way plans.
Parish of Belton	High Levels Bank	Works for the provision of resurfacing for the length of 276 metres and the full width of the street between the points SWR22-A to SWR22-B and delineated in orange on Sheet 10 of the street works, access and public rights of way plans.
Parish of Belton	High Levels Bank junction with Jaque's Bank	Cable Works beneath the full width of street within a length of 51 metres as shown between points CA15-A to CA15-B and delineated in pink on Sheet 10 of the street works, access and public rights of way plans.
Parish of Belton	High Levels Bank junction with Jaque's Bank	Works for the provision of resurfacing for the length of 51 metres and the full width of the street between the points SWR23-A to SWR23-B and delineated in orange on Sheet 10 of the street works, access and public rights of way plans.
Parish of Belton	Idle Bank	Cable Works beneath the full width of street within a length of 133 metres as shown between points CA17-A to CA17-B and delineated in pink on Sheets 10 and 11 of the street works, access and public rights of way plans.
Parish of Belton	Idle Bank	Works for the provision of resurfacing for the length of 133 metres and the full width of the street between the points SWR25-A to SWR25-B and delineated in orange on Sheets 10 and 11 of the street works, access and public rights of way

		plans.
Parish of Belton	Idle Bank	Cable Works beneath the full width of street within a length of 455 metres as shown between points CA18-A to CA18-B and delineated in pink on Sheets 10 and 11 of the street works, access and public rights of way plans.
Parish of Belton	Idle Bank	Works for the provision of resurfacing for the length of 455 metres and the full width of the street between the points SWR26-A to SWR26-B and delineated in orange on Sheets 10 and 11 of the street works, access and public rights of way plans.
Parish of Belton	Un-named road east of High Levels Bank	Cable Works beneath the full width of street within a length of 298 metres as shown between points CA19-A to CA19-B and delineated in pink on Sheets 10 and 11 of the street works, access and public rights of way plans.
Parish of Belton	Un-named road east of High Levels Bank	Works for the provision of resurfacing for the length of 298 metres and the full width of the street between the points SWR27-A to SWR27-B and delineated in orange on Sheets 10, 11 and 12 of the street works, access and public rights of way plans.
Parish of Belton	Un-named road east of High Levels Bank	Cable Works beneath the full width of street within a length of 2105 metres as shown between points CA19-B to CA19-C and delineated in pink on Sheets 10, 11 and 12 of the street works, access and public rights of way plans.
Parish of Belton	Un-named road east of High Levels Bank	Works for the provision of resurfacing for the length of 2105 metres and the full width of the street between the points SWR27-B to SWR27-C and delineated in orange on Sheets 10, 11 and 12 of the street works, access and public rights of way plans.
Parish of Belton	Un-named road east of High Levels Bank	Cable Works beneath the full width of street within a length of 167 metres as shown between points CA19-C to

		CA19-D and delineated in pink on Sheet 12 of the street works, access and public rights of way plans.
Parish of Belton	Un-named road east of High Levels Bank	Works for the provision of resurfacing for the length of 167 metres and the full width of the street between the points SWR27-C to SWR27-D and delineated in orange on Sheet 12 of the street works, access and public rights of way plans.
Parish of Belton	Un-named road east of High Levels Bank	Cable Works beneath the full width of street within a length of 228 metres as shown between points CA20-A to CA20-B and delineated in pink on Sheet 12 of the street works, access and public rights of way plans.
Parish of Belton	Un-named road east of High Levels Bank	Works for the provision of resurfacing for the length of 228 metres and the full width of the street between the points SWR28-A to SWR28-B and delineated in orange on Sheet 12 of the street works, access and public rights of way plans.
Parish of Belton	Verge to the west side of the A161	Works for the provision of resurfacing for the length of 61 metres and the full width of the street between the points SWR29-A to SWR29-B and delineated in orange on Sheet 12 of the street works, access and public rights of way plans.

SCHEDULE 5

Article 14

ALTERATION OF STREETS

(1) *Area*	*(2)* *Street subject to alteration of layout*	*(3)* *Description of alteration*
Parish of Thorne	Moor Edges Road	Works for the provision of a permanent means of access to the authorised development within the area shaded blue on Sheet 1 of the street works, access and public rights of way plans, reference STW1.
Parish of Thorne	Moor Edges Road	Works for the provision of a permanent means of access to the authorised development within the area shaded blue on Sheet 2 of the street works, access and public rights of way plans, reference STW2.
Parish of Crowle and Ealand	Crook O'Moor Track	Works for the provision of permanent means of access to the authorised development within the area shaded blue on Sheet 4 of the street works, access and public rights of way plans, references STW4-B, STW4-C and STW4.1.
Parish of Crowle and Ealand	Marsh Road	Works for the provision of permanent means of access to the authorised development within the area shaded blue on Sheet 4 of the street works, access and public rights of way plans, references STW5-A, STW5-B, STW5-C and STW5.1.
Parish of Thorne	Green Bank	Works for the provision of permanent means of access to the authorised development within the area shaded blue on Sheets 5 and 8 of the street works, access and public rights of way plans, references STW3-B, STW3-C, STW3.1 and STW3.2.
Parish of Thorne	Green Bank	Works for the provision of a permanent means of access to the authorised development within the area shaded blue on Sheets 5 and 8 of the street works, access and public rights of way plans, reference STW6.

Parish of Thorne and Parish of Hatfield	High Levels Bank	Works for the provision of a permanent means of access to the authorised development within the area shaded blue on Sheets 5 and 8 of the street works, access and public rights of way plans, reference STW7.
Parish of Hatfield	High Levels Bank	Works for the provision of a permanent means of access to the authorised development within the area shaded blue on Sheets 6 and 10 of the street works, access and public rights of way plans, reference STW8.
Parish of Thorne and Parish of Hatfield	Sandtoft Road	Works for the provision of a permanent means of access to the authorised development within the area shaded blue on Sheet 7 of the street works, access and public rights of way plans, reference STW9.
Parish of Belton	Jacque's Bank	Works for the provision of a permanent means of access to the authorised development within the area shaded blue on Sheets 6 and 10 of the street works, access and public rights of way plans, reference STW10.
Parish of Thorne and Parish of Hatfield	Low Levels Bank	Works for the provision of a permanent means of access to the authorised development within the area shaded blue on Sheets 7, 8 and 9 of the street works, access and public rights of way plans, reference STW11.
Parish of Thorne and Parish of Hatfield	High Levels Bank	Works for the provision of a permanent means of access to the authorised development within the area shaded blue on Sheet 8 of the street works, access and public rights of way plans, reference STW13.
Parish of Thorne and Parish of Hatfield	Crow Tree Bank	Works for the provision of a permanent means of access to the authorised development within the area shaded blue on Sheet 8 of the street works, access and public rights of way plans, reference STW14.
Parish of Hatfield	Low Levels Bank	Works for the provision of permanent means of access to the authorised development within the area shaded blue on Sheet 9 of the street works,

		access and public rights of way plans, references STW12-B, STW12-C and STW12.1.
Parish of Thorne and Parish of Hatfield	High Levels Bank	Works for the provision of a permanent means of access to the authorised development within the area shaded blue on Sheet 10 of the street works, access and public rights of way plans, reference STW15.
Parish of Thorne and Parish of Hatfield	High Levels Bank	Works for the provision of a permanent means of access to the authorised development within the area shaded blue on Sheet 10 of the street works, access and public rights of way plans, references STW16 and STW16.1.
Parish of Belton	High Levels Bank junction with Jaque's Bank	Works for the provision of a permanent means of access to the authorised development within the area shaded blue on Sheet 10 of the street works, access and public rights of way plans, reference STW17.
Parish of Belton	Idle Bank	Works for the provision of a permanent means of access to the authorised development within the area shaded blue on Sheets 10 and 11 of the street works, access and public rights of way plans, reference STW19.
Parish of Belton and Parish of Crowle and Ealand	Un-named road south of A18	Works for the provision of permanent means of access to the authorised development within the area shaded blue on Sheets 11 and 12 of the street works, access and public rights of way plans, reference STW21.1.
Parish of Belton	A161	Works for the provision of a permanent means of access to the authorised development within the area shaded blue on Sheet 12 of the street works, access and public rights of way plans, reference STW23-A to STW23-B.

SCHEDULE 6

Article 16

STREETS AND PUBLIC RIGHTS OF WAY TO BE TEMPORARILY CLOSED OR RESTRICTED

PART 1

STREETS TO BE TEMPORARILY CLOSED OR RESTRICTED

(1) *Area*	*(2)* *Street to be temporarily closed or restricted*	*(3)* *Extent of temporary closure or restriction*
Parish of Thorne	Moor Edges Road	Temporarily close, prohibit the use of, restrict the use of, alter or divert the width of street between the points marked TSC1-A and TSC1-B on Sheet 1 of the street works, access and public rights of way plans.
Parish of Thorne	Moor Edges Road	Temporarily close, prohibit the use of, restrict the use of, alter or divert the width of street between the points marked TSC2-A and TSC2-B on Sheet 2 of the street works, access and public rights of way plans.
Parish of Thorne	Green Bank	Temporarily close, prohibit the use of, restrict the use of, alter or divert the width of street between the points marked TSC3-A and TSC3-B on Sheet 2 of the street works, access and public rights of way plans.
Parish of Crowle and Ealand	Crook O'Moor Track	Temporarily close, prohibit the use of, restrict the use of, alter or divert the width of street between the points marked TSC4-A and TSC4-B on Sheets 3 and 4 of the street works, access and public rights of way plans.
Parish of Crowle and Ealand	Crook O'Moor Track	Temporarily close, prohibit the use of, restrict the use of, alter or divert the width of street between the points marked TSC4-B and TSC4-C on Sheet 4 of the street works, access and public rights of way plans.
Parish of Crowle and Ealand	Crook O'Moor Track	Temporarily close, prohibit the use of, restrict the use of, alter or divert the width of street between the points marked TSC4-C and TSC4-D on Sheet

		4 of the street works, access and public rights of way plans.
Parish of Crowle and Ealand	Marsh Road	Temporarily close, prohibit the use of, restrict the use of, alter or divert the width of street between the points marked TSC5-A and TSC5-B on Sheet 4 of the street works, access and public rights of way plans.
Parish of Crowle and Ealand	Marsh Road	Temporarily close, prohibit the use of, restrict the use of, alter or divert the width of street between the points marked TSC5-B and TSC5-C on Sheet 4 of the street works, access and public rights of way plans.
Parish of Crowle and Ealand	Cross Street	Temporarily close, prohibit the use of, restrict the use of, alter or divert the width of street between the points marked TSC6-A and TSC6-D on Sheet 4 of the street works, access and public rights of way plans.
Parish of Crowle and Ealand	Cross Street	Temporarily close, prohibit the use of, restrict the use of, alter or divert the width of street between the points marked TSC6-B and TSC6-D on Sheet 4 of the street works, access and public rights of way plans.
Parish of Crowle and Ealand	Commonside and Cross Street	Temporarily close, prohibit the use of, restrict the use of, alter or divert the width of street between the points marked TSC6-C and TSC6-D on Sheet 4 of the street works access and public rights of way plans.
Parish of Crowle and Ealand	Cross Street and Windsor Road	Temporarily close, prohibit the use of, restrict the use of, alter or divert the width of street between the points marked TSC6-D and TSC6-E on Sheet 4 of the street works, access and public rights of way plans.
Parish of Crowle and Ealand	High Street	Temporarily close, prohibit the use of, restrict the use of, alter or divert the width of street between the points marked TSC7-A and TSC7-B on Sheet 4 of the street works, access and public rights of way plans.
Parish of Crowle and Ealand	Wharf Road	Temporarily close, prohibit the use of, restrict the use of, alter or divert the width of street between the points marked TSC7-B and TSC7-C on Sheet

		4 of the street works, access and public rights of way plans.
Parish of Crowle and Ealand	Fieldside	Temporarily close, prohibit the use of, restrict the use of, alter or divert the width of street between the points marked TSC7-B and TSC7-D on Sheet 4 of the street works, access and public rights of way plans.
Parish of Crowle and Ealand	Godnow Road	Temporarily close, prohibit the use of, restrict the use of, alter or divert the width of street between the points marked TSC7-E and TSC7-F on Sheet 4 of the street works, access and public rights of way plans.
Parish of Crowle and Ealand	Godnow Road	Temporarily close, prohibit the use of, restrict the use of, alter or divert the width of street between the points marked TSC8-A and TSC7-B on Sheet 4 of the street works, access and public rights of way plans.
Parish of Crowle and Ealand	Windsor Road	Temporarily close, prohibit the use of, restrict the use of, alter or divert the width of street between the points marked TSC8-C and TSC8-D on Sheet 4 of the street works access and public rights of way plans.
Parish of Thorne	Green Bank	Temporarily close, prohibit the use of, restrict the use of, alter or divert the width of street between the points marked TSC3-B and TSC3-C on Sheets 5 and 8 of the street works, access and public rights of way plans.
Parish of Thorne	Green Bank	Temporarily close, prohibit the use of, restrict the use of, alter or divert the width of street between the points marked TSC9-A and TSC9-B on Sheets 5 and 8 of the street works, access and public rights of way plans.
Parish of Thorne	High Levels Bank	Temporarily close, prohibit the use of, restrict the use of, alter or divert the width of street between the points marked TSC10-A and TSC10-B on Sheets 5 and 8 of the street works, access and public rights of way plans.
Parish of Thorne	High Levels Bank	Temporarily close, prohibit the use of, restrict the use of, alter

		or divert the width of street between the points marked TSC11-A and TSC11-B on Sheets 6 and 10 of the street works, access and public rights of way plans.
Parish of Hatfield	Tudworth Road	Temporarily close, prohibit the use of, restrict the use of, alter or divert the width of street between the points marked TSC12-A and TSC12-B on Sheet 7 of the street works, access and public rights of way plans.
Parish of Hatfield	Sandtoft Road	Temporarily close, prohibit the use of, restrict the use of, alter or divert the width of street between the points marked TSC12-C and TSC12-D on Sheet 7 of the street works, access and public rights of way plans.
Parish of Thorne and Parish of Hatfield	Sandtoft Road	Temporarily close, prohibit the use of, restrict the use of, alter or divert the width of street between the points marked TSC13-A and TSC13-B on Sheet 7 of the street works, access and public rights of way plans.
Parish of Belton	Jacque's Bank	Temporarily close, prohibit the use of, restrict the use of, alter or divert the width of street between the points marked TSC14-A and TSC14-B on Sheets 6 and 10 of the street works, access and public rights of way plans.
Parish of Thorne and Parish of Hatfield	Low Levels Bank	Temporarily close, prohibit the use of, restrict the use of, alter or divert the width of street between the points marked TSC15-A and TSC15-B on Sheets 7, 8 and 9 of the street works, access and public rights of way plans.
Parish of Thorne and Parish of Hatfield	Low Levels Bank	Temporarily close, prohibit the use of, restrict the use of, alter or divert the width of street between the points marked TSC16-A and TSC16-B on Sheets 7 and 9 of the street works, access and public rights of way plans.
Parish of Thorne and Parish of Hatfield	High Levels Bank	Temporarily close, prohibit the use of, restrict the use of, alter

		or divert the width of street between the points marked TSC17-A and TSC17-B on Sheet 8 of the street works, access and public rights of way plans.
Parish of Thorne and Parish of Hatfield	Crow Tree Bank	Temporarily close, prohibit the use of, restrict the use of, alter or divert the width of street between the points marked TSC18-A and TSC18-B on Sheet 8 of the street works, access and public rights of way plans.
Parish of Thorne and Parish of Hatfield	Crow Tree Bank	Temporarily close, prohibit the use of, restrict the use of, alter or divert the width of street between the points marked TSC19-A and TSC19-B on Sheets 8 and 10 of the street works, access and public rights of way plans.
Parish of Thorne and Parish of Hatfield	Low Levels Bank	Temporarily close, prohibit the use of, restrict the use of, alter or divert the width of street between the points marked TSC16-B and TSC16-C on Sheet 9 of the street works, access and public rights of way plans.
Parish of Thorne and Parish of Hatfield	Moor Lane	Temporarily close, prohibit the use of, restrict the use of, alter or divert the width of street between the points marked TSC20-A and TSC20-B on Sheet 9 of the street works, access and public rights of way plans.
Parish of Hatfield and Parish of Belton	High Levels Bank	Temporarily close, prohibit the use of, restrict the use of, alter or divert the width of street between the points marked TSC21-A and TSC21-B on Sheet 10 of the street works, access and public rights of way plans.
Parish of Belton	High Levels Bank	Temporarily close, prohibit the use of, restrict the use of, alter or divert the width of street between the points marked TSC22-A and TSC22-B on Sheet 10 of the street works, access and public rights of way plans.
Parish of Belton	High Levels Bank junction with Jaque's Bank	Temporarily close, prohibit the use of, restrict the use of, alter

		or divert the width of street between the points marked TSC23-A and TSC23-B on Sheet 10 of the street works, access and public rights of way plans.
Parish of Belton	Idle Bank	Temporarily close, prohibit the use of, restrict the use of, alter or divert the width of street between the points marked TSC25-A and TSC25-B on Sheets 10 and 11 of the street works, access and public rights of way plans.
Parish of Belton	Idle Bank	Temporarily close, prohibit the use of, restrict the use of, alter or divert the width of street between the points marked TSC26-A and TSC26-B on Sheets 10 and 11 of the street works, access and public rights of way plans.
Parish of Belton	Un-named road east of High Levels Bank	Temporarily close, prohibit the use of, restrict the use of, alter or divert the width of street between the points marked TSC27-A and TSC27-B on Sheets 10 and 11 of the street works, access and public rights of way plans.
Parish of Belton	Un-named road east of High Levels Bank	Temporarily close, prohibit the use of, restrict the use of, alter or divert the width of street between the points marked TSC27-B and TSC27-C on Sheets 11 and 12 of the street works, access and public rights of way plans.
Parish of Belton	Un-named road east of High Levels Bank	Temporarily close, prohibit the use of, restrict the use of, alter or divert the width of street between the points marked TSC27-C and TSC27-D on Sheet 12 of the street works, access and public rights of way plans.
Parish of Belton	Un-named road east of High Levels Bank	Temporarily close, prohibit the use of, restrict the use of, alter or divert the width of street between the points marked TSC28-A and TSC28-B on Sheet 12 of the street works, access and public rights of way plans.
Parish of Belton	Verge to the west side of the A161	Temporarily close, prohibit the use of, restrict the use of, alter

		or divert the width of street between the points marked TSC29-A and TSC29-B on Sheet 12 of the street works, access and public rights of way plans.

PART 2

PUBLIC RIGHTS OF WAY TO BE TEMPORARILY CLOSED OR RESTRICTED

(1) *District*	*(2)* *Public right of way to be temporarily closed or restricted*	*(3)* *Extent of temporary closure or restriction*
Parish of Thorne	Footpath Thorne – 19	Temporarily prohibit the use of, restrict the use of, alter or divert the footpath in the area shaded green between the points marked PROW1-A and PROW1-B on Sheets 2 and 3 of the street works, access and public rights of way plans.
Parish of Thorne	Footpath Thorne – 19	Temporarily prohibit the use of, restrict the use of, alter or divert the footpath in the area shaded green between the points marked PROW1-B and PROW1-C on Sheet 3 of the street works, access and public rights of way plans.
Parish of Crowle and Ealand	Footpath CROW - 21	Temporarily close, prohibit the use of, restrict the use of, alter or divert the footpath in the area shaded green between the points marked PROW2-A and PROW2-B on Sheets 3 and 4 of the street works, access and public rights of way plans.
Parish of Crowle and Ealand	Footpath CROW - 21	Temporarily close, prohibit the use of, restrict the use of, alter or divert the footpath in the area shaded green between the points marked PROW2-B and PROW2-C on Sheet 4 of the street works, access and public rights of way plans.
Parish of Crowle and Ealand	Footpath CROW – 18	Temporarily close, prohibit the use of, restrict the use of, alter or divert the footpath in the area shaded green between the points marked PROW3-A and PROW3-B on Sheet 4 of the street works, access and public rights of way plans.

SCHEDULE 7

Article 17

ACCESS TO WORKS

(1) *District*	*(2)* *Street*	*(3)* *Description of means of access*
Parish of Thorne	Moor Edges Road	The provision of a permanent means of access to the authorised development, reference STW1, within the area shaded blue on Sheet 1 of the street works, access and public rights of way plans.
Parish of Thorne	Moor Edges Road	The provision of a permanent means of access to the authorised development, reference STW2, within the area shaded blue on Sheet 2 of the street works, access public and rights of way plans.
Parish of Crowle and Ealand	Crook O'Moor Track	The provision of permanent means of access to the authorised development, references STW4-B, STW4-C and STW4.1, within the area shaded blue on Sheet 4 of the street works, access and public rights of way plans.
Parish of Crowle and Ealand	Marsh Road	The provision of permanent means of access to the authorised development, references STW5-A, STW5-B, STW5-C and STW5.1, within the area shaded blue on Sheet 3 of the street works, access and public rights of way plans.
Parish of Thorne	Green Bank	The provision of permanent means of access to the authorised development, references STW3-B, STW3-C, STW3.1 and STW3.2, within the area shaded blue on Sheets 5 and 8 of the street works, access and public rights of way plans.
Parish of Thorne	Green Bank	The provision of a permanent means of access to the authorised development, reference STW6, within the area shaded blue on Sheet 5 and 8 of the street works, access and public rights of way plans.

Parish of Thorne and Parish of Hatfield	High Levels Bank	The provision of a permanent means of access to the authorised development, reference STW7, within the area shaded blue on Sheet 5 and 8 of the street works, access and public rights of way plans.
Parish of Hatfield	High Levels Bank	The provision of a permanent means of access to the authorised development, reference STW8, within the area shaded blue on Sheets 6 and 10 of the street works, access and public rights of way plans.
Parish of Hatfield	Sandtoft Road	The provision of a permanent means of access to the authorised development, reference STW9, within the area shaded blue on Sheet 7 of the street works, access and public rights of way plans.
Parish of Belton	Jacque's Bank	The provision of a permanent means of access to the authorised development, reference STW10, within the area shaded blue on Sheets 6 and 10 of the street works, access and public rights of way plans.
Parish of Hatfield	Low Levels Bank	The provision of a permanent means of access to the authorised development, reference STW11, within the area shaded blue on Sheets 7 and 9 of the street works, access and public rights of way plans.
Parish of Hatfield	Low Levels Bank	The provision of a permanent means of access to the authorised development, between references STW12-A and STW12-B within the area shaded blue on Sheets 7 and 9 of the street works, access and public rights of way plans.
Parish of Thorne	High Levels Bank	The provision of a permanent means of access to the authorised development, reference STW13, within the area shaded blue on Sheet 8 of the street works, access and public rights of way plans.
Parish of Thorne and Parish of Hatfield	Crow Tree Bank	The provision of a permanent means of access to the

		authorised development, reference STW14, within the area shaded blue on Sheet 8 of the street works, access and public rights of way plans.
Parish of Hatfield	Low Levels Bank	The provision of permanent means of access to the authorised development, references STW12-B, STW12-C and STW12.1 within the area shaded blue on Sheets 7 and 9 of the street works, access and public rights of way plans.
Parish of Thorne and Parish of Hatfield	High Levels Bank	The provision of a permanent means of access to the authorised development, reference STW15, within the area shaded blue on Sheet 10 of the street works, access and public rights of way plans.
Parish of Thorne and Parish of Hatfield	High Levels Bank	The provision of a permanent means of access to the authorised development, between references STW16 and STW16.1, within the area shaded blue on Sheet 10 of the street works, access and public rights of way plans.
Parish of Belton	High Levels Bank junction with Jaque's Bank	The provision of a permanent means of access to the authorised development, reference STW17, within the area shaded blue on Sheet 10 of the street works, access and public rights of way plans.
Parish of Belton	Idle Bank	The provision of a permanent means of access to the authorised development, reference STW19, within the area shaded blue on Sheets 10 and 11 of the street works, access and public rights of way plans.
Parish of Belton and Parish of Crowle and Ealand	Un-named road south of A18	The provision of permanent means of access to the authorised development, reference STW21.1, within the area shaded blue on Sheets 11 and 12 of the street works, access and public rights of way plans.
Parish of Belton	A161	The provision of a permanent means of access to the authorised development, reference STW23-A, within the area shaded blue on Sheet 12

	of the street works, access and public rights of way plans.

SCHEDULE 8

Article 26

LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED

In this Schedule—

"Access Rights" means all rights necessary for the purposes of the authorised development, including to—

(a) pass and re-pass on foot, with or without vehicles, plant and machinery (including rights to lay and use any temporary surface);

(b) make such investigations in, on or under the land and undertake such site preparation and clearance works as are necessary for the purpose of enabling the right to pass and re-pass;

(c) enter, be on, and break up the surface of, the land;

(d) create and effect access to and from the highway;

(e) upgrade, surface, resurface, use and repair the land for the purpose of enabling the right to pass and re-pass to adjoining land, including creating and maintaining visibility splays, and removing impediments to the exercise of such right to pass and repass;

(f) lay out, use, remove and divert paths for public use;

(g) fell, lop, cut, coppice, uproot and/or remove trees, hedges, shrubs or other vegetation which now or hereafter may be present on the land for the purpose of enabling the right to pass and re-pass to adjoining land;

(h) carry out, install, execute, implement, retain, repair, improve, renew, relocate, maintain and protect landscaping, environmental or ecological mitigation or enhancement works or measures;

(i) erect, repair and remove fencing, security and monitoring measures such as CCTV columns, lighting columns and lighting for the purpose of enabling the right to pass and re-pass;

(j) remove any works carried out to facilitate the right to pass and re-pass and reinstate the land thereafter, including planting and replanting any trees, hedges, shrubs or other vegetation; and

(k) exercise such other rights as may be necessary to facilitate the further associated development works or operations defined in Schedule 1 to the Order.

"Cable Rights" means all rights necessary for the purposes of the authorised development, including to—

(a) install, use, support, protect, inspect, alter, remove, replace, retain, renew, improve and maintain and repair electrical cables, earthing cables, optical fibre cables, data cables, telecommunications cables and other services, together with works associated with such cables including bays, ducts, protection and safety measures and equipment, and other apparatus and structures (collectively referred to as "the cables");

(b) carry out open cut trenching or horizontal directional drilling or any other trenchless method of installing the cables the effects of which are within those assessed in the environmental statement, and create, use and remove launch and exit pits and associated cable ducts;

(c) remain, pass and re-pass on foot, with or without vehicles, plant and machinery (including rights to lay and use any temporary surface);

(d) erect, use and remove fencing, gates, walls, barriers or other means of enclosure, and create, use and remove secure working areas and compounds;

(e) alter, improve, form, maintain, retain, use (with or without vehicles, plant and machinery), remove and reinstate means of access to the land (including visibility splays) and to remove impediments to such access;

(f) create and effect access to and from the highway;

(g) lay out, use, remove and divert paths for public use;

(h) make such investigations in, on or under the land as required, including archaeological investigations;

(i) excavate materials below ground level, including soils, and to store and re-use or dispose of the same, and in so excavating to undertake any works, including works of protection or removal of archaeological remains as may be required by any written scheme of investigation approved under this Order;

(j) install, retain and maintain cable marker posts to identify the location of the cables in the land (subject to an obligation to minimise interference with future use and operations within the land);

(k) install, use, support, protect, inspect, alter, remove, replace, retain, renew, improve and maintain watercourses, public sewers and drains and drainage apparatus and equipment;

(l) fell, lop, cut, coppice, uproot and/or remove trees, hedges, shrubs or other vegetation which now or hereafter may be standing on the land which would if not felled, lopped, cut or removed obstruct or interfere with the working of the cables;

(m) carry out, install, execute, implement, retain, repair, improve, renew, relocate, maintain and protect landscaping, environmental or ecological mitigation or enhancement works or measures;

(n) carry out such works (together with associated fencing) required by this Order, a planning permission and/or consent now or to be granted over the land in accordance with any necessary licences relating to protected species and/or wildlife (which for the avoidance of doubt includes newts);

(o) remove any works carried out and reinstate the land thereafter, including planting and replanting any trees, hedges, shrubs or other vegetation; and

(p) exercise such other rights as may be necessary to facilitate the further associated development works or operations defined in Schedule 1 to the Order.

"Cable Restrictive Covenant" a restrictive covenant over the land for the benefit of the remainder of the Order land to—

(a) prevent anything being done in or on the land or any part thereof for the purposes of—

  (i) the erection of any buildings; or

  (ii) the construction, erection or works of any kind requiring foundations, footings or other supporting structures, without the consent in writing of the undertaker (such consent not to be unreasonably withheld or delayed if the proposed building, erection, construction or works would not cause damage to the relevant part of the authorised development nor make it materially more difficult to access or maintain the authorised development);

(b) prevent anything to be done by way of hard surfacing of the land with concrete of any kind or with any other material or surface whatsoever without the consent in writing of the undertaker (such consent not to be unreasonably withheld or delayed if the proposed hard surfacing would not cause damage to the relevant part of the authorised development nor make it materially more difficult to access or maintain the authorised development);

(c) prevent anything to be done by way of excavation of any kind or agricultural practices exceeding 0.5 metres in depth from—

  (i) the surface of the land;

  (ii) the true cleaned bottom of the open drain, ditch, watercourse or river; or

  (iii) any activities which increase or decrease ground cover or soil levels or change the composition of the land in any manner whatsoever,

  without the consent in writing of the undertaker (such consent not to be unreasonably withheld or delayed if the proposed activity would not cause damage to the relevant part of the authorised development nor make it materially more difficult to access or maintain

the authorised development, with such consent being subject to such reasonable conditions as the undertaker may require);

(d) prevent the planting or growing within the land of any trees, shrubs or underwood without the consent in writing of the undertaker (such consent not to be unreasonably withheld or delayed provided that the proposed trees, shrubs or underwood would not cause damage to the relevant part of the authorised development nor make it materially more difficult to maintain or to access the relevant part of the authorised development) provided that the growing within the land of any pre-existing trees, shrubs or underwood do not require the consent of the undertaker;

(e) prevent anything being done which may interfere with the free flow and passage of electricity or telecommunications through the cables or support for the authorised development; and

(f) prevent anything being done in or on the land or any part thereof which will, or which the undertaker can reasonably foresee may, interfere with the exercise of the other rights set out in this Schedule, or the use of the authorised development or in any way render the authorised development or any part thereof in breach of any statute or regulation for the time being in force and applicable thereto.

"Drainage Rights" means all rights necessary for the purposes of the authorised development, including to—

(a) improvements or extensions to existing drainage and irrigation systems;

(b) works to alter the position and extent of existing irrigation systems;

(c) diversions and works to, and works to alter the position of, drainage connections;

(d) [the installation, use, support, protection, inspection, alteration, removal, replacement, retention, renewal, improvement and maintenance of public sewers and drains and drainage apparatus and equipment;]

(e) channelling and culverting and works to existing drainage networks.

"Environmental Mitigation Rights" means all rights necessary for the purposes of works to create, enhance and maintain green infrastructure and habitat management, including for the purposes of:

(a) soft landscaping including planting;

(b) landscape and biodiversity mitigation including earthworks, landscaping, means of enclosure and the laying and construction of drainage infrastructure;

(c) habitat creation and management including earthworks, landscaping, means of enclosure and the laying and construction of drainage infrastructure;

(d) earth works;

(e) laying down of permissive paths, signage and information boards;

(f) hard standing and hard landscaping;

(g) drainage and irrigation infrastructure and improvements or extensions to existing irrigation systems;

(h) fencing, gates, boundary treatment and other means of enclosure; and

(i) improvement, maintenance and use of existing private tracks.

"Environmental Mitigation Restrictive Covenant" means a restrictive covenant over the land for the benefit of the remainder of the Order land to—

(a) prevent anything being done in or on the land or any part thereof for the purposes of—

  (i) the erection of any buildings; or

  (ii) the construction, erection or works of any kind requiring foundations, footings or other supporting structures, without the consent in writing of the undertaker (such consent not to be unreasonably withheld or delayed if the proposed building, erection, construction or works would not interfere with the environmental

mitigation carried out as part of the authorised works nor make it materially more difficult to access or maintain that environmental mitigation);

(b) prevent anything to be done by way of hard surfacing of the land with concrete of any kind or with any other material or surface whatsoever without the consent in writing of the undertaker (such consent not to be unreasonably withheld or delayed if the proposed hard surfacing would not interfere with the environmental mitigation carried out as part of the authorised works nor make it materially more difficult to access or maintain that environmental mitigation);

(c) prevent anything to be done by way of excavation of any kind or agricultural practices exceeding 0.5 metres in depth from—

(i) the surface of the land;

(ii) the true cleaned bottom of the open drain, ditch, watercourse or river; or

(iii) any activities which increase or decrease ground cover or soil levels or change the composition of the land in any manner whatsoever,

without the consent in writing of the undertaker (such consent not to be unreasonably withheld or delayed if the proposed activity would not interfere with the environmental mitigation carried out as part of the authorised works nor make it materially more difficult to access or maintain that environmental mitigation, with such consent being subject to such reasonable conditions as the undertaker may require);

(d) prevent the planting or growing within the land of any trees, shrubs or underwood without the consent in writing of the undertaker (such consent not to be unreasonably withheld or delayed provided that the proposed trees, shrubs or underwood would not interfere with the environmental mitigation carried out as part of the authorised works nor make it materially more difficult to access or maintain that environmental mitigation) provided that the growing within the land of any pre-existing trees, shrubs or underwood do not require the consent of the undertaker;

"Oversailing Rights" means all rights necessary to extend over the boundary of land and into the airspace above adjoining land for the purposes of the authorised development.

(1) *Plot reference number shown on the land plans*	*(2)* *Purposes for which rights over land may be acquired and restrictive covenants imposed*
1/12, 1/14, 1/22, 1/23, 1/30, 1/33, 1/35, 1/38, 1/41,1/42, 1/45, 1/49, 1/51, 1/54, 1/57, 2/9, 2/11, 2/12, 2/14, 2/19, 2/22, 2/25, 2/28, 2/29, 2/30, 2/32, 2/36, 2/40, 2/51, 2/52, 2/55, 2/58, 2/61, 2/63, 2/73, 3/1, 3/6, 3/16, 3/17, 3/18, 3/19, 3/20, 3/23, 3/27, 3/28, 3/31, 3/32, 4/1, 4/4, 4/7, 4/23, 5/7, 5/8, 5/9, 5/15, 5/16, 6/2, 6/6, 6/7, 6/13, 6/20, 6/21, 6/22, 6/25, 6/26, 6/27, 6/28, 7/1, 7/14, 7/19, 7/23, 8/10, 8/13, 9/3, 9/8, 9/10, 9/11, 9/13, 9/14, 9/16, 9/17, 10/2, 10/4, 10/6, 10/9, 10/10, 10/12, 10/20, 10/22, 10/23, 10/24, 10/27, 10/33, 10/34, 10/35, 10/37, 10/47, 10/49, 10/50, 11/2, 11/3, 11/4, 11/5, 11/6, 11/7, 11/8, 11/11, 11/12, 11/14, 11/15, 11/16, 11/17, 11/18, 11/21, 11/23, 12/3, 12/4, 12/5 and 12/7	Access Rights Cable Rights Cable Restrictive Covenant Drainage Rights
~~3/32,~~ 7/2, 7/3, 7/4, 7/5 and 7/6	Access Rights Cable Rights Cable Restrictive Covenant Drainage Rights Environmental Mitigation Rights Environmental Mitigation Restrictive Covenant

3/21, 4/10, 4/36, 4/37, 4/38, 4/39, 4/40, 4/42, 4/43, 5/5, 6/3, 6/4, 6/5, 7/10, 7/18, 7/22, 9/6, 9/9, 9/18, 10/7, 10/8, 10/11, 10/13, 10/14, 10/15, 10/16, 10/17, 10/18, 10/36, 10/38, 10/39, 10/43, 10/45, 10/46, 10/48, 11/1, 11/10, 11/20, 12/1 and 12/2	Access Rights Cable Rights Drainage Rights
1/2, 1/4, 1/5, 1/7, 1/9, 1/11, 1/15, 1/16, 1/17, 1/18, 1/19, 1/20, 1/21, 1/28, 2/1, 2/2, 2/3, 2/4, 2/5, 2/6, 2/67, 4/8, 4/11, 4/12, 4/13, 5/10, 5/11, 5/12, 5/13, 5/14, 7/9, 8/8, 8/9, 12/6 and 12/18	Access Rights Drainage Rights
2/69, 5/1, 5/2 and 12/15	Access Rights Drainage Rights Environmental Mitigation Rights Environmental Mitigation Restrictive Covenant
3/24, 3/25 and 3/26	Cable Rights Cable Restrictive Covenant
9/24	Cable Rights
3/11, 3/12, 3/13, 3/14, 3/15, 8/6, 8/17, 8/18, 9/25, 10/30, 10/31, 10/32 and 10/40	Cable Rights Cable Restrictive Covenant Drainage Rights
8/5, 8/14, 8/15 and 9/12	Cable Rights Drainage Rights
12/8, 12/9, 12/10, 12/11, 12/12 and 12/13	Oversailing Rights

SCHEDULE 9

Article 26

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

Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right or the imposition of a restrictive covenant as they apply as respects compensation on the compulsory purchase of land and interests in land.

2.—(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1973(**a**) has effect subject to the modifications set out in sub-paragraph (2).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 (measure of compensation in case of severance) of the 1965 Act as substituted by paragraph 5—

(a) for the words "land is acquired or taken from" substitute "a right or restrictive covenant over land is purchased from or imposed on"; and

(b) for the words "acquired or taken from him" substitute "over which the right is exercisable or the restrictive covenant enforceable".

3.—(1) Without limitation on the scope of paragraph 1, the 1961 Act has effect subject to the modification set out in sub-paragraph (2).

(2) In section 5A(5A) (relevant valuation date), omit the words after "If—" and substitute—

"(a) the acquiring authority enters on land for the purpose of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act (as modified by paragraph 5(5) of Schedule 9 to the Tween Bridge Solar Farm Order 202[X]);

(b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A to the 1965 Act (as substituted by paragraph 5(8) of Schedule 9 to the Tween Bridge Solar Farm Order 202[X]) to acquire an interest in the land; and

(c) the acquiring authority enters on and takes possession of that land,

the authority is deemed for the purposes of subsection (3)(a) to have entered on that land where it entered on that land for the purpose of exercising that right."

Application of Part 1 of the 1965 Act

4. Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act, as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act to the acquisition of land under article 23 (compulsory acquisition of land) and as modified by article 32 (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, or the imposition of a restrictive covenant, under article 26 (compulsory acquisition of rights and imposition of restrictive covenants)—

(a) with the modifications specified in paragraph 5; and

(b) with such other modifications as may be necessary.

(**a**) 1973 c. 26

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

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

(a) the right acquired or to be acquired, or the restriction imposed or to be imposed; or

(b) the land over which the right is or is to be exercisable, or the restriction is to be enforceable.

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

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

(4) The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

(a) section 9(4) (refusal to convey, failure to make title, etc.);

(b) paragraph 10(3) of Schedule 1 (conveyance of the land or interest);

(c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and

(d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

are modified to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired or the restrictive covenant which is to be imposed is vested absolutely in the acquiring authority.

(5) Section 11 (powers of entry)(**a**) of the 1965 Act is modified to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right or restrictive covenant, as well as the notice of entry required by subsection (1) of that section (as it applies to compulsory acquisition under article 23 (compulsory acquisition of land)), it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant (which is deemed for this purpose to have been created on the date of service of the notice); and sections 11A (powers of entry: further notices of entry)(**b**), 11B (counter-notice requiring possession to be taken on specified date)(**c**), 12 (unauthorised entry)(**d**) and 13 (refusal to give possession to acquiring authority)(**e**) of the 1965 Act are modified correspondingly.

(6) Section 20 (tenants at will, etc.)(**f**) of the 1965 Act applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right or the enforcement of the restrictive covenant in question.

(**a**) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1), sections 186(2), 187(2) and 188 of, and paragraph 6 of Schedule 14 and paragraph 3 of Schedule 16 to, the Housing and Planning 2016 (c. 22) and S.I. 2009/1307

(**b**) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016.

(**c**) Section 11B was inserted by section 187(3) of the Housing and Planning Act 2016.

(**d**) Section 12 was amended by section 56(2) of, and Part 1 of Schedule 9 to, the Courts Act 1971 (c. 23) and paragraphs (2) and (4) of Schedule 16 to the Housing and Planning Act 2016.

(**e**) Section 13 was amended by sections 62(3), 139(4) to (9) and 146 of, and paragraphs 27 and 28 of Schedule 13 and Part 3 of Schedule 23 to the Tribunals, Courts and Enforcement Act 2007 (c. 15).

(**f**) Section 20 was amended by paragraph 4 of Schedule 15 to the Planning and Compensation Act 1991 (c. 34) and S.I. 2009/1307.

(7) Section 22 (interests omitted from purchase) of the 1965 Act as modified by article 25(4) (modification of Part 1 of the Compulsory Purchase Act 1965) is so modified as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired or restrictive covenant imposed, subject to compliance with that section as respects compensation.

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

"SCHEDULE 2A

Ref

COUNTER-NOTICE REQUIRING PURCHASE OF LAND

1.—(1) This Schedule applies where an acquiring authority serve a notice to treat in respect of a right over, or restrictive covenant affecting, the whole or part of a house, building or factory and have not executed a general vesting declaration under section 4 of the 1981 Act as applied by article 28 (application of the 1981 Act) of the Tween Bridge Solar Farm Order 202[ ] in respect of the land to which the notice to treat relates.

(2) But see article 29(3) (acquisition of subsoil only) of the Tween Bridge Solar Farm Order 202[X] which excludes the acquisition of subsoil only from this Schedule.

2. In this Schedule, "house" includes any park or garden belonging to a house.

Counter-notice requiring purchase of land

3. A person who is able to sell the house, building or factory ("the owner") may serve a counter-notice requiring the authority to purchase the owner's interest in the house, building or factory.

4. A counter-notice under paragraph 3 must be served within the period of 28 days beginning with the day on which the notice to treat was served.

Response to counter-notice

5. On receiving a counter-notice, the acquiring authority must decide whether to-

(a) withdraw the notice to treat;

(b) accept the counter-notice; or

(c) refer the counter-notice to the Upper Tribunal.

6. The authority must serve notice of their decision on the owner within the period of three months beginning with the day on which the counter-notice is served ("the decision period").

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

8. If the authority does not serve notice of a decision within the decision period they are to be treated as if they had served notice of a decision to withdraw the notice to treat at the end of that period.

9. If the authority serves notice of a decision to accept the counter-notice, the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in the house, building or factory.

Determination by the Upper Tribunal

10. On a referral under paragraph 7, the Upper Tribunal must determine whether the acquisition of the right or the imposition of the restrictive covenant would—

(a) in the case of a house, building or factory, cause material detriment to the house, building or factory; or

(b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

11. In making its determination, the Upper Tribunal must take into account—

(a) the effect of the acquisition of the right or the imposition of the covenant;

(b) the use to be made of the right or covenant proposed to be acquired or imposed; and

(c) if the right or covenant is proposed to be acquired or imposed for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.

12. If the Upper Tribunal determines that the acquisition of the right or the imposition of the covenant would have either of the consequences described in paragraph 10, it must determine how much of the house, building or factory the authority ought to be required to take.

13. If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in that land.

14.—(1) If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the authority may at any time within the period of six weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.

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

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

SCHEDULE 10

Article 38

ACQUISITION OF WAYLEAVES, EASEMENTS AND OTHER RIGHTS

PART 1

ON BEHALF OF LICENCE HOLDERS

Acquisition of necessary wayleaves

1.—(1) This paragraph applies where—

(a) a licence holder has agreed in writing with the undertaker that it is necessary or expedient to remove an electric line within the Order limits and to install and keep installed an electric line in substitution for it on, under or over specified land;

(b) the licence holder has agreed in writing that the undertaker may seek a necessary wayleave on behalf of the licence holder in respect of the specified land; and

(c) the owner or occupier of the specified land, having been given a notice by the undertaker or the licence holder requiring him to give the necessary wayleave to the licence holder within a period (not being less than 21 days) specified in the notice—

(i) has failed to give the wayleave before the end of that period; or

(ii) has given the wayleave subject to terms and conditions to which the undertaker, following consultation with the licence holder, objects.

(2) Subject to sub-paragraphs (3) and (4), the Secretary of State may, on the application of the undertaker, himself grant the necessary wayleave to the licence holder subject to such terms and conditions as he thinks fit; and a necessary wayleave so granted shall, unless previously terminated in accordance with a term contained in the wayleave, continue in force for such period as may be specified in the wayleave.

(3) The Secretary of State must not entertain an application under sub-paragraph (2) in any case where—

(a) the specified land is covered by a dwelling, or will be so covered on the assumption that any planning permission which is in force is acted on; and

(b) the line is to be installed on or over the specified land.

(4) Before granting the necessary wayleave to the licence holder, the Secretary of State must afford—

(a) the occupier of the specified land; and

(b) where the occupier is not also the owner of the specified land, the owner, an opportunity of being heard by a person appointed by the Secretary of State.

(5) A necessary wayleave granted to the licence holder under this paragraph—

(a) is not subject to the provisions of any enactment requiring the registration of interests in, charges over or other obligations affecting land; but

(b) binds any person who is at any time the owner or occupier of the specified land.

(6) Where in pursuance of a necessary wayleave granted under this paragraph a licence holder has erected on any land supports for an electric line, the licence holder is deemed to have an

interest in that land for the purposes of section 7 of the Mines (Working Facilities and Support) Act 1966(**a**).

(7) Where a wayleave is granted to a licence holder under this paragraph—

(a) the occupier of the specified land; and

(b) the owner (where the occupier is not also the owner of the specified land),

may recover from the undertaker compensation in respect of the grant.

(8) Where in the exercise of any right conferred by such a wayleave any damage is caused to the specified land or to movables, any person interested in the specified land or movables may recover from the undertaker compensation in respect of that damage, and where, in consequence of the exercise of such a right, a person is disturbed in their enjoyment of any land or movables he may recover from the undertaker compensation in respect of that disturbance.

(9) Compensation under this paragraph may be recovered as a lump sum or by periodical payments or partly in one way and partly in the other.

(10) Any question of disputed compensation under this paragraph will be determined by the Tribunal, and section 4 of the Land Compensation Act 1961(**b**) applies to any such determination.

Compulsory acquisition of easements or other rights

2.—(1) This paragraph applies where—

(a) a licence holder has agreed in writing with the undertaker that it is necessary or expedient to remove an electric line within the Order limits and to install and keep installed an electric line in substitution for it, or to otherwise install an electric line in connection with the authorised development on, under or over specified land; and

(b) the licence holder has agreed in writing that the undertaker may seek an easement or other right in land on behalf of the licence holder in respect of the specified land.

(2) Subject to sub-paragraph (3) and (4), where a compulsory purchase order is sought by the undertaker in accordance with sub-paragraph (1), the Secretary of State may authorise the relevant licence holder to purchase compulsorily an easement or right over the specified land where the Secretary of State is satisfied that it is required for any purpose connected with the carrying on of the activities which he is authorised by his licence to carry on.

(3) Part I (paragraphs 2 onwards) and Part II of Schedule 3 of the Electricity Act 1989(**c**) applies in respect of powers of compulsory purchase sought in accordance with this paragraph except that where consent is provided under sub-paragraph (1), the consent required under paragraph 2(1) of Schedule 3 of the Electricity Act 1989 is deemed to have been provided.

(4) Unless otherwise agreed between the undertaker and the licence holder in writing, where the undertaker seeks a compulsory purchase order on behalf of a licence holder in accordance with this paragraph, the negotiation of consideration and compensation will be undertaken by the undertaker and any consideration or compensation agreed or determined is payable by the undertaker and Schedule 3 of the Electricity Act 1989 as applied by this paragraph is interpreted accordingly.

Interpretation

3. In this Part of this Schedule—

"dwelling" means a building or part of a building occupied, or (if not occupied) last occupied or intended to be occupied, as a private dwelling and includes any garden, yard, outhouses and appurtenances belonging to or usually enjoyed with that building or part;

"licence holder" means a person holding a licence under section 6 of the Electricity Act 1989;

(**a**) 1966 c. 4.
(**b**) 1961 c. 33.
(**c**) 1989 c. 29.

"necessary wayleave" means consent for the licence holder to install and keep installed the electric line on, under or over the specified land and to have access to the specified land for the purpose of inspecting, maintaining, adjusting, repairing, altering, replacing or removing the electric line;

"specified land" means the land within or outside the Order limits on, under or over which a licence holder agrees, in accordance with paragraph 1 or 2, that an electric line should either be relocated in substitution for an existing electric line or, installed; and

"Tribunal" means the Upper Tribunal in relation to England and Wales.

PART 2

ON BEHALF OF CODE OPERATORS

Court imposition of code rights

4.—(1) This paragraph applies where—

(a) a code operator has agreed in writing with the undertaker that for the purposes of the authorised development it is necessary or expedient to remove electronic communications apparatus owned by the code operator within the Order limits and to install and keep installed electronic communications apparatus in substitution for it on, under or over specified land;

(b) the code operator has agreed in writing that the undertaker may seek code rights on behalf of the code operator in respect of the specified land, including all of the other terms of the agreement sought; and

(c) the code operator or the undertaker has given the relevant person a notice in writing—

(i) setting out the code rights, and all of the other terms of the agreement sought; and

(ii) (stating that the person's agreement to those terms is sought.

(2) The undertaker may apply to the court for an order under this paragraph if the relevant person does not, before the end of 28 days beginning with the day on which the notice in sub-paragraph (1)(c) is given, agree to confer or be otherwise bound by the code rights.

(3) An order under this paragraph is one which imposes on the code operator and the relevant person an agreement between them which—

(a) confers the code rights on the operator; or

(b) provides for the code rights to bind the relevant person.

(4) Where the undertaker makes an application to the court under sub-paragraph (2), paragraph 21, 22, 23, 24 and 26 of Part 4 of Schedule 3A (The Electronic Communications Code) and Part 14 (Compensation under The Code) of the Communications Act 2003(**a**) applies as if—

(a) reference to the making of an "order under paragraph 20" were substituted for the making of an "order under Schedule 10 of the Tween Bridge Solar Farm Order 20[ ]"; and

(b) (unless otherwise agreed on a case-by-case basis in writing between the undertaker and the code operator, all references to "consideration" or "compensation" provided for in any agreement or order or otherwise to be determined is to be read as being payable by the undertaker.

Compulsory acquisition of easements or other rights

5.—(1) The undertaker may seek a compulsory purchase order on behalf of a code operator where—

(**a**) 2003 c. 21.

(a) the code operator has agreed in writing with the undertaker that for the purposes of the authorised development it is necessary or expedient to remove electronic communications apparatus owned by the operator within the Order limits and to install and keep installed electronic communications apparatus in substitution for it on, under or over specified land; and

(b) the code operator has agreed in writing that the undertaker may seek an easement or other rights over land on behalf of the code operator in respect of the specified land.

(2) Subject to sub-paragraph (3) and (4), where a compulsory purchase order is sought by the undertaker in accordance with sub-paragraph (1), the Secretary of State may authorise the relevant code operator to purchase compulsorily the specified land or an easement or right over the specified land if the Secretary of State is satisfied that it is required by the code operator—

(a) for, or in connection with, the establishment or running of the code operator's network; or

(b) as to which it can reasonably be foreseen that it will be so required.

(3) Subject to sub-paragraph (4), paragraphs 3(2) to 3(7) of Schedule 4 of the Communications Act 2003 apply in respect of powers of compulsory purchase sought pursuant to this paragraph.

(4) Unless otherwise agreed between the undertaker and the licence holder in writing, where the undertaker seeks a compulsory purchase order on behalf of a code operator pursuant to this paragraph, all negotiations of compensation will be undertaken by the undertaker and any consideration or compensation agreed or determined in respect of any easements or rights acquired will be payable by the undertaker and Schedule 4 of the Communications Act 2003 will be interpreted accordingly as it applies to this paragraph.

Interpretation

6. In this paragraph, the following terms have the following meaning—

"code operator" has the meaning given for an "operator" in paragraph 2 of Schedule 3A of the Communications Act 2003;

"code operator's network" has the meaning given for "operator's network" in paragraph 6 of Schedule 3A of the Communications Act 2003;

"code rights" has the meaning given in paragraph 3 of Schedule 3A of the Communications Act 2003;

"court" has the meaning given in paragraph 94 of Schedule 3A of the Communications Act 2003;

"electronic communications apparatus" has the meaning given in paragraph 5 of Schedule 3A of the Communications Act 2003;

"relevant person" means the person in respect of whose interest in land a code right is required; and

"specified land" means the land within or outside the Order limits on, under or over which an operator agrees, in accordance with paragraph 5(1), that electronic communications apparatus should be relocated in substitution for existing electronic communications apparatus.

PART 3

ON BEHALF OF WATER AND SEWERAGE UNDERTAKERS

Compulsory acquisition of easement or other rights

7.—(1) The undertaker may seek a compulsory purchase order on behalf of a water or sewerage undertaker where—

(a) the water or sewerage undertaker has agreed in writing with the undertaker that for the purposes of the authorised development it is necessary or expedient to remove water or sewerage apparatus owned by the water or sewerage undertaker within the Order limits

and to install and keep installed alternative apparatus in substitution for it on, under or over specified land; and

(b) the water or sewerage undertaker has agreed in writing that the undertaker may seek an easement or other rights over land on behalf of the water or sewerage undertaker in respect of the specified land.

(2) Subject to sub-paragraph (3), where a compulsory purchase order is sought by the undertaker in accordance with sub-paragraph (1), the Secretary of State may authorise the relevant water or sewerage undertaker to purchase compulsorily the specified land or an easement or right over the specified land where the Secretary of State is satisfied that it is required by the water or sewerage undertaker for the purposes of, or in connection with, the carrying out of its functions.

(3) Section 155(3) to (6) of the Water Industry Act 1991(**a**) applies in respect of powers of compulsory purchase sought in accordance with this paragraph.

(4) Unless otherwise agreed between the undertaker and the water or sewerage undertaker in writing, where the undertaker seeks a compulsory purchase order on behalf of a water or sewerage undertaker in accordance with this paragraph, all negotiations of compensation will be undertaken by the undertaker and any consideration or compensation agreed or determined in respect of any easements or rights acquired is payable by the undertaker.

(5) In this paragraph—

"alternative apparatus" means alternative water or sewerage apparatus adequate to enable the water or sewerage undertaker in question to fulfil its statutory functions in a manner not less efficient than previously;

"specified land" means the land within or outside the Order limits on, under or over which a water or sewerage undertaker agrees, in accordance with sub-paragraph (1), that alternative apparatus should be relocated in substitution for existing relevant water or sewerage apparatus;

"water or sewerage undertaker" means "water undertaker" or "sewerage undertaker" as defined in the Water Industry Act 1991; and

"water or sewerage apparatus" means—

(a) mains, pipes or other water apparatus belonging to or maintained by a water undertaker for the purposes of water supply; and

(b) any drain or works vested in a sewerage undertaker, and any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of the Water Industry Act 1991 or an agreement to adopt made under section 104 of that Act, and includes a sludge main, disposal main (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 in each case includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus.

PART 4

ON BEHALF OF GAS TRANSPORTERS

Compulsory acquisition of easements or other rights

8.—(1) The undertaker may seek a compulsory purchase order on behalf of a gas transporter where—

(a) the gas transporter has agreed in writing with the undertaker that for the purposes of the authorised development it is necessary or expedient to remove gas apparatus owned by

(**a**) 1991 c. 56.

the gas transporter within the Order limits and to install and keep installed gas apparatus in substitution for it on, under or over specified land; and

(b) the gas transporter has agreed in writing that the undertaker may seek an easement or other rights over land on behalf of the gas transporter in respect of the specified land.

(2) Subject to sub-paragraph (3) and (4), where a compulsory purchase order is sought by the undertaker in accordance with sub-paragraph (1), the Secretary of State may authorise the relevant gas transporter to purchase compulsorily an easement or right over the specified land.

(3) Schedule 3 of the Gas Act 1986(**a**) applies in respect of powers of compulsory purchase sought in accordance with this paragraph.

(4) Where the undertaker seeks a compulsory purchase order on behalf of a gas transporter in accordance with this paragraph, all negotiations of compensation will be undertaken by the undertaker, unless otherwise agreed with the gas transporter, and any consideration or compensation agreed or determined in respect of any easements or rights acquired will be payable by the undertaker only (unless otherwise agreed with the operator).

(5) In this paragraph—

"alternative apparatus" means alternative gas apparatus adequate to enable the gas transporter in question to fulfil its statutory functions in a manner not less efficient than previously;

"gas apparatus" means any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purpose of gas supply;

"gas transporter" has the meaning given in Part 1 of the Gas Act 1986; and

"specified land" means land within or outside the Order limits on, under or over which a gas transporter agrees, in accordance with sub-paragraph (1), that alternative apparatus should be relocated in substitution for existing gas apparatus.

(**a**) 1986 c. 44

SCHEDULE 11

Article 42

REMOVAL OF HEDGEROWS

PART 1

REMOVAL OF HEDGEROWS

(1) *Area*	*(2)* *Number of hedgerow and extent of removal*
City of Doncaster	Removal of up to 4m in length of the hedgerow shown approximately within the area shown shaded red and with reference H174 on Sheet 18 of the trees and hedgerow to be removed or managed plan.
City of Doncaster	Removal of up to 12m in length of the hedgerow shown approximately within the area shown shaded red and with reference H135 on Sheet 28 of the trees and hedgerow to be removed or managed plan.
City of Doncaster	Removal of up to 6.5m in length of the hedgerow shown approximately within the area shown shaded red and with reference H138 on Sheet 28 of the trees and hedgerow to be removed or managed plan.
City of Doncaster	Removal of up to 8m in length of the tree group / outgrown hedgerow shown approximately within the area shown shaded red and with reference G107 on Sheet 30 of the trees and hedgerow to be removed or managed plan.
City of Doncaster	Removal of up to 6m in length of the hedgerow shown approximately within the area shown shaded red and with reference H37 on Sheet 35 of the trees and hedgerow to be removed or managed plan.
City of Doncaster	Removal of up to 6m in length of the hedgerow shown approximately within the area shown shaded red and with reference H40 on Sheet 35 of the trees and hedgerow to be removed or managed plan.

PART 2

REMOVAL OF IMPORTANT HEDGEROWS

(1) *Area*	*(2)* *Number of important hedgerow and extent of removal*
City of Doncaster	Removal of up to 14m in length of the hedgerow shown approximately within the area shown shaded red and with reference H61 on Sheet 34

	of the trees and hedgerow to be removed or managed plan.

SCHEDULE 12

Article 44

DOCUMENTS AND PLANS TO BE CERTIFIED

~~PART 1~~

~~SUBMISSION DOCUMENTS FORMING THE ENVIRONMENTAL STATEMENT TO BE CERTIFIED~~

~~*(1)*~~ ~~*Document name*~~	~~*(2)*~~ ~~*Document reference*~~	~~*(3)*~~ ~~*Revision number*~~	~~*(4)*~~ ~~*Date*~~
~~environmental statement~~	~~6.1.0 – 6.2.18~~	~~1~~	~~August 2025~~
~~environmental statement appendices~~	~~6.3.1.0 – 6.3.17.3~~	~~1~~	~~August 2025~~
~~environmental statement figures~~	~~6.4.1.1 – 6.4.17.1~~	~~1~~	~~August 2025~~

PART 1~~2~~

SUBMISSION AND EXAMINATION DOCUMENTS FORMING ~~PART OF~~ THE ENVIRONMENTAL STATEMENT TO BE CERTIFIED

(1) *Document name*	*(2)* *Document reference*	*(3)* *Revision number*	*(4)* *Date*	*(5)* *Examination library reference*
environmental statement chapter 0	6.1.0	4	August 2026	REP5-008
environmental statement chapter 1	6.1.1	1	August 2025	APP-038
environmental statement chapter 2	6.1.2	1	August 2025	APP-039
environmental statement chapter 3	6.1.3	2	May 2026	REP2-019
environmental statement chapter 4	6.1.4	1	August 2025	APP-041
environmental statement chapter 5	6.1.5	1	August 2025	APP-042
environmental statement chapter 6	6.2.6	4	July 2026	REP4-021
environmental statement chapter 7	6.2.7	5	August 2026	REP5-012
environmental statement chapter 8	6.2.8	3	July 2026	REP4-025
environmental statement chapter 9	6.2.9	2	June 2026	REP3-018
environmental statement chapter 10	6.2.10	2	May 2026	REP2-021
environmental statement	6.2.11	1	August 2025	APP-039

chapter 11				
environmental statement chapter 12	6.2.12	4	September 2026	REP6-012
environmental statement chapter 13	6.2.13	4	September 2026	REP6-014
environmental statement chapter 14	6.2.14	2	May 2026	REP2-025
environmental statement chapter 15	6~~5~~.2.15	2	June 2026	REP3-022
environmental statement chapter 16	6.2.16	2	May 2026	REP2-027
environmental statement chapter 17	6.2.17	4	September 2026	REP6-016
environmental statement chapter 18	6.2.18	3~~2~~	~~May~~ August 2026	REP5-010
environmental statement appendix 1.0	6.3.1.0	1	August 2025	APP-056
environmental statement appendix 1.1	6.3.1.1	1	August 2025	APP-057
environmental statement appendix 1.2	6.3.1.2	1	August 2025	APP-058
environmental statement appendix 1.3	6.3.1.3	1	August 2025	APP-059
environmental statement appendix 4.1	6.3.4.1	1	August 2025	APP-060
environmental statement appendix 6.1	6.3.6.1	1	August 2025	APP-061
environmental statement appendix 6.2	6.3.6.2	2	July 2026	REP4-027
environmental statement appendix 6.3 (Parts 1-4)	6.3.6.3	1	August 2025	APP-063 - APP-066
environmental statement appendix 6.4 (Part 2)	6.3.6.4	2	May 2026	REP2-039
environmental statement appendix 6.4 (Part 1)	6.3.6.4	2	June 2026	REP3-027
environmental statement appendix 6.5	6.3.6.5	1	August 2025	APP-069
environmental statement appendix 6.6	6.3.6.6	1	August 2025	APP-070
environmental statement appendix 6.7	6.3.6.7	1	August 2025	APP-071
environmental statement appendix 6.8	6.3.6.8	1	May 2026	REP2-040
environmental statement appendix 7.1	6.3.7.1	1	August 2025	APP-072
environmental statement appendix 7.2	6.3.7.2	2	November 2025	AS-014
environmental statement appendix 7.3	6.3.7.3	2	November 2025	AS-015
environmental statement appendix 7.4	6.3.7.4	1	July 2025	APP-075
confidential report	6.3.7.5	1	August 2025	APP-076
confidential report	6.3.7.6	1	August 2025	APP-077
environmental statement	6.3.7.7	3	May 2026	REP1-018

appendix 7.7				
environmental statement appendix 7.8	6.3.7.8	1	August 2025	APP-079
environmental statement appendix 7.9	6.3.7.9	1	August 2025	APP-084
environmental statement appendix 7.10	6.3.7.10	4	July 2026	REP4-029
environmental statement appendix 7.11	6.3.7.11	1	August 2025	APP-081
environmental statement appendix 7.12	6.3.7.12	4~~3~~	~~June~~ October 2026	
environmental statement appendix 7.13	6.3.7.13	2	November 2025	AS-017
environmental statement appendix 7.15	6.3.7.15	2~~3~~	August 2026	REP5-018
environmental statement appendix 8.1	6.3.8.1	3	July 2026	REP4-032
environmental statement appendix 8.2 (Parts 1-7)	6.3.8.2	1	August 2025	APP-086-APP-092
environmental statement appendix 8.3	6.3.8.3	2	May 2026	REP2-043
environmental statement appendix 8.4	6.3.8.4	1	August 2025	APP-094
environmental statement appendix 8.5	6.3.8.5	1	August 2025	APP-95
environmental statement appendix 8.6	6.3.8.6	5~~4~~	September 2026	REP6-028
environmental statement appendix 9.1 (Parts 1-10)	6.3.9.1	1	August 2025	APP-097-APP-106
environmental statement appendix 9.2	6.3.9.2	1	August 2025	APP-107
environmental statement appendix 9.3	6.3.9.3	1	June 2026	REP3-030
environmental statement appendix 10.1 (Parts 1-2~~3~~)	6.3.10.1	4	August 2026	REP5-014 – REP5-016
environmental statement appendix 10.1 (Part 3)	6.3.10.1	3	May 2026	REP2-051
environmental statement appendix 10.2	6.3.10.2	1	August 2025	APP-110
environmental statement appendix 12.1	6.3.12.1	1	August 2025	APP-111
environmental statement appendix 12.2	6.3.12.2	3	September 2026	REP6-018
environmental statement appendix 12.3	6.3.12.3	1	August 2025	APP-113
environmental statement appendix 12.4	6.3.12.4	1	June 2026	REP3-026
environmental statement appendix 13.1	6.3.13.1	1	August 2025	APP-114
environmental statement appendix 13.2	6.3.13.2	1~~2~~	May 2026	REP2-053
environmental statement appendix 14.1	6.3.14.1	1	August 2025	APP-115
environmental statement	6.3.14.2	1	August 2025	APP-116

appendix 14.2				
environmental statement appendix 14.3	6.3.14.3	2	May 2026	REP2-054
environmental statement appendix 14.4	6.3.14.4	1	August 2025	APP-118
environmental statement appendix 14.5	6.3.14.5	1	August 2025	APP-119
environmental statement appendix 15.1	6.3.15.1	1	August 2025	APP-120
environmental statement appendix 15.2	6.3.15.2	1	August 2025	APP-121
environmental statement appendix 16.1	6.3.16.1	1	August 2025	APP-122
environmental statement appendix 16.2	6.3.16.2	2	May 2026	REP2-054
environmental statement appendix 16.3	6.3.16.3	1	August 2025	APP-124
environmental statement appendix 16.4	6.3.16.4	1	August 2025	APP-125
environmental statement appendix 17.1	6.3.17.1	2	September 2026	REP6-020
environmental statement appendix 17.2	6.3.17.2	2	September 2026	REP6-022
environmental statement appendix 17.3	6.3.17.3	2	September 2026	REP6-24
environmental statement appendix 17.4	6.3.17.4	2	September 2026	REP6-026
environmental statement figure 1.1	6.4.1.1	1	August 2025	APP-129
environmental statement figure 1.2	6.4.1.2	1	August 2025	APP-130
environmental statement figure 1.3	6.4.1.3	1	August 2025	APP-131
environmental statement figure 1.4	6.4.1.4	1	August 2025	APP-132
environmental statement figure 2.1	6.4.2.1	1	August 2025	APP-133
environmental statement figure 2.2a	6.4.2.2a	3	July 2026	REP4-037
environmental statement figure 2.2b	6.4.2.2b	3	July 2026	REP4-038
environmental statement figure 2.3	6.4.2.3	2	July 2026	REP4-039
environmental statement figure 2.4	6.4.2.4	1	August 2025	APP-137
environmental statement figure 2.5	6.4.2.5	1	August 2025	APP-138
environmental statement figure 2.6	6.4.2.6	2	June 2026	REP3-031
environmental statement figure 3.1	6.4.3.1	1	August 2025	APP-140
environmental statement figure 3.2	6.4.3.2	1	August 2025	APP-141
environmental statement figure	6.4.3.3	1	August 2025	APP-142

3.3				
environmental statement figure 3.4	6.4.3.4	1	August 2025	APP-143
environmental statement figure 3.5	6.4.3.5	1	August 2025	APP-144
environmental statement figure 6.1	6.4.6.1	1	August 2025	APP-145
environmental statement figure 6.2	6.4.6.2~~1~~	2	July 2026	REP4-040
environmental statement figure 6.3	6.4.6.3	2	July 2026	REP4-041
environmental statement figure 6.4	6.4.6.4	5	July 2026	REP4-042
environmental statement figure 6.5	6.3.6.5	2	July 2026	REP4-043
environmental statement figure 6.6	6.4.6.6	2	July 2026	REP4-044
environmental statement figure 6.7	6.4.6.7~~6~~	1	May 2026	REP2-057
environmental statement figure 8.1	6.4.8.1	2	May 2026	REP2-058
environmental statement figure 8.2	6.4.8.2	1	August 2025	APP-152
environmental statement figure 8.3	6.4.8.3	1	August 2025	APP-153
environmental statement figure 10.1	6.4.10.1	1	August 2025	APP-154
environmental statement figure 10.2	6.4.10.2	1	August 2025	APP-155
environmental statement figure 10.3	6.4.10.3	1	August 2025	APP-156
environmental statement figure 10.4	6.4.10.4	1	August 2025	APP-157
environmental statement figure 10.5	6.4.10.5	1	August 2025	APP-158
environmental statement figure 10.6	6.4.10.6	1	August 2025	APP-159
environmental statement figure 10.7	6.4.10.7	1	August 2025	APP-160
environmental statement figure 10.8	6.4.10.8	1	August 2025	APP-161
environmental statement figure 11.1	6.4.11.1	1	August 2025	APP-162
environmental statement figure 11.5	6.4.11.5	1	August 2025	APP-163
environmental statement figure 12.1	6.4.12.1	2	September 2026	REP6-030
environmental statement figure 13.1	6.4.13.1	1	August 2025	APP-165
environmental statement figure 13.2	6.4.13.2	1	August 2025	APP-166
environmental statement figure 13.3	6.4.13.3	2	May 2026	REP2-059
environmental statement figure	6.4.13.4	2	May 2026	REP2-060

13.4				
environmental statement figure 14.1	6.4.14.1	1	August 2025	APP-169
environmental statement figure 14.2	6.4.14.2	1	August 2025	APP-170
environmental statement figure 14.3	6.4.14.3	1	August 2025	APP-171
environmental statement figure 14.4	6.4.14.4	1	August 2025	APP-172
environmental statement figure 15.1	6.4.15.1	1	August 2025	APP-173
environmental statement figure 15.2	6.4.15.2	1	August 2025	APP-174
environmental statement figure 15.3	6.4.15.3	2	July 2026	REP4-036
environmental statement figure 17.1	6.4.17.1	2	September 2026	REP6-031
change request environmental statement addendum	8.13	1	June 2026	CR1-025

PART 2~~3~~

OTHER DOCUMENTS TO BE CERTIFIED

(1) Document name	*(2) Document reference*	*(3) Revision number*	*(4) Date*	*(5) Examination library reference*
book of reference	4.3	6~~5~~	~~June~~ October 2026	
design approach document appendix A: parameters document	5.6.1	5	June 2026	REP3-014
land plans	2.2	4	June 2026	REP3-002
outline battery safety management plan	7.4	3~~2~~	~~June~~ August 2026	REP5-028
outline construction environmental management plan	7.1	7~~6~~	~~September~~ October 2026	
outline construction traffic management plan (Parts 1-3)	7.7	5	September 2026	REP6-038 - REP6-042
outline decommissioning environmental management plan	7.3	5~~4~~	~~July~~ August 2026	REP5-026
outline ecological construction management plan	7.5	6	September 2026	REP6-034
outline landscape ecological management plan	7.6	6	September 2026	REP6-036
outline operational environmental management plan	7.2	4~~3~~	~~July~~ August 2026	REP5-024
outline soil management plan	7.8	3	May 2026	REP2-078
outline supply chain, employment and skills plan	7.9	2	May 2026	REP1-038

street works, access and public rights of way plans	2.4	3	June 2026	REP3-004
trees and hedgerows to be removed or managed plans	2.6	1	August 2025	APP-012
works plans	2.3	4	July 2026	REP4-002

SCHEDULE 13

Article 45

ARBITRATION RULES

Commencing an arbitration

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

Time periods

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

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

(a) the date the arbitrator notifies the parties in writing of his/her acceptance of an appointment by agreement of the parties; or

(b) the date the arbitrator is appointed by the Secretary of State.

Timetable

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

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

(a) a written statement of claim which describes the nature of the difference between the parties, the legal and factual issues, the claimant's contentions as to those issues, the amount of its claim or the remedy it is seeking; and

(b) all statements of evidence and copies of all documents on which it relies, including contractual documentation, correspondence (including electronic documents), legal precedents and expert witness reports.

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

(a) a written statement of defence consisting of a response to the claimant's statement of claim, its statement in respect of the nature of the difference, the legal and factual issues in the claimant's claim, its acceptance of any elements of the claimant's claim and its contentions as to those elements of the claimant's claim it does not accept;

(b) all statements of evidence and copies of all documents on which it relies, including contractual documentation, correspondence (including electronic documents), legal precedents and expert witness reports; and

(c) any objections it wishes to make to the claimant's statements, comments on the claimant's expert reports (if submitted by the claimant) and explanations of the objections.

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

(a) a written statement responding to the respondent's submissions, including its reply in respect of the nature of the difference, the issues (both factual and legal) and its contentions in relation to the issues;

(b) all statements of evidence and copies of documents in response to the respondent's submissions;

(c) any expert report in response to the respondent's submissions;

(d) any objections to the statements of evidence, expert reports or other documents submitted by the respondent; and

(e) its written submissions in response to the legal and factual issues involved.

Procedure

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

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

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

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

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

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

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

(a) at least 28 days before a hearing, the arbitrator must provide a list of issues to be addressed by the experts;

(b) if more than one expert is called, they will jointly confer and produce a joint report or reports within 14 days of the issues being provided; and

(c) the form and content of a joint report must be as directed by the arbitrator and must be provided at least seven days before the hearing.

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

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

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

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

Arbitrator's powers

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

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

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

(a) if the arbitrator is satisfied that a variation of any fixed time limit is reasonably necessary to avoid a breach of the rules of natural justice and then; and

(b) only for such a period that is necessary to achieve fairness between the parties.

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

Costs

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

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

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

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

Confidentiality

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

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

SCHEDULE 14

Article 46

PROTECTIVE PROVISIONS

PART 1

PROTECTION FOR ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

Interpretation

1. For the protection of the utility undertakers referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and the utility undertaker 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 no less efficient than previously;

"apparatus" means—

(a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989(**a**)), belonging to or maintained by that undertaker;

(b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter within the meaning of Part 1 of the Gas Act 1986(b) for the purposes of gas supply;

(c) in the case of a water undertaker, mains, pipes or other apparatus belonging to or maintained by that undertaker for the purposes of water supply; and

(d) in the case of a sewerage undertaker—

(i) any drain or works vested in the undertaker under the Water Industry Act 1991(**c**); and

(ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) (adoption of sewers and disposal of works) of that Act or an agreement to adopt made under section 104 (agreements to adopt sewer, drain or sewage disposal works, at a future date) of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 (general interpretation) of that Act) or sewer outfall and any inspection chambers, 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;

"plan" includes all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed;

"utility undertaker" means—

(**a**) 1989 c. 29.
(**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).
(**c**) 1991 c. 56.

(a) any licence holder within the meaning of Part 1 of the Electricity Act 1989;

(b) a gas transporter within the meaning of Part 1 of the Gas Act 1986;

(c) a water undertaker within the meaning of the Water Industry Act 1991; and

(d) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991,

for the area of the authorised development, and in relation to any apparatus, means the undertaker to whom it belongs or by whom it is maintained.

On street apparatus

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.

Apparatus in stopped up public rights of way

4. Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 16 (temporary closure or restriction of streets and public rights of way), a utility undertaker is at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

Acquisition of ~~land~~apparatus

5. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

Removal of apparatus

6.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or requires that the utility undertaker's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of a utility undertaker to maintain that apparatus in that land must not be extinguished, until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the utility undertaker in question in accordance with sub-paragraphs (2) to (6).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to the utility undertaker in question 28 days' written notice of that requirement, together with a plan 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 —

(a) the utility undertaker must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed; and

(b) in the event that the utility undertaker cannot acquire all necessary land interests or rights which the utility undertaker may reasonably require for the relocation and construction of alternative apparatus pursuant to sub-paragraph ~~6~~(3)(a), the undertaker shall seek to utilise the process for acquiring an easement under paragraph 2 of Schedule 10 of this

Order so that it can obtain its powers of compulsory purchase powers for the acquisition of any such land or land rights unless otherwise agreed by arbitration under article 45 (arbitration) (and, for those purposes, paragraph 2 of Schedule 10 shall be construed so that it may authorise the acquisition of any land or rights in respect of the installation of an electric line in connection with the authorised development (whether or not it comprises alternative apparatus provided always that it constitutes apparatus) in specified land (as defined in Schedule 10).

(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 45 (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 45 (arbitration), and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraphs (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 the undertaker desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of 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.

(8) If the utility undertaker fails either reasonably to approve, or to provide reasons for its failure to approve along with an indication of what would be required to make acceptable, any proposed details relating to required removal works under sub-paragraph (2) within 28 days of receiving a notice of the required works from the undertaker, then such details are deemed to have been approved, provided that the undertaker has first taken all reasonable steps to contact the relevant representatives of the utility undertaker in order to elicit such a response.

(9) Any deemed approval under sub-paragraph (8) does not extend to the actual undertaking of the removal works, which remains the sole responsibility of the utility undertaker or its contractors.

Facilities and rights for alternative apparatus

7.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the undertaker and the utility undertaker or in default of agreement settled by arbitration in accordance with article 45 (arbitration).

(2) In settling those terms and conditions in respect of alternative apparatus to be constructed in the land of the undertaker, the arbitrator will—

(a) give effect to all reasonable requirements of the undertaker for ensuring the safety and efficient operation of the authorised development and for securing any subsequent alterations or adaptions of the alternative apparatus which may be required to prevent interference with the proposed works of the undertaker; and

(b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions, if any, applicable to the apparatus constructed in or on the land for which the alternative apparatus is to be substituted.

(3) 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.

Retained apparatus

8.—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 6(2) (removal of apparatus), the undertaker must submit to the utility undertaker in question a plan of the works to be executed.

(2) Those works must be executed only in accordance with the plan 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 under sub-paragraph (1) is 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 3 and 6 to 8 apply as if the removal of the apparatus had been required by the undertaker under paragraph 6(2) (removal of apparatus).

(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 unless otherwise agreed with the utility undertaker, a new plan instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case must give to the utility undertaker in question notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (3) in so far as is reasonably practicable in the circumstances.

Expenses and costs

9.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker all expenses reasonably 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 7(2) (facilities and rights for alternative apparatus).

(2) There must 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 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 article 45 (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) must be reduced by the amount of that excess.

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

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

(b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of an inspection chamber is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a utility undertaker in respect of works by virtue of sub-paragraph (1), if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

10.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraph7(2), or by reason of any subsidence resulting from such development or works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of 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 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 who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

Cooperation

11. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and a utility undertaker 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

Interpretation

12.—(1) For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the operator.

13. In this Part of this Schedule—

"the 2003 Act" means the Communications Act 2003(**a**);

"electronic communications apparatus" has the same meaning as in the electronic communications code;

"the electronic communications code" has the same meaning as in Chapter 1 of Part 2 of the 2003 Act(**b**);

"electronic communications code network" means—

(a) so much of an electronic communications network or infrastructure 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 (application of the electronic communications code) of the 2003 Act; and

(b) an electronic communications network which the undertaker 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 (application of the electronic communications code) of the 2003 Act; and

"operator" means the operator of an electronic communications code network.

Interaction with the Electronic Communications Code

14. The exercise of the powers conferred by article 35 (statutory undertakers) is subject to Part 10 (undertaker's works affecting electronic communications apparatus) of the electronic communications code.

Damages and indemnity

15.—(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.

(**a**) 2003 c. 21.
(**b**) See section 106.

(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 who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Any difference arising between the undertaker and the operator under this Part of this Schedule must be referred to and settled by arbitration under article 45 (arbitration).

Exclusions

16. This Part of this Schedule does not apply to—

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

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

In respect of the acquisition of rights under or over or use of the utility undertaker's property, the utility undertaker must co-operate with the undertaker with a view to avoiding undue delay.

Savings

17. 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

Interpretation

18. 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.

19. In this Part—

"commence" has the same meaning as in article 2 (interpretation) of this Order and commencement shall be construed to have the same meaning;

"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**);

"drainage work" means any ordinary 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(**b**);

"plans" includes sections, drawings, specifications and method statements;

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

(**a**) 1991 c. 59
(**b**) 1991 c. 59, section 72(1).

(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.

Specified works

20.—(1) Before commencing construction of 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 56 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 sub-paragraph (1).

(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 or for the prevention of flooding or pollution or discharge of environmental functions set out in Section 61A of the Land Drainage Act 1991.

Protective works

21. Without limiting paragraph 20 (specified works), 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 of any drainage work for flood defence purposes and land drainage purposes is not impaired and that the risk of flooding is not otherwise increased,

by reason of any specified work.

Compliance of specified and protective works

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

Maintenance of specified works

23.—(1) Subject to sub-paragraph (5) the undertaker must from the commencement of the construction of any specified work, until the date falling 12 months from the date of completion of the specified work, maintain in good repair and condition and free from obstruction any drainage work that is situated within the limits of deviation on land 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.

Failure of works

24. 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 the drainage work is otherwise damaged, the impairment or damage must be made good by the undertaker as soon as reasonably practicable to the reasonable satisfaction of the drainage authority and, if the undertaker

fails to do so, the drainage authority may make good the impairment or damage and recover from the undertaker the expense reasonably incurred by it in doing so.

Alternative access

25. If by reason of construction of the specified works the drainage authority's access to land drainage infrastructure, 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 drainage authority to maintain the land drainage infrastructure, flood defence or use the equipment no less effectively than was possible before the obstruction within 24 hours of or as soon as reasonably practicable after the undertaker becomes aware of such obstruction.

Indemnity

26. The undertaker must make reasonable compensation to ~~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.

27.—(1) Without limiting the other provisions of this Part, the undertaker must ~~indemnify the~~make reasonable compensation to the drainage authority~~ to a level not exceeding £10,000,000 (ten million pounds)~~ in respect of all reasonable claims, demands, proceedings, costs, damages, expenses or loss that may be made or taken against, reasonably 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) 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 negligent act, neglect or default of the drainage authorities, its officers, contractors or agents; and

(b) 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.

~~(2)~~(3) 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).

~~(3)~~(4) 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.

~~(4)~~(5) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or loss to the extent that it is attributable to the act, neglect or default of the drainage authority, its officers, servants, contractors or agents.

Arbitration

28. Any dispute between the undertaker and the drainage authority under this Part, if the parties agree, must be determined by arbitration under article 45 (arbitration).

PART 4

FOR THE PROTECTION OF THE CANAL & RIVER TRUST

Interpretation

29.—(1) For the protection of the Canal & River Trust the following provisions of this Part of this Schedule, have effect unless otherwise agreed in writing between the undertaker and the Canal & River Trust.

(2) In this Part of this Schedule—

"Code of Practice" means the Code of Practice for Works Affecting the Canal & River Trust (April 2026) or any updates or amendments thereto;

"construction" in relation to any specified work or protective work, includes—

(a) the execution and placing of that work; and

(b) any relaying, renewal or maintenance of that work,

and "construct" and "constructed" have corresponding meanings;

"Canal & River Trust's network" means the Canal & River Trust's network of waterways;

"detriment" means any damage to the waterway or any other property of the Canal & River Trust caused by the authorised development and, without prejudice to the generality of that meaning, includes—

(a) any obstruction of, or interference with, or hindrance or danger to, navigation or to any use of the waterway (including towing paths);

(b) the erosion of the bed or banks of the waterway, or the impairment of the stability of any works, lands or premises forming part of the waterway;

(c) the deposit of materials or the siltation of the waterway so as to damage the waterway;

(d) the pollution of the waterway;

(e) any significant alteration in the water level of the waterway or significant interference with the supply of water thereto, or drainage of water therefrom; and

(f) any harm to the ecology of the waterway; and

(g) any interference with the exercise by any person of any lawful rights over Canal & River Trust's network;

"the engineer" means a suitably qualified and experienced engineer appointed by the Canal & River Trust for the purpose in question;

"plans" includes navigational risk assessments, sections, designs, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction) and programmes;

"practical completion" means practical completion of all of the specified work notwithstanding that items which would ordinarily be considered snagging items remain outstanding, and the expression "practically complete" and "practically completed" is to be construed accordingly;

"protective work" means a work constructed under paragraph 31~~0~~ below (approval of plans, protective works etc.), sub-paragraph 4(a);

"specified work" means so much of any permanent or temporary work authorised by this Order as is in, across, under, or within 15 metres of, or may in any way affect, the waterway; and

"the waterway" means each and every part of the Stainforth & Keadby Canal within the order limits (including any works, lands or premises within the order limits belonging to the Canal & River Trust, or under its management or control, and held or used by the Canal & River Trust in connection with its statutory functions).

(3) Where the Code of Practice applies to any works or matters that are part of the authorised development or that form part of the protective works and there is an inconsistency between these protective provisions and the Code of Practice, the part of the Code of Practice that is inconsistent with these protective provisions will not apply and these protective provisions will apply. The undertaker will identify and agree with the Canal and River Trust those parts of the Code of Practice which are not applicable to the construction of the specified works and for the avoidance of doubt the undertaker will not be required to comply with those agreed parts of the Code of Practice.

Powers requiring the Canal & River Trust's consent

30.—(1) The undertaker must not in the exercise of the powers conferred by this Order obstruct or interfere with pedestrian or vehicular access to the waterway unless such obstruction or interference with such access is with the consent of the Canal & River Trust.

(2) Subject to sub-paragraph (3), the undertaker must not in the exercise of the powers conferred by this Order do anything which would directly result in the waterway being incapable of being used or maintained, or which would otherwise affect the safe operation of the Canal & River Trust's network, without the consent of the Canal & River Trust.

(3) The temporary occupation or use of land adjacent to the waterway, arising as a necessary consequence of carrying out the works authorised by this Order will not be treated as rendering the waterway incapable of being maintained for the purposes of sub-paragraph (2), except where the relevant part of the authorised development is a specified work and an approval under paragraph 31~~0~~(1) (approval of plans, protective works etc.) has not been provided by the Canal & River Trust.

(4) The undertaker must not exercise any power conferred by this Order to discharge water into the waterway under article 20 (discharge of water) or in any way interfere with the supply of water to or the drainage of water from the waterway unless such exercise is with the consent of the Canal & River Trust.

(5) The undertaker must not exercise the powers conferred by article 22 (authority to survey and investigate the land) or section 11(3) of the 1965 Act, in relation to the waterway unless such exercise is with the consent of the Canal & River Trust.

(6) The consent of the Canal & River Trust pursuant to sub-paragraphs (1) to (5) must not be unreasonably withheld or delayed and may be given subject to reasonable terms and conditions provided that it will not be reasonable for the Canal & River Trust to withhold or delay consent or impose terms and conditions that would prevent the undertaker from complying with the protective provisions in this Part of this Schedule or any condition contained in Schedule 2 (Requirements) to this Order.

Approval of plans, protective works etc.

31.—(1) The undertaker must before commencing construction of any specified work including any temporary works supply to the Canal & River Trust proper and sufficient plans of that work, on the Canal & River Trust forms, having regard to the Canal & River Trust's Code of Practice and such further particulars available to it as the Canal & River Trust may within 15 working days of the submission of the plans reasonably require for the approval of the engineer and must not commence such construction of a specified work until plans of that work have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld or delayed, and if within 25 working days after such plans (including any other particulars reasonably required under sub-paragraph (1)) have been received by the Canal & River Trust the engineer has

not intimated disapproval of those plans and the grounds of disapproval, the engineer is deemed to have approved the plans as submitted.

(3) An approval of the engineer under this paragraph 31~~0~~ (approval of plans, protective works etc.) is not deemed to have been unreasonably withheld if approval within the time limited by sub-paragraph (2) has not been given pending the outcome of any consultation on the approval in question that the Canal & River Trust is obliged to carry out in the proper exercise of its functions, provided prior written notice of such consultation has been provided by the Canal & River Trust to the undertaker.

(4) When signifying approval of the plans the engineer may specify on land held or controlled by the Canal & River Trust or the undertaker and subject to such works being authorised by this Order or being development permitted by an Act of Parliament or general development order made under the 1990 Act—

(a) any protective work (whether temporary or permanent) which in the reasonable opinion of the engineer should be carried out before the commencement of a specified work to prevent detriment; and

(b) such other requirements as may be reasonably necessary to prevent detriment,

and such protective works must be constructed by the undertaker or by the Canal & River Trust at the undertaker's request with all reasonable dispatch and the undertaker must not commence the construction of a specified work until the engineer has notified the undertaker that the protective works have been completed to the engineer's reasonable satisfaction such consent not to be unreasonably withheld or delayed.

(5) The withholding of an approval of the engineer under this paragraph 31~~0~~ (approval of plans, protective works etc.) will be deemed to be unreasonable if it would prevent the undertaker from complying with any condition contained in Schedule 2 (Requirements) to this Order.

(6) The undertaker must pay to the Canal & River Trust a capitalised sum representing any reasonably increased and additional cost of maintaining and, when necessary, renewing any works, including any permanent protective works provided under sub-paragraph (4) above, and of carrying out any additional dredging of the waterway reasonably necessitated by the exercise of any of the powers under this Order but if the cost of maintaining the waterway, or of works of renewal of the waterway, is reduced in consequence of any such works, a capitalised sum representing such reasonable saving is to be set off against any sum payable by the undertaker to the Canal & River Trust under this paragraph.

(7) In the event that the undertaker fails to complete the construction of, or part of, the specified works the Canal & River Trust may, if it is reasonably required in order to avoid detriment, serve on the undertaker a notice in writing requesting that construction be completed. Any notice served under this sub-paragraph must state the works that are to be completed by the undertaker and lay out a reasonable timetable for the works' completion. If the undertaker fails to comply with this notice within 35 working days, the Canal & River Trust may construct any of the specified works, or part of such works, (together with any adjoining works) in order to complete the construction of, or part of, the specified works or make such works and the undertaker must reimburse the Canal & River Trust all costs, fees, charges and expenses it has reasonably incurred in carrying out such works.

Design of works

32.—(1) Without prejudice to its obligations under the foregoing provisions of this Part of this Schedule the undertaker must consult, collaborate and respond constructively to any reasonable approach, suggestion, proposal or initiative made by the Canal & River Trust on—

(a) the design of the specified works;

(b) the environmental effects of those works, and must have regard to such views as may be expressed by the Canal & River Trust in response to such consultation pursuant in particular to the requirements imposed on the Canal & River Trust by section 22 (general environmental and recreational duties) of the British Waterways Act 1995 and to the

interest of the Canal & River Trust in preserving and enhancing the environment of its waterways; and

(c) amendments or alterations the construction environmental management plan, landscape and ecological management plan, operational environmental management plan, decommissioning environmental management plan (as may be approved pursuant to Schedule 2) in respect of a specified work or a protective work or otherwise in connection with the waterway prior to submitting the amendments or alterations to the relevant planning authority for approval under requirement 5 (Approved details and amendments to them).

Fencing

33. Where so required by the engineer acting reasonably the undertaker must, to the reasonable satisfaction of the engineer, fence off a specified work or a protective work or take such other steps as the engineer may require to be taken for the purpose of separating a specified work or a protective work from the waterway, whether on a temporary or permanent basis or both.

Notice of works

34. The undertaker must give to the engineer 30 days' notice of its intention to commence the construction of any of the specified works or protective works, or, in the case of repair carried out in an emergency, such notice as may be reasonably practicable so that, in particular, the Canal & River Trust may where appropriate arrange for the publication of notices bringing those works to the attention of users of the Canal & River Trust's network.

Lighting

35. The undertaker must provide and maintain at its own expense in the vicinity of the specified or protective works such temporary lighting and such signal lights for the control of navigation as the engineer may reasonably require during the construction or failure of the specified or protective works.

Survey of waterway

36.—(1) Before the commencement of the initial construction of any part of the specified works and again following practical completion of the specified works, the undertaker must bear the reasonable and proper costs of the carrying out, by a suitably qualified and experienced engineer (the "surveyor"), to be approved by the Canal & River Trust and the undertaker, of a survey to measure the navigational depth of the waterway and profile of the canal bed ("survey") of so much of the waterway and of any land which may provide support for the waterway as will or may be affected by the specified works—

(2) The design of, and methods proposed to be used for, the survey, are to be approved by the Canal & River Trust and the undertaker.

(3) For the purposes of the survey the undertaker must—

(a) on being given reasonable notice (save in case of emergency, when immediate access must be afforded) afford reasonable facilities to the surveyor for access to the site of the specified works and to any land of the undertaker which may provide support for the waterway as will or may be affected by the specified works; and

(b) supply the surveyor as soon as reasonably practicable with all such information as they may reasonably require and which the undertaker holds with regard to the specified works or the method of their construction.

(4) Copies of the survey results must be provided to both the Canal & River Trust and the undertaker at no cost to the Canal & River Trust.

Construction of specified works

37.—(1) Any specified works or protective works must, when commenced, be constructed—

(a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled as aforesaid and with any specifications made under paragraph 31~~0~~ (approval of plans, protective works etc) and paragraph 32~~1~~ (design of works) of this Part;

(b) under the supervision (if given) and to the reasonable satisfaction of the engineer;

(c) in such manner as to cause as little detriment as is reasonably practicable;

(d) in such manner as to cause as little inconvenience as is reasonably practicable to the Canal & River Trust, its officers and agents and all other persons lawfully using the waterways, except to the extent that temporary obstruction has otherwise been agreed by the Canal & River Trust;

(e) in such a manner as to ensure that no materials are discharged or deposited into the waterway otherwise than in accordance with paragraph 30~~29~~(2) (p~~P~~owers requiring the Canal & River Trust's consent); and

(f) in compliance with the Code of Practice (where appropriate and where consistent with the exercise of powers pursuant to this Order and for the timely, safe, economic and efficient delivery of the authorised works);

(2) Nothing in this Order authorises the undertaker to make or maintain any permanent works in or over the waterway so as to impede or prevent (whether by reducing the width of the waterway or otherwise) the passage of any vessel which is of a kind (as to its dimensions) for which the Canal & River Trust is required by section 105(1)(b) and (2) of the Transport Act 1968 to maintain the waterway.

(3) Following the completion of the construction of the specified works the undertaker must restore the waterway to a condition no less satisfactory than its condition immediately prior to the commencement of those works unless otherwise agreed between the undertaker and the Canal & River Trust and save to the extent that any deterioration to the condition of the waterway is not caused by the construction of the specified works.

(4) In assessing whether the condition of the waterway is no less satisfactory than immediately prior to the works pursuant to sub-paragraph (3), the Canal & River Trust and the undertaker must take account of any survey issued pursuant to paragraph 36~~5~~ (survey of waterway) and any other information agreed between them pursuant to this Part.

Prevention of pollution

38. The undertaker must not in the course of constructing a specified work or a protective work or otherwise in connection therewith do or permit anything which may result in the pollution of the waterway or the deposit of materials therein (unless otherwise permitted by the Order or the protective provisions in this Part of this Schedule) and must take such steps as the engineer may reasonably require to avoid or make good any breach of its obligations under this paragraph.

Access to work – provision of information

39.—(1) The undertaker on being given reasonable notice must—

(a) at all reasonable times allow reasonable facilities to the engineer for access to a specified work during its construction; and

(b) supply the engineer with all such information as the engineer may reasonably require with regard to a specified work or the method of constructing it.

(2) The Canal & River Trust on being given reasonable notice must—

(a) at all reasonable times afford reasonable facilities to the undertaker and its agents for access to any works carried out by the Canal & River Trust under this Part during their construction; and

(b) supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them and the undertaker must reimburse the Canal & River Trust's reasonable costs in relation to the supply of such information.

Alterations to the waterway

40.—(1) If during construction of a specified work or a protective work or during a period of twelve (12) months after the completion of those works any alterations or additions, either permanent or temporary, to the waterway are reasonably necessary in consequence of the construction of the specified work or the protective work in order to avoid detriment, and the Canal & River Trust gives to the undertaker reasonable notice of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to the Canal & River Trust the reasonable costs of those alterations or additions including, in respect of any such alterations or additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by the Canal & River Trust in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If the cost of maintaining, working or renewing the waterway is reduced in consequence of any such alterations or additions a capitalised sum representing such saving is to be set off against any sum payable by the undertaker to the Canal & River Trust under this paragraph.

Maintenance of works

41. If at any time after the practical completion of a specified work or a protective work, not being a work vested in the Canal & River Trust, the Canal & River Trust gives notice to the undertaker informing it that it reasonably considers that the state of maintenance of the specified work or protective work appears to be such that the work is causing or likely to cause detriment, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put the work in such state of maintenance as not to cause such detriment.

Repayment of the Canal & River Trust's fees, etc.

42.—(1) Save where otherwise agreed, the undertaker must repay to the Canal & River Trust in accordance with the Code of Practice all fees, costs, charges and expenses reasonably incurred by the Canal & River Trust—

(a) in constructing any protective works under the provisions of paragraph 31~~0~~ (approval of plans, ~~-~~protective works etc.) sub-paragraph (4)(a);

(b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction or repair of a specified work and any protective works;

(c) in respect of the employment during the construction of the specified works or any protective works of any inspectors, watchmen and other persons whom it is reasonably necessary to appoint for inspecting, watching and lighting any waterway and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of the specified works or any protective works;

(d) in bringing the specified works or any protective works to the notice of users of the Canal & River Trust's network; and

(e) in constructing and/or carrying out any measures related to any specified works or protective works which are reasonably required by the Canal & River Trust to ensure the safe navigation of the waterway save that nothing is to require the Canal & River Trust to construct and/or carry out any measures.

(2) If the Canal & River Trust considers that a fee, charge, cost or expense will be payable by the undertaker pursuant to sub-paragraph (1), the Canal & River Trust will first provide an estimate of that fee, charge, cost or expense and supporting information in relation to the estimate

to the undertaker along with a proposed timescale for payment for consideration and the undertaker may, within a period of 30 working days—

(a) provide confirmation to the Canal & River Trust that the estimate is agreed and pay to the Canal & River Trust, by the date stipulated, that fee, charge, cost or expense; or

(b) provide confirmation to the Canal & River Trust that the estimate is not accepted along with a revised estimate and a proposal as to how or why the undertaker considers that the estimate can be reduced and / or paid at a later date.

(3) The Canal & River Trust must take into account any representations made by the undertaker in accordance with this paragraph 42~~1~~ (repayment of the Canal & River Trust's fees, etc.) and must, within 15 working days of receipt of the information pursuant to sub-paragraph (1), confirm the amount of the fee, charge, cost or expense to be paid by the undertaker (if any) and the date by which this is to be paid.

(4) The Canal & River Trust must, when estimating and incurring any charge, cost or expense pursuant this paragraph 42~~1~~ (repayment of the Canal & River Trust's fees, etc.), do so with a view to being reasonably economic and acting as if the Canal & River Trust were itself to fund the relevant fee, charge, cost or expense.

Making good of detriment; compensation and indemnity, etc.

43.—(1) Subject to sub-paragraph (3), if any detriment is caused by the construction or failure of the specified works or the protective works if carried out by the undertaker, the undertaker (if so required by the Canal & River Trust) must make good such detriment and must pay to the Canal & River Trust all reasonable expenses incurred by the Canal & River Trust, and compensation for any loss sustained by the Canal & River Trust in making good or otherwise by reason of the detriment.

(2) Subject to sub-paragraph (3), the undertaker must be responsible for and make good to the Canal & River Trust all costs, charges, damages, expenses and losses not otherwise provided for in this Part which may be occasioned to and reasonably incurred by the Canal & River Trust—

(a) by reason of the construction of a specified work or a protective work or the failure of such work; or

(b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon the construction of a specified work or protective work, and subject to sub-paragraph (4),

the undertaker must effectively indemnify and hold harmless the Canal & River Trust from and against all claims and demands arising out of or in connection with any of the matters referred to in paragraphs (a) and (b).

(3) For the purposes of sub-paragraphs (1) and (2) above, the Canal and River Trust is not entitled to recover from the undertaker any consequential losses which are not reasonably foreseeable.

(4) The fact that any act or thing may have been done by the Canal & River Trust on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision or in accordance with any directions or awards of an arbitrator is not to (if it was done without negligence on the part of the Canal & River Trust or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this paragraph.

(5) Nothing in sub-paragraphs (1) and (2) imposes any liability on the undertaker with respect to any detriment, loss or interruption to the extent that it is attributable to the act, neglect or default of the Canal & River Trust, its officers, servants, contractors or agents.

(6) The Canal & River Trust must give the undertaker reasonable notice of any such claim or demand as aforesaid, and no settlement or compromise of such a claim or demand is to be made without the prior consent of the undertaker.

(7) The Canal & River Trust must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under

this paragraph applies. If requested to do so by the undertaker, the Canal & River Trust must provide an explanation of how the claim has been minimised.

Arbitration

44. Any difference arising between the undertaker and the Canal & River Trust under this Part (other than a difference as to the meaning or construction of this Part) must be referred to and settled) by arbitration in accordance with under article 45 (arbitration) of this Order.

Capitalised sums

45.—(1) Any capitalised sum which is required to be paid under this Part must be calculated by multiplying the cost of the maintenance or renewal works to the waterway necessitated as a result of the operation of the authorised development by the number of times that the maintenance or renewal works will be required during the operation of the authorised development.

(2) The aggregate cap of the undertaker's gross liability to pay capitalised sums and any other payments or liabilities under the terms of this Part of this Schedule shall be limited to £5,000,000.00 (five million pounds) for any one occurrence or all occurrences of a series arising out of the one original cause.

As built drawings

46. As soon as reasonably practicable following the completion of the construction of the authorised development, the undertaker must provide to the Canal & River Trust as built drawings of any specified works in a form and scale to be agreed between the undertaker and the Canal & River Trust to show the position of those works in relation to the waterway.

Decommissioning

47. Where the decommissioning environmental management plan identifies activities which may impact the waterway, the protective provisions in this Part 4 of Schedule 14 will, so far as appropriate, apply to those activities as if they were a specified work.

PART 5

FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

Interpretation

48.—(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; or

(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;

"plans" includes plans, sections, elevations, drawings, specifications, programmes, proposals, calculations and method statements and descriptions;

"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-

(d) 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;

(e) 8 metres of a drainage work or 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—

(f) 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

(g) 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

49.—(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 58~~7~~ (~~D~~disputes).

(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 receipt of further particulars if such particulars have been requested by the Agency for approval; and

(c) may be given subject to such reasonable requirements as the Agency may have for the protection of any drainage work or the fishery or for the protection of water resources, or for the prevention of flooding or pollution or for nature conservation or the prevention of environmental harm in the discharge of its environmental duties.

(4) The Agency must use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (3)(b).

(5) In the case of a refusal, if requested to do so the Agency must provide reasons for the grounds of that refusal.

Construction of protective works

50.—(1) Without limiting paragraph 49~~8~~ (s~~S~~ubmission and approval of plans) 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—

(2) to safeguard any drainage work against damage; or

(3) 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

51.—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the Agency under paragraph 50~~49~~ (c~~C~~onstruction of protective works), 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

52.—(1) 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 and where the Agency acting reasonably considers it necessary to avoid any of the risks specified in sub-paragraph (2), the Agency may serve written notice requiring the undertaker to cease all or part of the specified works as may be specified within the notice within the period specified in the notice, and the undertaker must cease constructing the specified works or part thereof until such time as it has obtained the consent or complied with the condition specified within the notice served.

(2) The risks specified in sub-paragraph (1) are—

(a) risk of flooding;

(b) risk of harm to the environment;

(c) risk of detrimental impact on drainage; and

(d) damage to the fishery.

(3) If any part of a specified work or any protective work required by the Agency is constructed otherwise than in accordance with the requirements of this 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.

(4) Subject to sub-paragraph (5) if, within a reasonable period, being not less than 28 days beginning with the date when a notice under sub-paragraph (3) 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.

(5) In the event of any dispute as to whether sub-paragraph (3) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the Agency must not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (4) until the dispute has been finally determined in accordance with paragraph 58~~7~~ (d~~D~~isputes).

Maintenance of works

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

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

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

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

(5) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the Agency must not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined in accordance with paragraph 58~~7~~ (d~~D~~isputes).

(6) This paragraph does not apply to—

(a) drainage works which are vested in the Agency, or which the Agency or another person is liable to maintain and is not proscribed by the powers of the Order from doing so; and

(b) any obstruction of a drainage work expressly authorised in the approval of specified works plans and carried out in accordance with the provisions of this Part of this Schedule provided that any obstruction is removed as soon as reasonably practicable.

Remediating impaired drainage work

54.—(1) 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

55. If by reason of construction of the specified work or the failure of any such work the Agency's access to flood defences or equipment maintained for flood defence purposes is materially obstructed, the undertaker must notify the Agency immediately and 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 and such alternative access must be made available as soon as reasonably practicable after the undertaker becomes aware of such obstruction, except in the case of an emergency in which case the undertaker must provide such alternative means of access on demand.

Free passage of fish

56.—(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 the period specified in the receipt of written notice the undertaker fails to take such steps as are described in sub-paragraph (2), the Agency may take those steps and any expenditure incurred by the Agency in so doing is recoverable from the undertaker.

(4) 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

57.—(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.

(2) 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.

(3) For the avoidance of doubt, in sub-paragraphs (1) and (2)—

(a) "costs" includes—

(i) expenses and charges;

(ii) staff costs and overheads; and

(iii) legal costs;

(b) "losses" includes physical damage;

(c) "claims" and "demands" include as applicable—

(i) costs (within the meaning of this sub-paragraph incurred in connection with any claim or demand; and

(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; and

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

(4) 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.

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

(6) 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.

(7) 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

58. 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 45 (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 6

FOR THE PROTECTION OF EXOLUM PIPELINE SYSTEM LTD

Application

59. For the protection of Exolum the following provisions, unless otherwise agreed in writing at any time between the undertaker and Exolum, have effect.

Interpretation

60. In this Part of this Schedule, the following terms have the following meanings—

"Additional Rights" means rights for the construction and for access to and for the use, protection, inspection, maintenance, repair and renewal of retained Apparatus including any restrictions on the landowner and occupiers for the protection of the retained Apparatus and to allow Exolum to perform its functions;

"Alternative Apparatus" means alternative apparatus adequate to enable Exolum to fulfil its functions as a pipeline operator in a manner not less efficient than previously;

"Alternative Rights" means rights for the construction and for access to and for the use, protection, inspection, maintenance, repair and renewal of Alternative Apparatus including any restrictions on the landowner and occupiers for the protection of the Alternative Apparatus and to allow Exolum to perform its functions;

"Apparatus" means the pipeline and storage system and any ancillary apparatus owned and/or operated by Exolum and includes—

(a) any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

(b) any ancillary works, all protective wrappings, valves, sleeves and slabs, cathodic protection units, together with ancillary cables and markers; and

(c) such legal interest, and benefit of property rights and covenants as are vested in in respect of these items, excluding any rights of access to or from the Apparatus,

and, where the context allows, includes Alternative Apparatus;

"Application" means the application to the Secretary of State for the Order made by the undertaker under the Planning Act 2008 on 28 August 2025;

"Authorised Development" has the same meaning as that given in article 2(1) (interpretation) and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised development and construction of any works authorised by this Schedule;

"Commence" has the same meaning as that given in article 2(1) (interpretation) (and commencing must be construed accordingly);

"Exolum" means Exolum Pipeline System Ltd (company number 09497223) and for the purpose of enforcing the benefit of any provisions in this Schedule, any group company of Exolum Pipeline System Ltd and in all cases any successor in title;

"Expert" is a person appointed in accordance with paragraph 72~~1~~ (dispute resolution) to resolve a dispute under this Schedule;

"functions" includes powers, duties and commercial undertaking;

"in" in a context referring to Apparatus in land includes a reference to Apparatus under, over or upon land;

~~"Order" means the order granting development consent, made by the Secretary of State and brought into force following the Application under the Planning Act 2008;~~

"parties" means the undertaker and Exolum and "party" is to be construed accordingly;

"Plan" includes all designs, drawings, sections, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary to allow Exolum to assess the relevant works to be executed properly and sufficiently and in particular must describe—

(a) the exact position of the works;

(b) the level at which the works are proposed to be constructed or renewed;

(c) the manner of the works' construction or renewal including details of excavation, positioning of plant etc.;

(d) the position of the affected Apparatus and any other apparatus belonging to another undertaker;

(e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;

(f) any intended maintenance regime;

(g) details of the proposed method of working and timing of execution of works; and

(h) details of vehicle access routes for construction and operational traffic;

"Protective Works" means works for the inspection and protection of Apparatus;

"Restricted Works" means any works that will or may affect any Apparatus including—

(a) all works within 15 metres measured in any direction of any Apparatus including embankment works, those that involve a physical connection or attachment to any Apparatus and any new crossings of the Apparatus;

(b) the use of explosives within 400 metres of any Apparatus;

(c) piling, undertaking of a 3D seismic survey or the sinking of boreholes within 30 metres of any Apparatus; and

(d) all works that impose a load directly upon the Apparatus, wherever situated,

whether carried out by the undertaker or any third party in connection with the Authorised Development; and

"Working Day" means any day other than a Saturday, Sunday or English bank or public holiday.

Acquisition of Apparatus

61.—(1) Regardless of any other provision in the Order—

(a) the undertaker must not, otherwise than by agreement with Exolum, acquire any Apparatus;

(b) where the undertaker acquires the freehold of any land in which Exolum holds an interest or Exolum's rights or interests in land are otherwise extinguished or restricted pursuant to the Order, the undertaker must afford to or secure for Exolum such rights in land in substitution for any right which would be extinguished by that acquisition (the replacement rights). These replacement rights must be granted upon substantially the same terms and conditions as the right to be extinguished and not less favourable than the right to be extinguished, unless otherwise agreed between the undertaker and Exolum, and must be granted or put in place contemporaneously with the extinguishment of the right which they replace;

(c) the undertaker must not, otherwise than in accordance with this Schedule—

(i) obstruct or render less convenient the access to any Apparatus;

(ii) interfere with or affect Exolum's ability to carry out its functions as an oil pipeline operator;

(iii) require that Apparatus is relocated or diverted; or

(iv) remove or require to be removed any Apparatus;

(d) any right of Exolum to maintain, repair, renew, adjust, alter or inspect Apparatus may not be extinguished until any necessary Alternative Apparatus has been constructed, it is in operation and the Alternative Rights have been granted, all to the reasonable satisfaction of Exolum; and

(e) any right of Exolum to access the Apparatus must not be extinguished until necessary alternative access has been provided to Exolum's reasonable satisfaction.

(2) Prior to the carrying out of any Restricted Works or any works authorised by this Order that will affect the Apparatus, and if required by Exolum, the parties shall use their reasonable endeavours to negotiate and enter into such deeds of consent (crossing consent) and (if necessary) variations to the existing rights upon such terms and conditions as may be agreed between Exolum and the undertaker acting reasonably and which must be no less favourable on the whole to

Exolum than this Schedule, and the undertaker will use reasonable endeavours to procure and / or secure the consent and entering into of such deeds and variations by all other third parties with an interest in land within the Order limits at that time who are affected by such works.

~~(2)~~(3) Where the undertaker acquires land which is subject to any existing rights held by Exolum and the provisions of paragraph 63~~2~~ (facilities and rights for alternative apparatus) do not apply, the undertaker must—

(a) retain any notice of the existing rights held by Exolum on the title to the relevant land when registering the undertaker's title to such acquired land; and

(b) provide up to date official entry copies to Exolum within 20 working days of receipt of such up to date official entry copies.

~~(3)~~(4) Where the undertaker takes temporary possession of any land or carries out survey works on land in respect of which Exolum has an easement, right, asset, interest or Apparatus—

(a) where reasonably necessary, Exolum may exercise its rights to access such land—

(i) in an emergency, without notice but in all such instances Exolum will notify the undertaker as soon as reasonably practicable and until service of such notice, entry will be at Exolum's own risk; and

(ii) in non-emergency circumstances, having first given prior written notice to the undertaker in order to allow the parties to agree the timing of their respective works during the period of temporary possession; and

(b) the undertaker may not remove or in any way alter Exolum's rights in such land, unless in accordance with the provisions of this Order; and

(c) Exolum will comply with all reasonable health and safety requirements that are notified to Exolum in writing (including any requirements applicable to the undertaker under the Construction, Design and Management Regulations 2015).

Removal of Apparatus and Rights for Alternative Apparatus

62.—(1) If, having used all reasonable endeavours to implement the Authorised Development without the removal of any Apparatus—

(a) the undertaker reasonably requires the removal of any Apparatus; or

(b) Exolum reasonably requires the removal of any Apparatus,

then the relevant party must give written notice of that requirement to the other.

(2) The parties must use all reasonable endeavours to produce a plan of the work proposed and a plan of the proposed position of the Alternative Apparatus to be provided or constructed.

(3) The undertaker must afford to Exolum the necessary facilities and rights for the construction of Alternative Apparatus and subsequently the grant of Alternative Rights in accordance with paragraph 63~~2~~ (facilities and rights for alternative apparatus).

(4) Any Alternative Apparatus is to be constructed in land owned by the undertaker or in land in respect of which Alternative Rights have been or are guaranteed to be granted to Exolum. The Alternative Apparatus must be constructed in such manner and in such position or situation as may be agreed between Exolum and the undertaker or in default of agreement settled by expert determination in accordance with paragraph 72~~1~~ (dispute resolution).

(5) After the details for the works for Alternative Apparatus to be provided or constructed have been agreed or settled by expert determination in accordance with paragraph 72~~1~~ (dispute resolution), and after the grant to Exolum of any such facilities and rights as are referred to in sub-paragraph (3), Exolum must proceed as soon as reasonably practicable using reasonable endeavours to construct and bring into operation the Alternative Apparatus and subsequently to remove (or if agreed between the parties to allow the undertaker to remove) any redundant Apparatus required by the undertaker to be removed under the provisions of this Schedule.

(6) The following sub-paragraphs (7) and (8) only apply if—

(a) Exolum fails to comply with its obligations under sub-paragraph (5) to remove any redundant Apparatus; and

(b) the undertaker has served notice on Exolum specifying the default; and

(c) Exolum has failed to remedy the default within 28 days.

(7) In the circumstances set out in sub-paragraph (6), if the undertaker then gives notice in writing to Exolum that it will remove the redundant Apparatus, that work, instead of being executed by Exolum, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of Exolum.

(8) Nothing in sub-paragraph (7) 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 3000 millimetres of the Apparatus unless that Apparatus is redundant and disconnected from Exolum's remaining system.

Facilities and Rights for Alternative Apparatus

63.—(1) Where, in accordance with the provisions of this Schedule, the undertaker affords to Exolum facilities and rights for the construction of Alternative Apparatus and the grant of Alternative Rights, 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 Exolum in accordance with this Schedule or in default of agreement settled by expert determination in accordance with paragraph 72~~1~~ (dispute resolution).

(2) Alternative Rights must be granted before any Alternative Apparatus is brought into operation.

(3) The parties agree that the alternative rights shall be granted as far as practicable substantially in the form of Exolum's precedent from time to time as amended by written agreement between the parties acting reasonably or such other form of agreement as the parties otherwise agree acting reasonably.

~~(3)~~(4) Nothing in this Schedule or contained in the Alternative Rights shall require Exolum to divert or remove any Alternative Apparatus.

~~(4)~~(5) 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 Expert less favourable on the whole to Exolum 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 Expert will make such provision for the payment of compensation by the undertaker to Exolum as appears to the Expert to be reasonable having regard to all the circumstances of the particular case.

Retained Apparatus and Alternative Apparatus: protection

64.—(1) Before commencing the execution of any Restricted Works, the undertaker must submit to Exolum a Plan of the works to be executed and any other information that Exolum may reasonably require to allow Exolum to assess the works.

(2) No Restricted Works are to be commenced until the Plan to be submitted to Exolum under sub-paragraph (1) has been approved by Exolum in writing and are to be carried out only in accordance with the details submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be notified to the undertaker in writing in accordance with sub-paragraph (3) by Exolum.

(3) Any approval by Exolum of the Plan of works submitted under sub-paragraph (1) must not be unreasonably withheld or delayed.

(4) Exolum must communicate its approval or refusal of the plans within 56 days of the date of submission of the plan under sub-paragraph (1) and any approval of the Plan of works may be given subject to such reasonable requirements as Exolum may require to be made for—

(a) the continuing safety and operational viability of any Apparatus; and

(b) the requirement for Exolum to have reasonable access with or without vehicles to inspect, repair, replace, maintain and ensure the continuing safety and operation or viability of any Apparatus,

providing such reasonable requirements are notified to the undertaker in writing.

(5) Exolum will be entitled to watch and inspect the execution of Restricted Works at any time.

(6) Where reasonably required by either party, in view of the complexity of any proposed works, timescales, phasing or costs, the parties must with due diligence and good faith negotiate a works agreement for the carrying out of Protective Works or the installation of Alternative Apparatus.

(7) If in consequence of the works notified to Exolum by the undertaker under sub-paragraph (1), the circumstances in paragraph 62~~1~~(2) (removal of apparatus and rights for alternative apparatus) apply, then the parties will follow the procedure in paragraph 62~~1~~(2)(removal of apparatus and rights for alternative apparatus) onwards.

(8) Nothing in sub-paragraphs (1) to (7) precludes the undertaker from submitting prior to the commencement of works to protect retained Apparatus or to construct Alternative Apparatus (unless otherwise agreed in writing between the undertaker and Exolum) a new Plan, instead of the Plan previously submitted, in which case the parties will re-run the procedure from sub-paragraph (1) onwards.

(9) Where Exolum reasonably requires Protective Works, the parties must use all reasonable endeavours to produce a plan of the work proposed and a plan of the proposed position of any physical features to be provided or constructed.

(10) The undertaker must afford to Exolum the necessary facilities and rights for the construction of Protective Works and subsequently the grant of Additional Rights in accordance with paragraph 63~~2~~ (facilities and rights for alternative apparatus).

(11) Any Protective Works are to be constructed in land owned by the undertaker or in land in respect of which Additional Rights have been or are guaranteed to be granted to Exolum. The Protective Works must be constructed in such manner and in such position or situation as may be agreed between Exolum and the undertaker or in default of agreement settled by expert determination in accordance with paragraph 72~~1~~ (dispute resolution).

(12) After the details for the Protective Works to be provided or constructed have been agreed or settled in accordance with paragraph 72~~1~~ (dispute resolution) and after the grant to Exolum of any such facilities and rights as are referred to in paragraph 62~~1~~(3) (removal of apparatus and rights for alternative apparatus), Exolum must proceed as soon as reasonably practicable using reasonable endeavours to construct and bring into operation the Protective Works.

(13) Where the undertaker needs to carry out emergency works—

(a) it must give to Exolum notice before such works commence, or as soon as is reasonably practicable after the works have commenced where it is not reasonably practicable to provide notice prior to commencement;

(b) the parties will work together to co-ordinate their respective works and agree a plan of those works before such works commence, or as soon as is reasonably practicable after the works have commenced where it is not reasonably practicable to provide notice prior to commencement; and

(c) it must comply with the conditions imposed under sub-paragraph (1) insofar as is reasonably practicable in the circumstances.

(14) In this Part of this Schedule, "emergency works" means works whose execution at the time when they are executed is required in order to put an end to, or to prevent the occurrence of, circumstances then existing or imminent (or which the person responsible for the works believes on reasonable grounds to be existing or imminent) which are likely to cause danger to persons or property where such works will or may materially and adversely affect the Apparatus or Exolum's access to Apparatus.

Cathodic protection testing

65.—(1) Where in the reasonable opinion of Exolum or the undertaker~~,~~:

(a) the Authorised Development might interfere with the cathodic protection forming part of Apparatus; or

(b) any Apparatus ~~must~~ might interfere with any proposed or existing cathodic protection forming part of the Authorised Development,

~~**65.**~~ Exolum and the undertaker must co-operate in undertaking the tests which they consider reasonably necessary for ascertaining the nature and extent of such interference and measures for providing or preserving cathodic protection.

~~(1)~~(2) The parties shall carry out the works and enter into such agreements (if any) as are necessary to implement the measures for providing or preserving cathodic protection under this paragraph.

Expenses

66.—(1) Subject to the following provisions of this paragraph 66~~5~~ (expenses), the undertaker must pay to Exolum the reasonable and properly incurred costs and expenses (including reasonable staffing costs if work is carried out in-house) incurred by Exolum in, or in connection with—

(a) undertaking its obligations under this Schedule including—

(i) the installation, inspection, removal, alteration, testing or protection of any Apparatus, Alternative Apparatus and/or Protective Works;

(ii) the execution of any other works under this Schedule; and

(iii) the review and assessment of Plans;

(b) the watching of and inspecting the execution of the Authorised Development, any Restricted Works and any works undertaken by third parties as a result of Authorised Development (including the assessment of Plans); and

(c) imposing reasonable requirements for the protection or alteration of Apparatus affected by the Authorised Development or works as a consequence of the Authorised Development in accordance with paragraph 64~~3~~(3) (retained apparatus and alternative apparatus: protection),

together with any administrative costs properly and reasonably incurred by Exolum.

(2) Provided that Exolum takes all reasonable steps to minimise the costs incurred in the following circumstances, there will be no deduction from any sum payable under this paragraph as a result of—

(a) the placing of apparatus of a better type, greater capacity or of greater dimensions, or at a greater depth than the existing Apparatus;

(b) the placing of apparatus in substitution of the existing Apparatus that may defer the time for renewal of the existing Apparatus in the ordinary course; or

(c) the scrap value (if any) of any Apparatus removed.

(3) Upon the submission of proper and reasonable estimates of costs and expenses to be incurred by Exolum, the undertaker must pay Exolum sufficiently in advance but to enable Exolum to undertake its obligations under this Schedule in a manner that is neutral to its cash flow provided that the undertaker shall not be required to make any such payment earlier than 14 days before the date on which the relevant cost or expense is reasonably anticipated to be incurred by Exolum. In the event that the costs reasonably incurred by Exolum are less than the amount paid by the undertaker pursuant to this paragraph then Exolum must promptly repay any overpayment to the undertaker within 56 days of the payment of those costs.

Damage to property and other losses

67.—(1) Subject to sub-paragraphs (2) to (6), the undertaker shall:

(a) indemnify Exolum for all reasonably incurred loss, damage, costs and expenses suffered or reasonably incurred by Exolum arising out of:

(i) the carrying out of works under this Schedule;

(ii) the carrying out of the Authorised Development;

(iii) the use or occupation of land over or in the vicinity of any Apparatus in connection with the carrying out the Authorised Development;

(iv) any injury or damage whatsoever to any property, real or personal, including the property of Exolum; and

(v) any matters arising out of or in connection with the Order;

(b) indemnify Exolum against any claim made against, or loss suffered by, Exolum as a result of any act or omission committed by the undertaker's officers, employees, contractors or agents whilst on or in the vicinity of any Apparatus for the purposes of carrying out any activity authorised by this Order;

(c) pay to Exolum in accordance with the terms of the provisions of this Part of this Schedule, the cost reasonably and properly incurred by Exolum in making good any damage to the Apparatus (other than Apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) arising out of the carrying out of works under this Schedule and arising out of the carrying out of the Authorised Development subject to provision of reasonable supporting evidence of the costs reasonably incurred;

(d) pay to Exolum the cost reasonably incurred by Exolum in stopping, suspending and restoring the supply though its Apparatus in consequence of the carrying out of works under this Schedule or the carrying out of the Authorised Development; and

(e) make reasonable compensation to Exolum for other losses directly arising from damages, penalty or costs incurred by Exolum by reason or in consequence of any such damage to or interruption of its Apparatus, including reasonable third-party claims.

(2) 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 negligent act, neglect or default of Exolum, its officers, contractors or agents; and

(b) 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.

(3) The fact that any act or thing may have been done by Exolum on behalf of the undertaker or in accordance with a Plan approved by Exolum or in accordance with any requirement of Exolum or under its supervision shall not, excuse the undertaker from liability under the provisions of sub-paragraph (1), except to the extent that such loss arises from the negligence or default of Exolum in line with sub-paragraph (2).

(4) Exolum shall at all times take reasonable steps to prevent and mitigate any loss, damage, liability, claim, cost or expense (whether indemnified or not) which it suffers in connection with this Schedule and if reasonably requested to do so by the undertaker, Exolum, must provide an explanation of how the loss, damage, liability, claim, cost or expense has been mitigated, where relevant.

(5) The undertaker warrants that it will use reasonable endeavours to ensure—

(a) the information it or any of its employees, agents or contractors provide to Exolum about the Plans or the Authorised Development and on which Exolum relies in the design of and carrying out of any works is accurate to the best of its knowledge; and

(b) the undertaker or any of its employees, agents or contractors have exercised all the reasonable skill, care and diligence to be expected of a qualified and experienced member of their respective profession.

(6) Exolum must—

(a) give to the undertaker reasonable notice of any claim or demand to which this paragraph applies as soon as reasonably possible after Exolum become aware of any claims or demands;

(b) not admit liability or make any offer to settle or settle or compromise any such claim 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); and

(c) keep the undertaker informed in relation to the progress of any such claims and demands and pay due regard to the undertaker's reasonable representations in relation to them.

Insurance

68.—(1) the undertaker must not carry out any Restricted Works unless and until Exolum has confirmed to the undertaker in writing that it is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker (or its contractor) has procured acceptable professional indemnity insurance and public liability insurance with minimum cover of £25 million (twenty five million pounds) per event, with respect to the carrying out of the works.

(2) The undertaker must maintain such insurance for the construction period of the Authorised Development from the proposed date of Commencement of the Authorised Development.

Co-operation and reasonableness

69.—(1) Where Apparatus is required to be protected, altered, diverted or removed under this Schedule, the undertaker must use all reasonable endeavours to co-ordinate the execution of any works under this Schedule—

(a) in the interests of safety;

(b) in the interest of the efficient and economic execution of both Exolum's works and the Authorised Development; and

(c) taking into account the need to ensure the safe and efficient operation of Apparatus and carrying out of Exolum's functions.

(2) Exolum must use reasonable endeavours to co-operate with the undertaker for the purposes outlined in sub-paragraph (1).

(3) The undertaker and Exolum must act reasonably in respect of any given term of this Schedule and, in particular, (without prejudice to generality) where any approval, consent or expression of satisfaction is required by this Schedule it must not be unreasonably withheld or delayed.

Emergency circumstances

70.—(1) The undertaker acknowledges that Exolum provides services to His Majesty's Government, using the Apparatus, which may affect any works to be carried under this Schedule and the Authorised Development.

(2) In the following circumstances, Exolum may on written notice to the undertaker immediately suspend all works that necessitate the stopping or suspending of the supply of product through any Apparatus under this Schedule and Exolum shall not be in breach of its obligations under this Schedule:

(a) circumstances in which, in the determination of the Government, there subsists a material threat to national security, or a threat or state of hostility or war or other crisis or national emergency (whether or not involving hostility or war); or

(b) circumstances in which a request has been received, and a decision to act upon such request has been taken, by the Government for assistance in relation to the occurrence or anticipated occurrence of a major accident, crisis or natural disaster; or

(c) circumstances in which a request has been received from or on behalf of NATO, the EU, the UN, the International Energy Agency (or any successor agency thereof) or the government of any other state for support or assistance pursuant to the United Kingdom's international obligations and a decision to act upon such request has been taken by the Government; or

(d) any circumstances identified as such by the COBRA committee of the Government (or any successor committee thereof); or

(e) any situation in connection with which the Government requires fuel capacity, including where the United Kingdom is engaged in any planned or unplanned military operations within the United Kingdom or overseas.

(3) The parties agree to act in good faith and in all reasonableness to agree any revisions to any schedule, programme or costs estimate (which will include costs of demobilising and remobilising any workforce, and any costs to protect the Apparatus "mid-works") to account for the suspension.

(4) Exolum will not be liable for any costs, expenses, loss or liabilities the undertaker incurs as a result of the suspension of any activities under sub-paragraphs (2) to (3) or delays caused by it.

Escalation of differences

71.—(1) The undertaker and Exolum must use their reasonable endeavours to secure the amicable resolution of any dispute or difference arising between them out of or in connection with this Schedule in accordance with the following provisions.

(2) The undertaker and Exolum will each nominate a representative who will meet to try to resolve the matter. If the matter is not resolved at that level within ten working days of either the undertaker or Exolum requesting such a meeting (or such longer period as may be agreed between the undertaker and Exolum) the matter may at the request of either the undertaker or Exolum be referred for discussion at a meeting to be attended by a senior executive from each party.

(3) If the meeting between senior executives fails to result in a settlement within 20 working days of the date of the request for such a meeting (or if it is not possible to convene a meeting within this period) then either the undertaker or Exolum may refer the matter to expert determination or arbitration in accordance with the provisions of paragraphs 72~~1~~ (dispute resolution).

Dispute resolution

72.—(1) If any dispute or difference arising out of or in connection with this Schedule is not resolved in accordance with paragraph 71~~0~~ (escalation of differences), either the undertaker or Exolum may refer the matter to—

(a) in the case of any dispute or difference pursuant to sub-paragraphs 64~~3~~(1), (4) or (11) (retained apparatus and alternative apparatus: protection), expert determination under paragraphs 71~~0~~ (escalation of differences) and 72~~1~~ (dispute resolution); or

(b) in the case of any dispute or difference not falling within sub-paragraph (1)(a), arbitration under article 45 (arbitration) of the Order.

(2) The parties will agree on the appointment of an independent Expert and must agree with the Expert the terms of their appointment.

(3) If the parties are unable to agree on an Expert or the terms of their appointment within five working days of either party serving details of a suggested expert on the other, either party will then be entitled to request the Institution of Civil Engineers or its successor to appoint an Expert and to agree with the Expert the terms of their appointment.

(4) The Expert is required to prepare a written decision including reasons and give notice (including a copy) of the decision to the parties within a maximum of three months of the matter being referred to them.

(5) If the Expert dies or becomes unwilling or incapable of acting, or does not deliver the decision within the time required by sub-paragraph (4) then either party may re-apply to the

relevant professional body referred to above to discharge the Expert and to appoint a replacement Expert with the required expertise and sub-paragraph (4) onwards will apply to the new Expert as if they were the first Expert appointed.

(6) The parties are entitled to make submissions to the Expert and will provide the Expert with such assistance and documents as the Expert reasonably requires for the purpose of reaching a decision.

(7) The Expert will act as an expert and not as an arbitrator. The Expert may award interest as part of their decision. The Expert's written decision on the matters referred to them will be final and binding on the parties in the absence of manifest error or fraud.

(8) The Expert may direct that any legal costs and expenses incurred by a party in respect of the determination will be paid by another party to the determination on the general principle that costs should follow the event, except where it appears to the Expert that, in the circumstances, this is not appropriate in relation to the whole or part of such costs. The Expert's fees and any costs properly incurred by them in arriving at his determination (including any fees and costs of any advisers appointed by the Expert) will be borne by the parties equally or in such other proportions as the Expert directs.

(9) The dispute resolution procedure set out in this Schedule will apply to matters dealt with in this Schedule notwithstanding any dispute resolution procedure provided for either in the Order or as part of any other consent in respect of the Authorised Development.

Miscellaneous

73.—(1) Nothing in this Schedule affects the provisions of any enactment or prior agreement regulating the relations between the undertaker and Exolum in respect of any Apparatus laid or erected in land belonging to the undertaker on the date the Order is granted.

(2) No failure or delay by a party to exercise any right or remedy provided under this Schedule or by law will constitute a waiver of that or any other right or remedy, nor will it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy will prevent or restrict the further exercise of that or any other right or remedy.

PART 7

FOR THE PROTECTION OF NATIONAL HIGHWAYS LIMITED

Application etc.,

74.—(1) The provisions of this Part of this Schedule apply for the protection of National Highways and have effect unless otherwise agreed in writing between the undertaker and National Highways.

74.(2) Except where expressly amended by the Order the operation of the powers and duties of National Highways or the Secretary of State under the 1980 Act, the 1984 Act, the 1991 Act, the Transport Act 2000, or the Town and Country Planning (General Permitted Development) (England) Order 2015 shall continue to apply in respect of the exercise of all National Highways' statutory functions.

Interpretation

75.—(1) Where the terms defined in this Part of this Schedule are inconsistent with the terms defined in article 2 (interpretation) of this Order are inconsistent with sub paragraph (2) the latter former prevail.

(2) In this Part of this Schedule—

"as built information" means one electronic copy of the following information where National Highways deems reasonably necessary, so far as it is relevant to the specified works—

(a) as constructed drawings in both PDF and AutoCAD DWG formats for anything designed by the undertaker ~~as installed and any ancillary or protective measures installed within the strategic road network~~ in compliance with Interim Advice Note 184 or any successor document and for the cable works, showing the location and depth of the cable as installed and any ancillary or protective measures installed within the strategic road network or land that National Highways has an interest in;

(b) list of suppliers and materials used, as well as any relevant test results and CCTV surveys (if required to comply with DMRB standards);

(c) product date sheets and technical specifications for all materials used;

~~(b)~~(d) as constructed information for any utilities discovered or moved during the specified works;

~~(c)~~(e) method statements for the specified works carried out;

(f) in relation to the road works, any information required by Series 1300 and 1400 of the Specification for Highway Works or any replacement or modification of it;

(g) organisation and methods manuals for all products used;

(h) as constructed programme;

(i) test results and records as required by the detailed design information and during construction phase of the project;

(j) a condition survey;

(k) in relation to road works, a stage 3 road safety audit subject to any exceptions to the road safety audit standard as agreed by the undertaker and National Highways;

~~(d)~~(l) ~~in so far as it is relevant to the specified works,~~ the health and safety file; and

~~(e)~~(m) such other information as is reasonably required by National Highways ~~to be used to update all relevant databases and to ensure compliance with National Highway's Asset Data Management Manual as is in operation at the relevant time~~;

~~"condition survey" means a survey of the condition of National Highways structures and assets within the Order limits that may be affected by the specified works;~~

"bond" means a bond in a form duly executed by the undertaker and reputable UK surety company or other UK financial institution to be approved in writing by National Highways (such approval not to be unreasonably withheld or delayed);

"the bond sum" means 200% of the cost of carrying out the road works (to include all costs plus any commuted sum), or such other sum agreed between the undertaker and National Highways, to be provided to National Highways in the form of:

(a) a bond; or

(b) a cash surety; or

(c) where agreed by National Highways a combination of a bond and cash surety;

"cable works" means any works under this Order which consist of the installation and maintenance of cables, cable ducts, tunnels for cables and cable ducts and related or associated works to those operations under the strategic road network, and to be installed through the use of trenchless installation techniques where no works are required to or on the operational carriageway;

"cash surety" means a cash deposit to be paid by the undertaker into an account specified by National Highways;

"commuted sum" means such sum calculated as provided for in paragraph 87 (commuted sums) of this Part of this Schedule to be used to fund the future cost of maintaining any new National Highways assets, structures or apparatus as part of the road works provided under the Order;

"condition survey" means a survey of the condition of National Highways structures and assets within the Order Limits that in the reasonable opinion of National Highways may be affected by the specified works and further to include a CCTV survey of specified drains that

National Highways reasonably considers may be materially and adversely affected by a specified work;

"contractor" means any contractor or subcontractor appointed by the undertaker to carry out the specified works;

"defects period" means the period from the date of the provisional certificate to the date of the final certificate which shall be no less than 12 months from the date of the provisional certificate;

"detailed design information" means such of the following drawings specifications and calculations as are relevant to—

(a) the ~~specified~~ road works—

(i) site clearance details;

(ii) boundary environmental and mitigation fencing;

(iii) road restraints systems and supporting road restraint risk appraisal process assessment;

(iv) drainage and ducting as required by DMRB CD 535 Drainage asset data and risk management and DMRB CS551 Drainage surveys – standards for Highways

(v) earthworks including supporting geotechnical assessments required by DMRB CD622 Managing geotechnical risk and any required strengthened earthworks appraisal form certification;

(vi) pavement, pavement foundations, kerbs, footways and paved areas;

(vii) traffic signs and road markings;

(viii) traffic signal equipment and associated signal phasing and timing detail;

(ix) road lighting (including columns and brackets);

(x) regime of California Bearing Ratio testing;

(xi) electrical work for road lighting, traffic signs and signals;

(xii) motorway communications as required by DMRB;

(xiii) highway structures and any required structural approval in principle;

(xiv) landscaping;

(xv) any proposed departures from DMRB standards;

(xvi) walking, cycling and horse-riding assessment and review report in accordance with DMRB GG142 Designing for walking, cycling and horse riding or any successor document;

(xvii) stage 1 and stage 2 road safety audits and exceptions agreed;

(xviii) utilities diversions;

(xix) topographical survey;

(xx) maintenance and repair strategy in accordance with DMRB GD304 Designing health and safety into maintenance or any replacement or modification of it;

(xxi) health and safety information including any asbestos survey required by GG105 or any successor document; and

(xxii) other such information that may be reasonably required by National Highways to be used to inform the detailed design of the road works; or

(b) the cable works—

~~(a) site clearance details;~~

~~(b)~~(i) boundary, environmental and mitigation fencing;

(ii) drainage and ducting as required by DMRB CD 535 Drainage asset data and risk management and DMRB CS551 Drainage surveys – standards for Highways;

(iii) earthworks including supporting geotechnical assessments required by DMRB CD622 Managing geotechnical risk and any required strengthened earthworks appraisal form certification;

(iv) regime of California Bearing Ratio testing;

(v) any proposed departures from DMRB standards;

(vi) utilities diversions;

(vii) topographical survey;

(viii) maintenance and repair strategy in accordance with DMRB GD304 Designing health and safety into maintenance or any replacement or modification of it;

(ix) technical approval of highway structures under CG3000 of DMRB;

(x) health and safety information including any asbestos survey required by GG105 or any successor document; and

~~(c)~~(xi) other such information that may be reasonably required by National Highways to be used to inform the detailed design of the cable works.

~~(d) utilities diversions; and~~

~~(e) other such information that may be reasonably required by National Highways to be used to inform the detailed design of the specified works;~~

"DBFO contract" means the design build finance operate contract between National Highways and the highway operations and maintenance contractor for the maintenance and operation of parts of the strategic road network which are within the Order Limits or any successor or replacement contract that may be current at the relevant time;

"DMRB" means the Design Manual for Roads and Bridges or any replacement or modification of it;

"final certificate" means the certificate relating to those aspects of the specified works that have resulted in any alteration to the strategic road network to be issued by National Highways pursuant to paragraph 86 (security);

"the health and safety file" means the file or other permanent record containing the relevant health and safety information for the specified works required by the Construction Design and Management Regulations 2015 (or such updated or revised regulations as may come into force from time to time);

"highway operations and maintenance contractor" means the contractor appointed by National Highways under the DBFO contract;

"nominated persons" means the undertaker's representatives or the contractor's representatives on site during the carrying out of the specified works as notified to National Highways from time to time;

"programme of works" means a document setting out the sequence and timetabling of the specified works;

"provisional certificate" means the certificate of provisional completion relating to those aspects of the specified works that have resulted in any alteration to the strategic road network to be issued by National Highways in accordance with paragraph 81 (provisional certificate) when it considers the specified works are substantially complete and may be opened for traffic;

"road safety audit" means an audit carried out in accordance with the road safety audit standard and "road safety audits shall be construed accordingly"; "road safety audit standard" means DMRB Standard HD GG119 or any replacement or modification of it;

"road space booking" means road space bookings in accordance with National Highways' Asset Management Operational Requirements (AMOR) including Network Occupancy Management System (NOMS) used to manage road space bookings and network occupancy and "road space bookings shall be construed accordingly";

"road works" means so much of any work including highway works, street works, surveys and signalisation authorised by this Order and including any maintenance of that work, but excluding the cable works, as is undertaken on the strategic road network;

"Specification for Highways Works" means the specification for highways works forming part of the manual of contract documents for highway works published by National Highways and setting out the requirements and approvals procedures for work, goods or materials used in the construction, improvement or maintenance of the strategic road network or any successor of it;

"specified works" means so much of any cable works or road works~~the~~ authorised ~~development~~by this Order, including any maintenance of that work, as is undertaken on~~, in,~~ under ~~or over~~ the strategic road network~~ for which National Highways is the highway authority~~ and "specified work" shall be construed accordingly;

"strategic road network" means any part of the road network including trunk roads, special roads or streets for which National Highways is the highway authority including structures, drainage infrastructure, street furniture, verges and vegetation and all other highway assets together with all land, apparatus and rights located in, on, over or under the highway~~; and~~;

"utilities" means any pipes wires cables or equipment belonging to any person or body having power or consent to undertake street works under the New Roads and Street Works Act 1991 (or such updated or revised legislation as may come into force from time to time); and~~.~~

"winter maintenance" means maintenance of the road surface to deal with snow and ice.

~~(3) References to any standards, manuals, contracts, Regulations and Directives including to specific standards forming part of the DMRB are, for the purposes of this Part of this Schedule, to be construed as a reference to the same as amended, substituted or replaced, and with such modifications as are required in those circumstances.~~

General

76.—(1) In respect of any part of the strategic road network that may be affected by works authorised by this Order and is managed under a DBFO contract both National Highways and the highway operations and maintenance contractor shall have the benefit of this Part of Schedule 13 but for the purposes of any approvals required under this Part of Schedule 14 the undertaker shall liaise directly with National Highways.~~The undertaker acknowledges that parts of the works authorised by this Order affect or may affect parts of the strategic road network in respect of which National Highways may have appointed or may appoint a highway operations and maintenance contractor.~~

(2) No works in carrying out, maintaining or diverting the authorised development may be carried out in, on, or over~~under~~ the strategic road ~~carriageway~~ network or under it at a distance of less than ~~4~~five (5) metres below the lowest point of the carriageway surface, unless such works are agreed in writing National Highways at the absolute discretion of National Highways.

(3) References to any standards, manuals, contracts, regulations and directives including to specific standards forming part of the DMRB are, for the purposes of this Part of this Schedule, to be construed as a reference to the same as amended, substituted or replaced, and with such modifications as are required in those circumstances.

Works outside the Order limits

~~(3)~~**77.** If the undertaker proposes to carry out works to the strategic road network that are outside of the Order Limits in connection with the authorised development, the undertaker must enter into an agreement with National Highways in respect of the carrying out of those works prior to the commencement of those works.

Prior approvals~~ and security~~

~~77.~~**78.**~~ (1) Any specified works which involve tunnelling, boring under the strategic road network without trenching from the surface, must be designed by the undertaker in accordance with DMRB CD622 unless otherwise agreed in writing by National Highways.~~ (1) The ~~specified~~ road works must not commence until—

(a) a stage 1 and stage 2 road safety audit has been carried out and all recommendations raised by them or any exceptions are approved by National Highways;

~~(a)~~(b) the programme of works has been approved by National Highways;

~~(b)~~(c) the detailed design of the ~~specified~~ road works comprising of the following details, insofar as considered relevant by National Highways, acting reasonably, has been submitted to and approved by National Highways—

(i) the detailed design information, incorporating all recommendations and any exceptions approved by National Highways under sub-paragraph (a);

(ii) details of the proposed road space bookings and at the same time as submitting the relevant details the undertaker shall be entitled to submit its application for road space bookings to National Highways;

~~(ii)~~(iii) the identity and ~~suitability~~ qualifications of the contractor and nominated persons; ~~and~~

~~(iii)~~(iv) a process for stakeholder liaison, with key stakeholders to be identified and agreed between National Highways and the undertaker; and

(d) National Highways has approved the audit brief and CVs for all road safety audits and exceptions to items raised in accordance with the road safety audit standard;

(e) the undertaker has agreed the estimate of the commuted sum with National Highways;

(f) the scope of all maintenance operations (routine inspections, incident management, reactive and third party damage) to be carried out by the undertaker during the construction of the road works (which must include winter maintenance) has been agreed in writing by National Highways;

(g) the undertaker has procured to National Highways collateral warranties in a form approved by National Highways from the contractor and designer of the road works in favour of National Highways to include covenants requiring the contractor and designer to exercise all reasonable skill care and diligence in designing and constructing the specified works, including in the selection of materials, goods, equipment and plant;

(h) any further information that National Highways may reasonably request within 14 days of the submission of the detailed design of the road works has been supplied to National Highways; and

~~(c)~~(i) a condition survey and regime of monitoring of any National Highways assets or structures that National Highways reasonably considers will be affected by the ~~specified~~ road works~~,~~ has been agreed in writing by National Highways.~~; and~~

(2) The cable works must not commence until:

(a) a programme of works has been approved by National Highways;

(b) the detailed design of the cable works comprising the following details insofar as is considered relevant by National Highways, acting reasonably, has been submitted to and approved by National Highways:

(i) the detailed design information;

(ii) details of the proposed road space bookings and the undertaker is entitled to submit its application for road space bookings at the same time as the relevant details are submitted under sub-paragraph (i) to National Highways;

(iii) a method statement including details of the cable works, equipment and locations;

(c) a survey to determine the appropriate minimum depth for the cable works has been carried out and the minimum cable depth has been approved by National Highways;

(d) the detailed design of the cable works including supporting geotechnical assessments required by DMRB CD622 Managing Geotechnical Risk and any required strengthened earthworks appraisal form certification has been submitted to and approved by National Highways;

(e) a condition survey and regime of monitoring has been agreed in writing by National Highways;

(f) the CASS01 has been approved by National Highways;

(g) the undertaker has paid to National Highways the estimate of the NH costs notified to it pursuant to paragraph 80(3) (payments) of this Part of this Schedule;

(h) any further information that National Highways may reasonably request within 14 days of the submission to National Highways of the detailed design of any cable works.

~~(2)~~(3) National Highways must~~,~~ prior to the commencement of the specified works, inform the undertaker of the identity of the person who will act as a point of contact on behalf of National Highways for consideration of the information required under sub-paragraph (1~~2~~) or (2).

~~(3)~~(4) Any approval or consent of National Highways required under this paragraph—

(a) must not be unreasonably withheld or delayed;

(b) must be given in writing; and

~~(c) shall be deemed to have been given if neither given nor refused within 2 months of the receipt of the information for approval or, where further particulars are requested by National Highways (acting reasonably) within 2 months of receipt of the information to which the request for further particulars relates; and~~

~~(d)~~(c) may be subject to any reasonable conditions as National Highways considers necessary.

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

~~(4)~~(6) Any change to the identity of the contractor and/or designer of the specified works will be notified to National Highways immediately and details of their suitability to deliver the specified works will be provided on request along with collateral warranties in a form agreed by National Highways.

(7) Any change to the detailed design of the specified works must be approved by National Highways in accordance with sub-paragraph (1~~2~~) or (2) of this paragraph~~Part~~.

~~(5)~~(8) Article 49 (requirements, appeals, etc.) does not apply to any application for consent, agreement or approval required or contemplated by any of the provisions to this Part of the Schedule.

Construction of the specified works

~~78.~~79.—(1) Unless otherwise agreed by National Highways, ~~T~~the undertaker must give National Highways 28 days' notice in writing of the date on which the specified works will start.

(2) The undertaker must comply with National Highways' road space booking procedures when booking road space on the strategic road network prior to and during the carrying out of the specified works and no specified works for which a road space booking is required shall commence without a road space booking having first been secured from National Highways.

~~(2)~~(3) The specified works must be carried out by the undertaker to the ~~reasonable~~ satisfaction of National Highways in accordance with—

(a) the relevant detailed design information and programme of works approved pursuant to paragraph 78~~6~~(2) (prior approvals ~~and security~~) above or as subsequently varied by agreement between the undertaker and National Highways;

(b) in so far as ~~it~~ may be applicable~~,~~ the DMRB, the Manual of Contract Documents for Highway Works, including the Specification for Highway Works, together with all other relevant standards as required by National Highways to include, inter alia, all relevant interim advice notes save to the extent that exceptions from those standards apply which have been approved by National Highways; and

(c) all aspects of the Construction (Design and Management) Regulations 2015 or any statutory amendment or variation of the same and in particular the undertaker, as client,

must ensure that all client duties (as defined in the said regulations) are undertaken to the satisfaction of National Highways. For the avoidance of doubt no approval or consent issued by National Highways shall be taken to be a consent or approval pursuant to the Construction (Design and Management) Regulations 2015.

(4) The undertaker must ensure that (where possible) without entering the highway the highway is kept free from mud, soil and litter as a result of carrying out a specified work.

~~(3)~~(5) The undertaker must permit and must require the contractor to permit at all reasonable times persons authorised by National Highways (whose identity must have been previously notified to the undertaker by National Highways) to gain access to the specified works pursuant to the Order including all land in which National Highways has an interest for the purposes of inspection and supervision of the specified works.

~~(4)~~(6) If any part of the specified works is constructed—

(a) other than in accordance with the requirements of this Part of this Schedule; or

(b) in a way that causes damage to the highway, highway structure or asset or any other land of National Highways,

National Highways may by notice in writing require the undertaker, at the undertaker's own expense, to comply promptly with the requirements of this Part of this Schedule or remedy any damage notified to the undertaker under this Part of this Schedule, to the satisfaction of National Highways~~, acting reasonably~~.

~~(5)~~(7) If during the carrying out of the authorised development the undertaker or its appointed contractors or agents causes damage to the strategic road network then National Highways may by notice in writing require the undertaker, at its own expense, to remedy the damage.

~~(6)~~(8) If within 28 days on which a notice under sub-paragraph (6~~4~~) or sub-paragraph (7~~5~~) is served on the undertaker (or in the event of there being, in the opinion of National Highways, a danger to road users, within such lesser period as National Highways may stipulate), the undertaker has failed to take the steps required by that notice, National Highways may carry out the steps required of the undertaker and may recover any expenditure reasonably incurred by National Highways in so doing, such sum to be payable within 28 days of demand.

~~(7)~~(9) Nothing in this Part of this Schedule prevents National Highways from carrying out any work or taking any such action as it reasonably believes to be necessary as a result of or in connection with the carrying out or maintenance of the authorised development without prior notice to the undertaker in the event of an emergency or to prevent the occurrence of danger to the public and National Highways may recover any expenditure it reasonably incurs in so doing.

~~(8)~~(10) In constructing the specified works, the undertaker must at its own expense divert or protect all utilities and all alterations and reinstatement of highways over existing utilities must be constructed to the satisfaction of National Highways.

(11) Until such time that National Highways issues the provisional certificate the undertaker must carry out all maintenance (including winter maintenance) in accordance with the scope of maintenance operations agreed by National Highways pursuant to paragraph 78(1)(h) (prior approvals) and the undertaker must carry out such maintenance at its own cost.

~~(9)~~(12) The undertaker must notify National Highways if it fails to complete the specified works in accordance with the agreed programme of works pursuant to paragraph 78~~6~~(12~~2~~)(a) (prior approvals~~ and security~~) of this Part~~,~~ or suspends the carrying out of any specified work beyond~~ 14 days~~ a reasonable period of time, and National Highways reserves the right to withdraw any road space booking granted to the undertaker to ensure compliance with its network occupancy requirements.

Payments

~~79.~~**80.**—(1) The undertaker must pay to National Highways a sum equal to the ~~whole of any reasonable~~ costs and expenses which National Highways reasonably and properly incurs (including costs and expenses for using internal or external staff and costs relating to any work which becomes

abortive) in relation to the specified works and in relation to any approvals sought under this Order, or otherwise incurred under this Part, including—

(a) the checking and approval of the information required under paragraph 78~~6~~(2) (prior approvals~~ and security~~);

(b) the supervision of the specified works;

(c) contractual costs properly payable to the highway operations and maintenance contractor as a consequence of any specified works, including costs incurred by the highway operations and maintenance contractor in carrying out the tasks referred to in sub-paragraphs (a) and (b) of this paragraph, in which case National Highways will be responsible for the payment of any sums received from the undertaker under this paragraph to the highway operations and maintenance contractor;

(d) the checking and approval of the information required to determine approvals under this Order;

~~(c)~~(e) all ~~any~~ costs ~~reasonably incurred under paragraph 77(7) (construction of the~~ in relation to the transfer of any land required for the specifie~~de~~ works~~) of this Part~~; and

(f) all legal and administrative costs and disbursements reasonably incurred by National Highways in connection with the Order and sub-paragraphs (a)-(d); and

~~(d)~~(g) any value added tax which is payable by National Highways in respect of such costs and expenses arising under this paragraph and for which it cannot obtain reinstatement from HM Revenue and Customs,

together comprising "the NH costs".

(2) The undertaker must pay to National Highways within 28 days of demand and prior to such costs being incurred the total costs that National Highways believe will be properly and necessarily incurred by National Highways in undertaking any statutory procedure or preparing and bringing into force any traffic regulation order or orders necessary to carry out or for effectively implementing the authorised development.

~~(2)~~(3) National Highways must provide the undertaker with a schedule showing its reasonable estimate of the NH costs prior to the commencement of the specified works and the undertaker must pay to National Highways the reasonable estimate of the NH costs prior to commencing the specified works and in any event prior to National Highways incurring any cost.

~~(3)~~(4) If at any time after the payment referred to in sub-paragraph (3~~2~~) has become payable, National Highways reasonably believes that the NH costs will exceed the ~~reasonably~~ estimated NH costs it may give notice to the undertaker of the amount that it reasonably believes the NH costs will exceed the estimate ~~of the NH costs~~ (the excess) and the undertaker must pay to National Highways within 28 days of the date of the notice a sum equal to the excess.

~~(4)~~(5) National Highways must give the undertaker a final account of the NH costs referred to in sub-paragraph (1) above within 91 days of ~~the date of~~ completion of the specified works as set out in the programme of works.

~~(5)~~(6) Within 28 days of the issue of the final account—

(a) if the final account shows a further sum as due to National Highways the undertaker must pay to National Highways the sum shown due to it; or

(b) if the account shows that the payment or payments previously made by the undertaker have exceeded the costs incurred by National Highways, National Highways must refund the difference to the undertaker.

(7) If any payment due under ~~sub-paragraph (2) above~~any of the provisions of this Part of this Schedule~~,~~ is not made on or before the date on which it falls due the party from whom it was due must at the same time as making the payment pay to the other party interest at 3% above the Bank of England base lending rate from time to time being in force for the period starting on the date upon which the payment fell due and ending with the date of payment of the sum on which interest is payable together with that interest.

Provisional Certificate

81.—(1) Following the completion of any specified works or prior to reopening any part of the strategic road network following any closure or partial closure, whichever shall be sooner, the undertaker shall notify National Highways who will carry out a site inspection to satisfy itself that the strategic road network is, in its opinion, safe for traffic and the undertaker must comply with any requirements of National Highways following the site inspection.

(2) As soon as the undertaker considers that the provisional certificate may be properly issued it must apply to National Highways for the provisional certificate.

(3) Following an application for a provisional certificate, National Highways must as soon as reasonably practicable:

(a) inspect the specified works within the strategic road network or in land in which National Highways retains an interest; and

(b) provide the undertaker with a written list of works that are required for the provisional certificate to be issued or confirmation that no further works are required for this purpose.

(4) When—

(a) a condition survey for the specified works has been carried out and all recommendations raised including remedial works have (subject to any exceptions agreed) been approved by National Highways;

(b) the specified works incorporating the approved remedial works under sub-paragraph (4)(a) and any further works notified to the undertaker pursuant to sub-paragraph (3)(b) have been completed to the satisfaction of National Highways;

(c) the as built information has been provided to National Highways,

National Highways must issue the provisional certificate.

(5) Following the issue of the provisional certificate, National Highways shall reduce the bond sum in writing to 20% provided that in the event any claim or claims have been made against the undertaker or liability on its part has arisen under the bond sum (which here shall also include any claim or claims to which National Highways are joined howsoever they arise) before that date National Highways will be at liberty to retain a sufficient sum in addition to the 20% to ensure it does not have to meet any costs for and/or arising from and/or in connection with the road works.

Opening

~~(6)~~**82.** Unless otherwise agreed in writing by National Highways, in the case of road works requiring closure of any part of the strategic road network, the undertaker must notify National Highways not less than 56 days in advance of the intended date of opening to the public of the strategic road network and the undertaker must notify National Highways of the actual date the strategic road network will be opened to the public within 14 days of that date and must not open the strategic road network to the public prior to the expiration of the requisite notice period.

Final ~~C~~condition survey~~ and as built details~~

~~80.~~83.—(1) The undertaker must, as soon as reasonably practicable~~ after completing the specified work~~ make its application for a provisional certificate pursuant to paragraph 81(2) (provisional certificate), arrange for ~~any~~ the highways structures and assets that were the subject of the condition survey ~~under paragraph 76(2)(c) (prior approvals and security)~~ to be re-surveyed and must submit the re-survey to National Highways for its approval. The re-survey will include a renewed geotechnical assessment required by DMRB CD622 if the specified works include any works beneath the strategic road network.

(2) If the re-surveys carried out pursuant to ~~sub-paragraph (1)~~paragraph 81(1) (provisional certificate) indicates that any damage has been caused to a structure or asset, the undertaker must submit a scheme for remedial works in writing to National Highways for its approval in writing and the undertaker must carry out the remedial works at its own cost and in accordance with the scheme submitted and such programme as National Highways may reasonably require.

(3) If fails to carry out the remedial work in accordance with the approved scheme and programme pursuant to paragraph 84(2) (defects period) or fails to submit a scheme for remedial works to National Highways, National Highways may carry out the steps required of the undertaker and may recover within 28 days of demand any expenditure from the undertaker it reasonably incurs in so doing.

~~(2)~~(4) National Highways may, at its discretion, at the same time as giving its approval to the re-surveys pursuant to paragraph 84(1) (defects period) give notice in writing that National Highways will ~~National Highways must~~ remedy any damage identified in the re- surveys and National Highways may recover within 28 days of demand any expenditure from the undertaker it reasonably incurs in so ~~doing from the undertaker~~.

~~(3)~~(5) The undertaker must make available to National Highways upon request copies of any survey or inspection reports produced pursuant to any inspection or survey of any specified work following its completion that the undertaker may from time to time carry out.

(6) Within 30 days of completion of the specified works, the as built ~~details~~ information must be provided by the undertaker to National Highways.

Defects period

84.—(1) The undertaker must at its own expense remedy any defects in the strategic road network resulting from the carrying out of the road works as are reasonably required by National Highways to be remedied during the defects period. All identified defects must be remedied in accordance with the following timescales—

(a) in respect of matters of urgency, within 24 hours of receiving notification for the same (urgency to be determined at the absolute discretion of National Highways);

(b) in respect of matters which National Highways considers to be serious defects or faults, within 14 days of receiving notification of the same; and

(c) in respect of all other defects notified to the undertaker, within 4 weeks of receiving notification of the same.

(2) Following the issuing of the provisional certificate National Highways has responsibility for routine maintenance of the strategic road network save for any soft landscaping works which must be established and which must thereafter be maintained for a period of 3 years by and at the expense of the undertaker.

Final certificate

85.—(1) The undertaker must apply to National Highways for the final certificate no sooner than 12 months from the date of the provisional certificate for the road works or the cable works.

(2) Following receipt of the application for the final certificate, National Highways must as soon as reasonably practicable:

(a) inspect the strategic road network; and

(b) provide the undertaker with a written list of any further works required to remedy or make good any defect or damage in the strategic road network or confirmation that no such works are required for this purpose.

(3) The undertaker must carry out such works notified to it pursuant to sub-paragraph (2).

(4) When National Highways is satisfied that—

(a) any defects or damage arising from defects during the defects period and any defects notified to the undertaker pursuant to sub-paragraph (2) and any remedial works required as a result of the stage 4 road safety audit have been made good to the satisfaction of National Highways; and

(b) the NH costs have been paid to National Highways in full;

National Highways must issue the final certificate and upon the issue of the final certificate reduce the bond sum in full provided that in the event any claim or claims have been

made against the undertaker or liability on its part has arisen under the bond sum (which here shall also include any claim or claims to which National Highways are joined howsoever they arise) National Highways will be at liberty to retain a sufficient sum to ensure it does not have to meet any costs for and/or arising from and/or in connection with the road works.

(5) The undertaker must pay to National Highways within 28 days of demand the costs incurred by National Highways in identifying the defects and supervising and inspecting the undertaker's work to remedy the defects that it is required to remedy pursuant to this paragraph 85.

Security

86.—(1) The road works must not commence until the undertaker procures that the road works are secured by the bond to indemnify National Highways against all losses, damages, costs or expenses arising from any breach of any one or more of the obligations of the undertaker in respect of the exercise of the powers under this Order and the road works under the provisions of this Part of this Schedule provided that the maximum liability of the bond must not exceed the bond sum.

(2) If at any time the undertaker is in breach of any of the provisions of this Part of this Schedule or becomes insolvent, National Highways shall be entitled upon giving notice to the undertaker to use such parts of the bond sum as National Highways considers necessary and without prejudice to any other remedy which may be available to National Highways.

Commuted sums

87.—(1) National Highways must provide to the undertaker an estimate of the commuted sum, calculated in accordance with Commuted Lump Sum A Guide for Promoters of Major Third Party Projects dated 28 November 2023 or any successor guidance, prior to the commencement of the road works.

(2) The undertaker must pay to National Highways the commuted sum prior to the issue of the provisional certificate for the road works.

Insurance

88. Prior to the commencement of the specified works the undertaker must affect public liability insurance with an insurer in the minimum sum of £25,000,000 (twenty five million pounds) in respect of any one claim against any legal liability for damage loss or injury to any property or any person as a direct result of the execution of specified works or use of the strategic road network by the undertaker.

Indemnity

89.—(1) The undertaker indemnifies National Highways from and against all costs, claims, expenses, damages, losses, and liabilities suffered by National Highways arising from the construction, maintenance or use of the specified works or exercise of, or failure to exercise, any power under this Order (but always excluding any consequential loss or indirect loss suffered by National Highways) within 28 days of an itemised demand subject to sub-paragraphs (2) to (4).

(2) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of any damage to the extent that it is attributable to the neglect or default of National Highways, its officers, servants, contractors or agents.

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

(4) National Highways must use its reasonable endeavours to mitigate and to minimise any costs, claims, expenses, damages, losses and to which the indemnity under this paragraph applies where it is within National Highways' reasonable ability and control to do so and which expressly

excludes any obligation to mitigate liability arising from third parties outside of National Highways' control.

Maintenance of the specified works

~~81.~~90.—(1) The undertaker must, prior to the commencement of any works of ~~external~~ maintenance to the specified works, give National Highways 28 days' notice in writing of the date on which those works will start unless otherwise agreed by National Highways, acting reasonably.

(2) If, for the purposes of maintaining the specified works, the undertaker needs to occupy any road space, the undertaker must comply with National Highways' road space booking requirements and no maintenance of the specified works for which a road space booking is required shall commence without a road space booking having first been secured.

(3) During any maintenance works ~~T~~the undertaker must comply with any reasonable requirements that National Highways may notify to the undertaker, such requirements to be notified to the undertaker not less than 14 days~~'~~ in advance of the planned commencement date of the maintenance works.

Land

91.—(1) Following completion of the specified works National Highways may serve notice on the undertaker that it wishes to take a freehold transfer of land within the extent of strategic road network boundary which is not in the ownership of National Highways but has been acquired by the undertaker for the purposes of carrying out the specified works.

~~82.~~(2) If the undertaker receives notice under sub-paragraph (1) then the undertaker must affect a freehold transfer of the land which is the subject of the notice and complete such transfer as soon as reasonably practicable at no cost to National Highways.

~~**83.**The undertaker must not, in reliance on or in exercise of any power under this Order, interfere with, remove, damage or prevent or impair the functioning of, and must on reasonable request (or in case of emergency, on demand) allow access by National Highways to, highway drainage assets.~~

Expert Determination

~~84.~~92.—(1) Article 45 (arbitration) of the Order does not apply to this Part of this Schedule.

(2) Any difference under this Part of this Schedule may be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) On notification by either party of a dispute, the parties must jointly instruct an expert within 14 days of notification of the dispute.

(4) All parties involved in settling any difference must use all reasonable ~~but~~ and commercially prudent endeavours to do so within 21 days from the date that an expert is appointed.

(5) The expert must—

(a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 7 days of the expert's appointment;

(b) permit a party to comment on the submissions made by the other party within 7 days of receipt of the submission;

(c) issue a decision within 7 days of receipt of the submissions under sub-paragraph (b); and

(d) give reasons for the decision.

(6) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 45 (arbitration).

(7) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.

PART 8

FOR THE PROTECTION OF RAILWAY INTERESTS

Application

93. The provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 110~~00~~ (transfer of property, land and rights) of this Part of this Schedule any other person on whom rights or obligations are conferred by that paragraph.

~~85.~~ Interpretation

~~86.~~94.—(1) In this Part of this Schedule—

"asset protection agreement" means an agreement to regulate the construction and maintenance of the specified work in a form ~~prescribed from time to time~~reasonably required by Network Rail having regard to the nature of the specified works and not imposing obligations on the undertaker which are inconsistent with those contained in these protective provisions;

"construction" includes execution, placing, alteration and reconstruction and "construct" and "constructed" have corresponding meanings;

"the engineer" means an engineer appointed by Network Rail for the purposes of this Order;

"network licence" means the network licence, as the same is amended from time to time, granted to Network Rail Infrastructure Limited by the Secretary of State in exercise of their powers under section 8 (licences) of the Railways Act 1993;

"Network Rail" means Network Rail Infrastructure Limited (company number 02904587, whose registered office is at Waterloo General Office, London SE1 8SW) and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition "associated company" means any company which is (within the meaning of section 1159 of the Companies Act 2006) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited and any successor to Network Rail Infrastructure Limited's railway undertaking;

"plans" includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

"railway operational procedures" means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

"railway property" means any railway belonging to Network Rail and—

(a) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and

(b) any easement or other property interest held or used by Network Rail or a tenant or licencee of Network Rail for the purposes of such railway or works, apparatus or equipment (evidence of which shall be provided by Network Rail to the undertaker as soon as reasonably practicable upon Network Rail's receipt of written request from the undertaker);

"regulatory consents" means any consent or approval required under—

(a) the Railways Act 1993;

(b) the network licence; and/or

(c) any other relevant statutory or regulatory provisions;

by either the Office of Rail and Road or the Secretary of State for Transport or any other competent body including change procedures and any other consents, approvals of any access or beneficiary that may be required in relation to the authorised development;

"specified work" means so much of any of the authorised development as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property and, for the avoidance of doubt, includes the maintenance of such works under the powers conferred by article 5 (power to maintain the authorised development) in respect of such works.

Railway operational procedures

~~87.~~**95.**—(1) Where under this Part of this Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail must—

(a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and

(b) use their reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development pursuant to this Order.

~~(b)~~ **Prior approvals**

~~88.~~**96.**—(1) The undertaker must not exercise the powers conferred by—

(a) article 20 (discharge of water*)*;

(b) article 22 (authority to survey and investigate the land);

(c) article 42 (felling or lopping of trees and removal of hedgerows);

(d) the powers conferred by section 172 (right to enter and survey land) of the Housing and Planning Act 2016;

(e) any powers in respect of the temporary possession of land under the Neighbourhood Planning Act 2017;

in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(3) The undertaker must not exercise the powers conferred by sections 271 or 272 of the 1990 Act, article 35 (statutory undertakers), article 30 (power to override easements and other rights) or article 27 (private rights), in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

(4) The undertaker must not under the powers of this Order do anything which would result in railway property being incapable of being used or maintained or which would affect the safe running of trains on the railway.

(5) Where Network Rail is asked to give its consent pursuant to this paragraph, such consent must not be unreasonably withheld or unreasonably delayed but may be given subject to reasonable conditions~~ but it shall never be unreasonable to withhold consent for reasons of operational or railway safety~~.

(6) The undertaker must enter into an asset protection agreement prior to the carrying out of any specified work~~, subject to agreement not being unreasonably withheld or delayed by either party~~.

~~(6)~~ **Submission and approval of plans**

~~**89.**~~**97.**—(1) The undertaker must before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration in accordance with article 45 (arbitration) of the Order.

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld or delayed, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated their disapproval of those plans and the grounds of such disapproval the undertaker may serve upon the engineer written notice requiring the engineer to intimate approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further 28 days the engineer has not intimated approval or disapproval, the engineer is deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the reasonable opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail must construct it without unnecessary delay on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.

(4) When signifying their approval of the plans the engineer may specify any protective works ~~within the Order limits~~ (whether temporary or permanent) which in the engineer's reasonable opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes must be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works must be carried out at the expense of the undertaker in either case without unnecessary delay and the undertaker must not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to their reasonable satisfaction provided that any such protective works must be~~.—~~

(a) on land held or controlled by Network Rail; and

(b) either (i) authorised by the Order or (ii) development permitted by an Act of Parliament or a general development order made under the 1990 Act which (in the case of either (i) or (ii)) can be relied upon by the party constructing the protective works.

(5) Network Rail must have regard to the proposed programme of works for the authorised development as may be made available to Network Rail by the undertaker and ensure that it does not unreasonably impede, interfere with or delay the authorised development provided that impeding, interfering or delaying the authorised development for reasons of ensuring compliance with Network Rail's network licence or any other regulatory of statutory duties shall not be unreasonable.

~~(4)~~ **Construction of specified works**

~~**90.**~~**98.**—(1) Any specified work and any protective works to be constructed by virtue of paragraph 95~~87~~(4) (submission and approval of plans) must, when commenced, be constructed—

(a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 97 ~~102~~ (submission and approval of plans);

(b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;

(c) in such manner as to cause as little damage as is possible to railway property; and

(d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction is caused by the carrying out of, or in consequence of the construction of a specified work, the undertaker must, notwithstanding any such approval, make good such damage and must pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any direct loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Part of this Schedule imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents or any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

~~(3)~~ Access to works and provision of information

~~91.~~**99.**—(1) The undertaker must—

(a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and

(b) supply the engineer with all such information as they may reasonably require with regard to a specified work or the method of constructing it.

~~(b)~~ Provision of access to the undertaker

100. Network Rail must at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by Network Rail under this Part of this Schedule during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

~~92.~~ Alterations and additions

~~93.~~**101.**—(1) If any permanent or temporary alterations or additions to railway property are reasonably necessary in consequence of the construction or completion of a specified work during a period of 12 months after the completion of that work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the undertaker 56 days' notice (or in the event of an emergency or safety critical issue such notice as is reasonable in the circumstances) of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions (subject to article 36 (no double recovery)).

(2) If during the construction of a specified work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work which in the reasonable opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work is to be constructed, Network Rail must assume construction of that part of the specified work and the undertaker must, notwithstanding any such approval of a specified work under paragraph 97~~102~~(3) (submission and approval of plans), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any direct loss which it may

suffer by reason of the execution by Network Rail of that specified work provided that at all times Network Rail will be under an obligation to take reasonable steps to mitigate its loss and always excluding any consequential loss or indirect loss.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 102~~107~~(1)(a) (expenses) provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

(4) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving must be set off against any sum payable by the undertaker to Network Rail under this paragraph.

~~(4)~~ **Expenses**

~~**94.**~~**102.**—(1) The undertaker must repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

(a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 97~~102~~(3) (submission and approval of plans) or in constructing any protective works under the provisions of paragraph 97~~102~~(4) (submission and approval of plans) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works (subject to article 36 (no double recovery));

(b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work;

(c) in respect of the employment or procurement of the services of any inspectors, signallers, watch-persons and other persons whom it shall be reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;

(d) in respect of any special traffic working resulting from any speed restrictions which may in the reasonable opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and

(e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

~~(e)~~ **Electromagnetic interference**

~~**95.**~~**103.**—(1) In this paragraph—

"EMI" means, subject to sub-paragraph (2), electromagnetic interference with Network Rail apparatus generated by the operation of the authorised development where such interference is of a level which adversely affects the safe operation of Network Rail's apparatus; and

"Network Rail's apparatus" means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised development) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail's apparatus carried out after approval of plans under paragraph 97~~102~~(1) (submission and approval of plans) for the relevant part of the authorised development giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the undertaker must in the design and construction of the authorised development take all measures necessary to prevent EMI and must establish with

Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) In order to facilitate the undertaker's compliance with sub-paragraph (3)—

(a) the undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail's apparatus which may be at risk of EMI, and thereafter must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 97~~102~~(1) (submission and approval of plans)) in order to identify all potential causes of EMI and the measures required to eliminate them;

(b) Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail's apparatus identified pursuant to sub-paragraph (a); and

(c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail's apparatus identified pursuant to sub-paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail's apparatus, Network Rail must not unreasonably withhold or unreasonably delay its consent ~~unreasonably~~ to modifications of Network Rail's apparatus, but the means of prevention and the method of their execution must be selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 97~~102~~(1) (submission and approval of plans) has effect subject to the sub-paragraph.

(6) Prior to the commencement of operation of the authorised development the undertaker shall test the use of the authorised development in a manner that shall first have been agreed with Network Rail and if, notwithstanding any measures adopted pursuant to sub-paragraph (3), the testing of the authorised development causes EMI then the undertaker must immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) the undertaker's apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail's apparatus.

(7) In the event of EMI having occurred—

(a) the undertaker must afford reasonable facilities to Network Rail for access to the undertaker's apparatus in the investigation of such EMI;

(b) Network Rail must afford reasonable facilities to the undertaker for access to Network Rail's apparatus in the investigation of such EMI;

(c) Network Rail must make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail's apparatus or such EMI; and

(d) the undertaker shall not allow the use or operation of the authorised development in a manner that has caused or will cause EMI until measures have been taken in accordance with this paragraph to prevent EMI occurring.

(8) Where Network Rail approves modifications to Network Rail's apparatus pursuant to sub-paragraphs (5) or (6)—

(a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus;

(b) any modifications to Network Rail's apparatus approved pursuant to those sub-paragraphs must be carried out and completed by the undertaker in accordance with paragraph 98 (construction of specified works)~~103~~.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 107~~112~~(1) (indemnity) applies to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of

works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.

(10) For the purpose of paragraph 102~~107~~(1)(a) (expenses) any modifications to Network Rail's apparatus under this paragraph shall be deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph the reference in article 45 (Arbitration) to the Institution of Civil Engineers shall be read as a reference to the Institution of Engineering and Technology.

~~(11)~~ Adverse impact on railway property

104. If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property in the reasonable opinion of the engineer, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.

~~96.~~ Signage

105. The undertaker must not provide any illumination or illuminated sign or signal ~~outside construction hours~~ on or in connection with a specified work within 15 metres of any railway belonging to Network Rail unless it has first consulted Network Rail and it must comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

~~97.~~ Maintenance of works

106. Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order as a direct result of and consequence of the existence of a specified work must, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to Network Rail.

~~98.~~ Indemnity

~~99.~~**107.**—(1) The undertaker must pay to Network Rail all reasonable costs, charges, damages and expenses (but always excluding any consequential or indirect loss) not otherwise provided for in this Part of this Schedule (subject to the remaining provisions of this part of this Schedule and to article 36 (no double recovery)) which may be occasioned to or reasonably incurred by Network Rail—

(a) by reason of the construction, maintenance or operation of a specified work or the failure thereof; or

(b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work;

(c) by reason of any act or omission of the undertaker or any person in its employ or of its contractors or others whilst accessing to or egressing from the authorised development;

(d) in respect of any damage caused to or additional maintenance required to, railway property or any such interference or obstruction or delay to the operation of the railway as a result of access to or egress from the authorised development by the undertaker or any person in its employ or of its contractors or others;

(e) in respect of costs incurred by Network Rail in complying with any railway operational procedures or obtaining any regulatory consents which procedures are required to be followed or consents obtained to facilitate the carrying out or operation of the authorised development;

and the undertaker must indemnify and keep indemnified Network Rail from and against all ~~reasonable~~ claims and demands arising out of or in connection with a specified work or any such failure, act or omission ~~subject to a cap of £25,000,000 (twenty five million pounds): and~~ provided always that Network Rail will be under an obligation to take reasonable steps to mitigate its loss and always excluding any consequential loss or indirect loss and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision will not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

~~(2) In no circumstances will the undertaker be liable to Network Rail under this paragraph 112 for any indirect or consequential loss (including, without limitation, loss of profit) howsoever arising, nor for any direct or indirect loss that may have been caused by a specified work or the carrying out of the authorised development more than six years after any specified work or the relevant part of the authorised development has been completed.~~

~~(3)~~(2) Network Rail must—

(a) give the undertaker reasonable written notice of any such claims or demands as soon as reasonably practicable after Network Rail becomes aware of any such claims or demands;

(b) not admit liability or make any settlement or compromise of such a claim or demand without the prior consent of the undertaker; ~~and~~

(c) take such steps as are within its control and are reasonable in the circumstances to mitigate any liabilities relating to such claims or demands~~.~~; and

~~(c)~~(d) keep the undertaker informed in relation to the progress of any such claims and demands and have due regard to the undertaker's representations in relation to them.

~~(4)~~(3) The sums payable by the undertaker under sub-paragraph (1) will if relevant include a sum equivalent to the relevant costs.

~~(5)~~(4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

~~(6)~~(5) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs shall, in the event of default, be enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-paragraph (4).

~~(7)~~(6) In this paragraph—

"the relevant costs" means the costs, losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any specified work including but not limited to any restriction of the use of Network Rail's railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in subparagraph (1)~~, subject to a cap of £25,000,000 (twenty five million)~~; and

"train operator" means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

Estimated ongoing expenses

108.—(1) Network Rail must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part of this Schedule (including the amount of the relevant costs mentioned in paragraph 107 ~~112~~ (indemnity) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Part of this Schedule (including any claim relating to those relevant costs).

(2) Network Rail must provide an itemised invoice to the undertaker of all charges, costs, fees, damages and expenses which are claimed under this Part of this Schedule and any payment due to

Network Rail under this Part of this Schedule must be made within 30 days of receipt of the itemised invoice.

Assessment of expenses

109. In the assessment of any sums payable to Network Rail under this Part of this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part of this Schedule or increasing the sums so payable.

~~100.~~ Transfer of property, land and rights

~~101.~~**110.**—(1) The undertaker and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the undertaker of—

(a) any railway property shown on the works and land plans and described in the book of reference;

(b) any lands, works or other property held in connection with any such railway property; and

(c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

~~(c)~~ Part 1 of the Railways Act 1993

111. Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part I of the Railways Act 1993.

~~102.~~ Application under article 7 (consent to transfer benefit of Order)

~~103.~~**112.**—(1) The undertaker must give written notice to Network Rail if any application which relates to railway property is proposed to be made by the undertaker for the Secretary of State's consent, under article 8 (consent to transfer of benefit of Order) of this Order and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

(a) the nature of the application to be made;

(b) the extent of the geographical area to which the application relates; and

(c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

~~(c)~~ Certification of plans

113. The undertaker must no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 44 (certification of plans and documents etc.) are certified by the Secretary of State, provide a set of those plans relevant to railway property to Network Rail in a format specified by Network Rail.

~~104.~~ Application of article 45 (arbitration)

~~105.~~**114.** Any dispute arising under this Part of this Schedule, unless otherwise provided for, must be referred to and settled by arbitration in accordance with article 45 (arbitration) and the Rules at Schedule 13 (arbitration rules).

PART 9

FOR THE PROTECTION OF CADENT GAS LIMITED

Application

~~106.~~115. For the protection of Cadent, the following provisions will, unless otherwise agreed in writing between the undertaker and Cadent, have effect.

Interpretation

~~107.~~116. In this Part of this Schedule—

"1991 Act" means the New Roads and Street Works Act 1991;

"acceptable credit provider" means a bank or financial institution with a credit rating that is not lower than: "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 a third party liability insurance effected and maintained by the undertaker to a level of not less than £50,000,000 (fifty million pounds) per occurrence or series of occurrences arising out of one event, or such lower amount as may be agreed in writing by Cadent. Such insurance must be maintained for the construction and use period of the authorised works which constitute specified works and arranged with an internationally recognised insurer of repute operating in the London and worldwide insurance market underwriters whose security/credit rating meets the same requirements as an "acceptable credit provider", such policy must include (but without limitation):

(a) Cadent as a Co-Insured;

(b) a cross liabilities clause;

(c) a waive of subrogation in favour of Cadent; and

(d) contractors' pollution liability for third-party property damage and third-party bodily damage arising from a pollution/contamination event with cover of £10,000,000.00 (ten million pounds) per event or £20,000,000.00 (twenty million pounds) in aggregate;

"acceptable security" means either:

(a) evidence provided to Cadent's reasonable satisfaction that the undertaker has a tangible net worth of not less than £50,000,000.00 (fifty million pounds) (or an equivalent financial measure);

(b) a parent company guarantee from a parent company in favour of Cadent to cover the undertaker's liability to Cadent to a cap of not less than £50,000,000 (fifty million pounds) per asset per event up to a total liability cap of £50,000,000 (fifty million pounds) (in a form reasonably satisfactory to Cadent and where required by Cadent, accompanied with a legal opinion confirming the due capacity and authorisation of the parent company to enter into and be bound by the terms of such guarantee); or

(c) a bank bond or letter of credit from an acceptable credit provider in favour of Cadent to cover the undertaker's liability to Cadent for an amount of not less than £50,000,000 (fifty million pounds) per asset per event up to a total liability cap of £50,000,000 (fifty million pounds) (in a form reasonably satisfactory to Cadent);

"alternative apparatus" means appropriate alternative apparatus adequate, to the reasonable satisfaction of Cadent, to enable Cadent to fulfil its statutory functions in a manner no less efficient that previously;

"apparatus" means any gas mains, pipelines, pipes, pressure governors, ventilators, cathodic protection (including transformed rectifiers and any associated groundbeds or cables), cables, marker posts, block valves, hydrogen above ground installations or other apparatus belonging to, or maintained by, Cadent for the purposes of Cadent's undertaking together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of Cadent for the purposes of Cadent's undertaking and

includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

"authorised works" has the same meaning as is given to the term "authorised development" in article 2 of this Order and includes any associated development authorised by the Order;

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

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

"commence" and "commencement" has the same meaning as in article 2 (interpretation) of this Order but shall include intrusive operations for the purposes of archaeological, ground condition or structural investigations and intrusive remedial work in respect of contamination or other adverse ground conditions, where such operation or work is within 15 metres in any direction of Cadent's apparatus;

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

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

"functions" includes powers and duties;

"ground mitigation scheme" means a scheme approved by Cadent (such approval not to be unreasonably withheld or delayed) setting out the necessary, reasonable measures (if any) for a ground subsidence event;

"ground monitoring scheme" means a reasonable 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, must require the undertaker to submit for Cadent's approval (such approval not to be unreasonably withheld or delayed) 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" include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of Cadent including retain, lay, construct, inspect, maintain, protect, use, access, enlarge, replace, renew, remove, decommission or render unusable or remove the apparatus;

"parent company" means a parent company of the undertaker acceptable to Cadent and which will have been approved by Cadent acting reasonably;

"plan" or "plans" include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary to properly and sufficiently describe and assess the works to be executed;

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

"specified works" means any of 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 120~~10~~(2) (removal of apparatus) or otherwise;

(b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 120~~10~~(2) (removal of apparatus) or otherwise; or

(c) include any of the activities that are referred to in CD/SP/SSW/22 Cadent's policies for safe working in proximity to gas apparatus Specification for safe working in the vicinity of Cadent assets; and

"undertaker" means the undertaker as defined in article 2 of the Order.

On Street apparatus

~~108.~~117.—(1) This Schedule does not apply to apparatus in respect of which the relations between the undertaker and Cadent are regulated by the provisions of Part 3 of the 1991 Act, except for—

(a) paragraphs 118~~08~~ (apparatus of Cadent in temporarily closed or restricted streets), 120~~22~~ (retained apparatus: protection of Cadent), 123~~13~~ (expenses) and 124~~14~~ (indemnity); and

(b) where sub-paragraph (2) applies, paragraphs 118~~0~~ (removal of apparatus) and 121~~11~~ (facilities and rights for alternative apparatus).

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

(3) Notwithstanding article 32 (rights under or over streets) or any other powers in the Order generally, section 85 of the 1991 Act in relation to cost sharing and the regulations made thereunder will not apply in relation to any diversion of apparatus of Cadent under the 1991 Act.

Apparatus of Cadent in temporarily closed or restricted streets

~~109.~~118. Where any street is subject to temporary alteration, diversion or restriction of use of any street under the powers of article 16 (temporary closure or restriction of streets and public rights of way), Cadent will be at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as it would have been entitled to do immediately before such temporary closure, alteration, diversion or restriction in respect of any apparatus which at the time of the closure or diversion was in that street, unless otherwise agreed.

Protective works to buildings

~~110.~~119.—(1) Except in an emergency, the undertaker, in the case of the powers conferred by article 21 (protective works 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 Cadent (which must not be unreasonably be withheld or delayed) and, if by reason of the exercise of those powers any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) or property of Cadent or any interruption in the supply of gas by Cadent, as the case may be, is caused, the undertaker must bear and pay on demand the cost reasonably incurred by Cadent in making good such damage or restoring the supply; and, subject to sub-paragraph (2), will—

(a) pay compensation to Cadent for any loss sustained by it; and

(b) indemnify Cadent against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by Cadent, by reason of any such damage or interruption.

(2) Nothing in this paragraph imposes any liability on the undertaker with respect to any damage or interruption to the extent that such damage or interruption is attributable to the act, neglect or

default of Cadent or its contractors or workmen; and Cadent will give to the undertaker reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made by Cadent, save in respect of any payment required under a statutory compensation scheme, without first consulting the undertaker and giving the undertaker an opportunity to make representations as to the claim or demand.

Removal of apparatus

~~111.~~**120.**—(1) If, in the exercise of the powers conferred by the Order, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be decommissioned or removed under this Part of this Schedule and any right of Cadent to maintain that apparatus in that land must not be extinguished or interfered with until alternative apparatus has been constructed, is in operation, and the facilities and rights referred to in sub-paragraph (2) have been provided, to the satisfaction of Cadent and in accordance with sub-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under the Order, the undertaker requires the removal of any apparatus placed in that land, it must give to Cadent advance written notice of not less than 56 days, 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 the Order Cadent reasonably needs to move or remove any of its apparatus) the undertaker must afford to Cadent to its satisfaction (taking into account sub-paragraph (1)) the necessary facilities and rights—

(a) for the construction of alternative apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus);

(b) subsequently for the maintenance of that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus); and

(c) to allow access to that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus).

(3) If the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, Cadent may, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to assist the undertaker in obtaining the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation will not extend to the requirement for Cadent to use its compulsory purchase powers to this end unless it (in its absolute discretion) elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between Cadent and the undertaker or settled by arbitration.

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

Facilities and rights for alternative apparatus

~~112.~~**121.**—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for Cadent facilities and rights in land for the access to, construction and maintenance of alternative apparatus in substitution for apparatus to be decommissioned or removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and Cadent and must be no less favourable on the whole to Cadent

than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed unless otherwise agreed by Cadent.

(2) If the facilities and rights to be afforded by the undertaker and agreed with Cadent under sub-paragraph (1) in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to Cadent (in Cadent's opinion) than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed, then the terms and conditions to which those facilities and rights are subject in the matter will be referred to arbitration in accordance with paragraph 128~~18~~ (arbitration) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to Cadent as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection of Cadent

~~113.~~**122.**—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to Cadent a plan and, if reasonably required by Cadent, a ground monitoring scheme in respect of those works.

(2) The plan to be submitted to Cadent under sub-paragraph (1) must include a method statement 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 until Cadent has given written approval of the plan so submitted (and the ground monitoring scheme if required).

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

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5) provided that any conditions are communicated to the undertaker within a period of 42 days beginning with the date on which a plan is submitted to Cadent in accordance with sub-paragraph (1); and

(b) must not be unreasonably withheld or delayed.

(5) For the purposes of sub-paragraph (4)(b) it will be deemed to be reasonable for any approval to be refused if Cadent considers that the specified works would:

(a) cause interference with or risk of damage to its apparatus; or

(b) prevent access to its apparatus at any time.

(c) and these cannot be reasonably addressed by modifications under sub-paragraph (6).

(6) In relation to any specified works to which sub-paragraphs (1) and/or (2) apply Cadent may require such modifications to be made to the plan as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus and Cadent must notify the undertaker of such modifications within a period of 42 days beginning with the date on which the plan required under sub-paragraph (1) has been submitted to Cadent.

(7) Works to which this paragraph applies must only be executed in accordance with—

(a) the plan submitted under sub-paragraph (1) (and ground monitoring scheme if required), as approved or as reasonably amended from time to time by agreement between the undertaker and Cadent; and

(b) all conditions imposed under sub-paragraph (4)(a), and Cadent will be entitled to watch and inspect the execution of those works where reasonably practicable to do so and in accordance with any relevant health and safety legislation.

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

(9) If Cadent, in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, sub-paragraphs (1) to (3) and (5) to (7) apply as if the removal of the apparatus had been required by the undertaker under paragraph 120~~10~~(2) (removal of apparatus).

(10) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the specified works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(11) As soon as reasonably practicable after any ground subsidence event attributable to the authorised works (including such an event attributable to its maintenance)—

(a) the undertaker must implement an appropriate ground mitigation scheme; and

(b) Cadent retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 123~~9~~ (expenses).

(12) The undertaker is not required to comply with sub-paragraph (1) where it needs to carry out emergency works but in that case it must give to Cadent notice as soon as is reasonably practicable and a plan of those works and must comply with—

(a) the conditions imposed under sub-paragraph (4)(a) insofar as is reasonably practicable in the circumstances; and

(b) sub-paragraph (14) at all times.

(13) In this paragraph, "emergency works" means works whose execution at the time when they are executed is required in order to put an end to, or to prevent the occurrence of, circumstances then existing or imminent (or which the person responsible for the works believes on reasonable grounds to be existing or imminent) which are likely to cause danger to persons or property.

(14) At all times when carrying out any works authorised under the Order the undertaker must comply with the Cadent's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of Cadent Assets CAD//SP/SSW/22" and HSE's "HS(~G)47 Avoiding Danger from underground services.

Expenses

~~114.~~123.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to Cadent on demand all charges, costs and expenses anticipated or reasonably and properly incurred by Cadent in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any specified works as are referred to in this Part of this Schedule including without limitation—

(a) any costs reasonably incurred by or compensation properly paid by Cadent in connection with the negotiation and/or acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs (including professional fees) incurred by Cadent as a consequence of Cadent;

(i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 120~~11~~(3) (removal of apparatus) if it elects to do so; and/or

(ii) exercising any compulsory purchase powers under the Order transferred to or benefitting Cadent;

(b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;

(c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;

(d) the approval of plans;

(e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;

(f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule; and

(g) any watching brief pursuant to sub-paragraph 12~~414~~(2) (indemnity).

(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 128~~33~~ (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 Cadent 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 Cadent 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 Cadent 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

~~115.~~124.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Part of this Schedule (including without limitation relocation, diversion, decommissioning, construction and maintenance of apparatus or alternative apparatus) or in consequence of the construction, use, maintenance or failure of any of the authorised 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 the undertaker) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised development) or property of Cadent, or there is any interruption in any service provided, or in the supply of any goods, by Cadent, or Cadent becomes liable to pay any amount to any third party, the undertaker will—

(a) bear and pay on demand, accompanied by an invoice or claim from Cadent (where available to Cadent), the cost reasonably incurred by Cadent in making good such damage or restoring the supply; and

(b) indemnify Cadent for any other expenses, loss, demands, proceedings, damages, claims, penalty, compensation or costs incurred by, paid by or recovered from Cadent, by reason or in consequence of any such damage or interruption or Cadent becoming liable to any third party as aforesaid other than arising from any default of Cadent.

(2) The fact that any act or thing may have been done by Cadent on behalf of the undertaker or in accordance with a plan approved by Cadent or in accordance with any requirement of Cadent or under its supervision including under any watching brief will not (unless sub-paragraph (3) applies) excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless Cadent fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker in respect of—

(a) any damage or interruption to the extent that it is attributable to the neglect or default of Cadent, its officers, servants, contractors or agents; and

(b) any 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 of interruption, which is not reasonably foreseeable at the commencement of the relevant works referred to in sub-paragraph (1) that is attributable to the neglect or default of Cadent, its officers, servants, contractors or agents; and

(c) any part of the authorised works carried out by Cadent in the exercise of any functions conferred by the Order pursuant to a grant or transfer under article 8 (consent to transfer benefit of the Order) of the Order.

(4) Cadent must:

(a) give the undertaker reasonable written notice of any such third party claim or demand as soon as reasonably practicable after Cadent becomes 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 first:

(i) consulting the undertaker and having due regard to any representations made by it;

(ii) provide the undertaker with reasonable advance notice of the material terms of any proposed settlement, admission of liability or compromise; and

(iii) where Cadent departs from the undertaker's representations, give written reasons for doing so; and

(b) 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.

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

(a) unless and until Cadent is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has first provided the acceptable security (and provided evidence that it will maintain such acceptable security for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and Cadent has confirmed the same to the undertaker in writing; and

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

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

Enactments and agreements

~~116.~~125. Except where this Part of this Schedule provides otherwise, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Cadent in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which the Order is made.

Co-operation

~~117.~~126.—(1) Where in consequence of the of the proposed construction of any part of the authorised works, the undertaker or Cadent requires the removal of apparatus under paragraph 118~~0~~(2) (removal of apparatus) or Cadent makes reasonable requirements for the protection or alteration of apparatus under paragraph 122~~12~~ (retained apparatus: protection of Cadent), the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of Cadent's undertaking and Cadent must use its best endeavours to co-operate with the undertaker for that purpose.

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

Access

~~118.~~127. If in consequence of the powers conferred by the Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative rights and means of access to such apparatus as will enable Cadent to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

~~119.~~128. Save for differences or disputes arising under sub-paragraphs 120~~10~~(2) and 1(4) (removal of apparatus), any difference or dispute arising between the undertaker and Cadent under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and Cadent, be determined by arbitration in accordance with article 45 (arbitration).

Notices

~~120.~~129. Notwithstanding article 47 (service of notices) any plans submitted to Cadent by the undertaker pursuant to paragraph 122~~12~~(1) (retained apparatus: protection of Cadent) must be sent via email to Cadent Gas Limited Plant Protection at plantprotection@cadentgas.com copied by e-

mail to toby.feirn@cadentgas.com and sent to the General Counsel Department at Cadent's registered office or such other address as Cadent may from time to time appoint instead for that purpose and notify to the undertaker in writing.

PART 10

FOR THE PROTECTION OF LOCAL HIGHWAY AUTHORITIES

Application

~~121.~~**130.** The provisions of this Part of this Schedule have effect and apply to highway works within the administrative area of the local highway authority, unless otherwise agreed in writing between the undertaker and the local highway authority.

Interpretation

~~122.~~**131.**—(1) The terms used in this Part of this Schedule are as defined in article 2 (interpretation) of this Order save where inconsistent with sub-paragraph (2) which will prevail.

(2) In this Part of this Schedule—

"as built information" means one digital copy of the following information where applicable to the highway works in question—

(a) as constructed drawings in both PDF and AutoCAD DWG formats for anything designed by the undertaker;

(b) list of suppliers and materials used;

(c) product data sheets, technical specifications for all materials used;

(d) as constructed information for any utilities discovered or moved during the works;

(e) method statements for works carried out;

(f) in relation to road lighting, signs and traffic signals any information required by Series 1400 of the Specification for Highway Works (or any successor document);

(g) plan of temporary signage indicating new road layouts;

(h) populated post-construction inventory in a form agreed with the local highway authority;

(i) organisation and methods manuals for all products used in the construction of the authorised development;

(j) as constructed programme;

(k) ~~RSA3~~a Stage 3 Road Safety Audit and any exceptions agreed; and

(l) health and safety file;

"the bond sum" means the sum equal to 110% of all the costs of the carrying out the highway works concerned and 100% of the commuted sum relating to those highway works or such other sum agreed between the undertaker and the local highway authority;

"CDC" means the City of Doncaster Council of Civic Office, Waterdale, Doncaster DN13BU;

"commuted sum" means such sum as provided for in paragraph 137~~28~~(2) (security) of this Part of this Schedule and to be used to fund the future cost of maintenance of the highway works and which may be required for the following infrastructure items where relevant to the CDC highway works: highway trees and hedgerows; sustainable drainage, linear drainage units; traffic signals and associated equipment; highway structures; bespoke materials; grass verges and soft landscapes; street lighting equipment including any bespoke equipment; CCTV camera and associated equipment; and vehicle restraint systems;

"contractor" means any contractor or sub-contractor appointed by the undertaker to carry out the highway works;

"detailed design information" means the following drawings, specifications and other information unless otherwise agreed between the local highway authority and the undertaker—

(a) site clearance details;

(b) boundary environmental and mitigation fencing;

(c) drainage and ducting;

(d) earthworks including supporting geotechnical assessments;

(e) pavement, pavement foundations, kerbs, footways and paved areas, including vertical and horizontal alignments;

(f) traffic signs and road markings;

(g) traffic signal equipment and associated signal phasing and timing detail;

(h) electrical work for traffic signs and signals;

(i) highway structures;

(j) Stage 2 Road Safety Audit and exceptions agreed;

(k) utilities diversions;

(l) topographical survey;

(m) identification of any land to be dedicated as highway;

(n) pre-construction health and safety information; and

(o) such other information as the local highway authority reasonably consider necessary.

where relevant to the highway works concerned;

"estimated costs" means the estimated costs agreed pursuant to sub-paragraphs 1342~~24~~(1) and (5) (payments) of this Part of this Schedule;

"the excess" means the amount by which the local highway authority estimates that the costs referred to in sub-paragraph 1342~~24~~(3) (payments) of this Part of this Schedule will exceed the estimated costs;

"highway works" means any works authorised by this Order undertaken on, to or under any highway which is maintainable by the local highway authority;

"local highway authority" means the highway authority for the area in which the highway is situated, being ~~City of Doncaster Council~~CDC or North Lincolnshire Council in ~~each of~~ their respective capacities as highway authorities;

"nominated persons" means the undertaker's representatives or the contractor's representatives on site during the carrying out of the highway works as notified to the local highway authority from time to time;

"programme of works" means a document setting out the sequence and timetabling of the highway works in question;

"Road Safety Audit" means an audit carried out in accordance with the Road Safety Audit Standard;

"Road Safety Audit Standard" means GG 119 or any successor document;

"utilities" means any pipes, wires, cables or equipment belonging to any person or body having power or consent to undertake street works under the 1991 Act; and

"winter maintenance" means maintenance of the road surface to deal with snow and ice during the winter months.

Prior approvals and security

~~123.~~132.—(1) The highway works must not commence until—

(a) the detailed design information and a programme of works has been submitted to and approved by the local highway authority;

(b) the local highway authority has agreed the bond sum for those works and the undertaker has provided security for the carrying them out as provided for in paragraph 1374~~2~~ (security) of this Part of this Schedule or some other form of security acceptable to the local highway authority;

(c) the local highway authority has approved the audit brief and CVs for all Road Safety Audits and exceptions to items raised if appropriate for those works in accordance with the Road Safety Audit Standard;

(d) a Stage 2 Road Safety Audit has been carried out in respect of those works and all issues raised incorporated into an amended design approved by the local highway authority or any relevant exceptions approved by the local highway authority;

(e) the undertaker has agreed the commuted sum for those works with the local highway authority to be calculated in accordance with paragraph 138~~28~~(2) (commuted sums) of this Part of this Schedule;

(f) the undertaker has provided confirmation of ownership to the local highway authority for any land which is to be dedicated as highway following completion of the highway works;

(g) in the case of highway works within the area for which CDC is the local highway authority, the undertaker has obtained any necessary permits under the permit scheme, as it applies to the highway works by virtue of article 12 of this Order; and

~~(g)~~(h) the undertaker has notified the Health and Safety Executive (if required) of those works and has provided the local highway authority with a copy of that notification and any acknowledgement from the Health and Safety Executive.

Carrying out of works

133.—(1) The undertaker must prior to commencement of the highway works give the local highway authority 28 days' notice in writing of the date on which those works will start unless otherwise agreed with the local highway authority.

(2) The undertaker must comply with CDC's usual road space booking procedures under the permit scheme, as it applies to the highway works by virtue of article 12 of this Order, prior to and during the carrying out of the highway works and no highway works for which a road space booking is required must commence without a road space booking having first been secured.

(3) For the purposes of sub-paragraph (2), a road space booking is required when the work is a registrable activity within the meaning of the permit scheme.

~~**124.**~~(4) The highway works must be carried out to the satisfaction of the local highway authority in accordance with—

(a) the relevant detailed design information, ~~and~~ a programme of works and any other details approved or otherwise required pursuant to paragraph 132~~21~~(1) (prior approvals and security) of this Part of this Schedule or as subsequently varied by agreement between the undertaker and the local highway authority;

(b) the Department for Transport's Manual for Streets, Design Manual for Roads and Bridges, Local Transport Note 1/20, the Specification for Highway Works (contained within the Manual of Contract Documents for Highways Works), all relevant interim advice notes, the Traffic Signs Manual and the Traffic Signs Regulations and General Directions 2016, and any amendment to or substitution thereof for the time being in force save to the extent that a departure from such standards has been approved by the local highway authority; and

(c) all aspects of the Construction (Design and Management) Regulations 2015 or any statutory amendment or variation of the same and in particular the undertaker as client shall ensure that all client duties (as defined in the said regulations) are undertaken to the satisfaction of the local highway authority.

~~(2)~~(5) The undertaker must permit and require the contractor to permit at all reasonable times persons authorised by the local highway authority (whose identity must have been previously

notified to the undertaker by the local highway authority) to gain access to the land upon which the highway works are being carried out for the purposes of inspection and supervision and the undertaker must provide to the local highway authority contact details of the nominated persons with whom the local highway authority should liaise during the carrying out of the highway works.

~~(3)~~(6) At any time during the carrying out of the highway works the nominated persons must act upon any reasonable request made by the local highway authority in relation to the carrying out of the highway works as soon as practicable following such request being made to the nominated persons.

~~(4)~~(7) If at any time the undertaker does not comply with any of the terms of this Part of this Schedule in respect of the highway works having been given notice of an alleged breach and an adequate opportunity to remedy it by the local highway authority, the local highway authority, on giving the undertaker 28 days' notice in writing to that effect, is entitled to either—

(a) carry out and complete the highway works and any maintenance works which the undertaker would have been responsible for on the undertaker's behalf; or

(b) carry out such necessary works of reinstatement of the highways and other land and premises of the local highway authority, and in either case the undertaker must within 28 days of receipt of the itemised costs pay to the local highway authority the costs so incurred by the local highway authority in undertaking this work.

~~(5)~~(8) If at any time the undertaker, in carrying out the highway works, causes any damage to the local road network not hereby authorised then the local highway authority is to give notice of such damage and allow the undertaker 28 days to remedy the damage. Should the undertaker fail to adequately remedy the damage to the satisfaction of the local highway authority, the local highway authority, on giving the undertaker 14 days' notice in writing to that effect, is entitled to carry out such necessary works deemed appropriate to remedy the damage, and the undertaker must within 28 days of receipt of the itemised costs pay to the local highway authority the costs so incurred by the local highway authority in undertaking this work.

~~(6)~~(9) Nothing in this Part of this Schedule prevents the local highway authority from carrying out any work or taking such action as deemed appropriate, without prior notice to the undertaker, in the event of an emergency or danger to the public. The cost to the local highway authority of such work or action being chargeable to and recoverable from the undertaker if the need for such action arises from the carrying out of the highway works.

~~(7)~~(10) The undertaker, in carrying out the highway works, must at its own expense divert or protect all utilities as may be necessary to enable the highway works to be properly carried out, and all agreed alterations to existing services must be carried out to the reasonable satisfaction of the local highway authority.

~~(8)~~(11) In the event that the local highway authority incurs additional costs in the winter maintenance of the highway as a result of traffic management measures regulating the highway works concerned (over and above the costs that would have been incurred in the absence of the highway works being carried out), the undertaker must reimburse the local highway authority those additional costs, such costs to include any administration costs incurred.

~~(9)~~(12) The undertaker must notify the local highway authority of the intended date of opening of highway works ~~involving the creation of new, altered or improved permanent means of access~~ to public traffic not less than 14 days in advance of the intended date and the undertaker must notify the local highway authority of the actual date that such works are open to public traffic on each occasion within 14 days of that occurrence.

Payments

~~125.~~134.—(1) The undertaker must fund the whole of the cost of the highway works and all costs incidental to the highway works and must also pay to the local highway authority in respect of the highway works a sum equal to the whole of any costs and expenses which the local highway authority reasonably incur, including costs and expenses for using external staff and resources as

well as costs and expenses of using in-house staff and resources in relation to the highway works and arising out of them and their implementation, including —

(a) the checking and approval of all design work carried out by or on behalf of the undertaker;

(b) costs in relation to agreeing the programme of works;

(c) the carrying out of the inspection of the highway works; and

(d) all administrative costs in relation to paragraphs (a), (b) and (c), together comprising "the estimated costs".

(2) The undertaker must pay to the local highway authority the total costs that the local highway authority believe will be properly and necessarily incurred by the local highway authority in undertaking any statutory procedure or preparing and bringing into force any traffic regulation order or orders necessary to carry out or for effectively implementing the highway works provided that this sub-paragraph does not apply to the making of any orders which duplicate orders contained in this Order.

~~(2)~~(3) The undertaker and the local highway authority must agree a schedule of the estimated costs to be incurred pursuant to sub-paragraphs (1) and (2) in respect of the highway works prior to the commencement of those works.

~~(3)~~(4) The undertaker must make the payments referred to in sub-paragraphs (1) and (2) as follows—

(a) the undertaker must pay a sum equal to the agreed estimated costs to the local highway authority prior to the local highway authority undertaking those tasks in respect of the highway works;

(b) if at any time or times after the payment referred to in paragraph (a) has become payable, the local highway authority reasonably estimates that the costs referred to in sub-paragraphs (1) and (2) above will exceed the estimated costs, it may, provided that such excess has been agreed by variation to the schedule referred to in sub-paragraph (3), give notice to the undertaker of the excess and the undertaker must pay to the local highway authority within 28 days of the date of that notice a sum equal to the excess.

~~(4)~~(5) Within 91 days of the issue of the final certificate for the highway works the local highway authority must give the undertaker a final account of the costs referred to in sub-paragraphs (1) and (2) and within 28 days from the expiry of the 91-day period —

(a) if the account shows a further sum as due to the local highway authority the undertaker must pay to the local highway authority the sum shown due to it in that final account; and

(b) if the account shows that the payment or payments previously made have exceeded those costs the local highway authority must refund the difference to the undertaker.

~~(5)~~(6) If any payment due under any of the provisions of this Part of this Schedule is not made on or before the date on which it falls due the party from whom it was due must at the same time as making the payment pay to the party to whom it was due interest at 1% above the rate payable in respect of compensation under section 32 (rate of interest after entry on land) of the 1961 Act for the period starting on the date upon which the payment fell due and ending with the date of payment of the sum on which interest is payable together with that interest.

Provisional certificate and defects and maintenance period

~~126.~~135.—(1) Following completion of the highway works and provided—

(a) the local highway authority and the undertaker have jointly inspected the highway works, the local highway authority have provided the undertaker with a definitive list of any further works to be carried out (which will include any defects in or damage to the road surface water drainage system) and those works have been completed without unreasonable delay to the local highway authority's reasonable satisfaction;

(b) the undertaker has provided a plan clearly identifying the extent of any land which is to become highway maintainable at public expense by the local highway authority upon the

issue of the final certificate referred to in paragraph 136~~26~~ (final certificate) of this Part of this Schedule;

(c) the undertaker has provided confirmation that any additional land which is to be dedicated as highway maintainable at public expense is so dedicated; and

(d) the as built information has been provided to the local highway authority,

the local highway authority must issue a provisional certificate of completion in respect of the highway works, such certificate not to be unreasonably withheld or delayed.

(2) Subject to sub-paragraph (3) the undertaker must at its own expense remedy any and all defects attributable to the defecting construction of the highway works as reasonably required to be remedied by the local highway authority and identified by the local highway authority during a period of 12 months from the date of the provisional certificate.

Final certificate

~~127.~~136.—(1) The undertaker must apply to the local highway authority for the issue of the final certificate in respect of the highway works at the expiration of the 12 month period referred to in paragraph 135~~25~~(2) (provisional certificate and defects and maintenance period) of this Part of this Schedule or, if later, on the date on which any defects or damage arising during that period which are the responsibility of the undertaker under the provisions of paragraph 135~~2~~ (provisional certificate and defects and maintenance period)~~5~~ of this Part of this Schedule have been made good to the reasonable satisfaction of the local highway authority.

(2) If the provisions of sub-paragraph (1) are satisfied the local highway authority must issue a final certificate for the highway works concerned, such certificate not to be unreasonably withheld or delayed.

Security

~~128.~~137.—(1) The highway works must not commence until the undertaker secures a bond from a bondsman (or other form of security as agreed with the local highway authority) first approved by the local highway authority drafted substantially as detailed in Form 1 contained after~~in~~ paragraph 144~~34~~ (form of bond) of this Part of this Schedule, or such other form that may be agreed between the undertaker and the local high-way authority, to indemnify the local highway authority against all losses, damages, costs or expenses arising from any breach of any one or more of the obligations of the undertaker in respect of the highway works under the provisions of this Part of this Schedule, provided that the relevant maximum liability of the bond does not exceed the bond sum which applies to it.

(2) Each bond sum is to be progressively reduced as follows—

(a) on receipt of written confirmation (including receipt of receipted invoices evidencing payments made by the undertaker to the contractors) from the undertaker of the payments made from time to time to the contractor ("the submission"), the local highway authority may in writing authorise the reduction of the relevant bond sum by such proportion of the bond sum as amounts to 75% of those payments provided that —

(i) an evaluation of the highway works completed and remaining has been carried out by the undertaker and audited and agreed by the local highway authority to ensure that the stage of completion of the works is relative to the payments made by the undertaker to the contractors (the local highway authority will only be required to provide the said authorisation if it is satisfied that the monies remaining secured by the bond sum will be sufficient to cover all remaining costs and liabilities anticipated to be incurred in completing the highway works plus an additional 10%); and

(ii) the operation of paragraph (a) will not enable the overall reduction of the relevant bond to be greater than 75% of the original bond sum;

(b) within 20 working days of completion of the highway works (as evidenced by the issuing of the provisional certificate pursuant to paragraph 135~~25~~(1) (provisional certificate and defects and maintenance period) of this Part of this Schedule) the local highway authority

must in writing release the bond provider from its obligations in respect of 75% of the bond sum save insofar as any claim or claims have been made against the relevant bond and/or liability on its part has arisen prior to that date; and

(c) within 20 working days of the issue of the final certificate for the highway works referred to in paragraph 136~~26~~ (final certificate) of this Part of this Schedule the local highway authority must in writing release the bond provider from all its obligations in respect of the relevant bond save insofar as any claim or claims have been made against the bond or liability on its part has arisen prior to that date.

Commuted sums

~~129.~~138.—(1) Prior to the issue of the final certificate in respect of any highway works the undertaker must pay to the local highway authority any commuted sums payable in respect of those works calculated as provided for in sub-paragraph (2).

(2) The rates to be applied in calculating the commuted sums payable must be calculated in accordance with the City of Doncaster Council's commuted sum methodology prior to commencement of the highway works.

Insurance

~~130.~~139. The undertaker must prior to commencement of the highway works effect public liability insurance with an insurer in the minimum sum of £10,000,000.00 (ten million pounds) for any one claim against any legal liability for damage loss or injury to any property or any person arising out of or in connection with the execution of the highway works or any part thereof by the undertaker.

Indemnity

~~131.~~140.—(1) The undertaker must in relation to the carrying out of the highway works take such precautions for the protection of the public and private interest as would be incumbent upon it if it were the local highway authority and must indemnify the local highway authority from and against all costs, expenses, damages, losses and liabilities arising from or in connection with or ancillary to any claim demand action or proceedings resulting from the design and carrying out of the highway works, provided that —

(a) the foregoing indemnity shall not extend to any costs, expenses, liabilities and damages caused by or arising out of the neglect or default of the local highway authority or its officers, servants, agents or contractors or any person or body for whom it is responsible;

(b) the local highway authority must notify the undertaker upon receipt of any claim specifying the nature of the indemnity liability in reasonable detail where such detail is known by the local highway authority and invite the undertaker to take conduct of the defence of such claim;

(c) the local highway authority must not make any admission of liability, settlement or compromise without the consent of the undertaker (such consent not to be unreasonably withheld or delayed) who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand provided that—~~.~~

(i) if the undertaker does not respond to a written request for consent within 14 days of that request, consent is deemed to have been granted; and

(ii) if the undertaker withholds consent and has sole conduct of any settlement or compromise or of any proceedings, the undertaker must pursue the matter diligently and must indemnify the local highway authority against any costs, expenses, damages, losses or liabilities incurred by the local highway authority as a result of that conduct, including any increase in the amount of the claim attributable to the undertaker's conduct.

(2) The local highway authority must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands and penalties to which the indemnity

under this paragraph applies where it is within the local highway authority's reasonable gift and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of the local highway authority's control. The local highway authority must provide an explanation of how any claim has been mitigated or minimised or where mitigation or minimisation is not possible an explanation as to why, if reasonably requested to do so by the undertaker and only in relation to costs that are incurred which are within the relevant highway authority's direct control.

~~(2)~~(3) If, further to sub-paragraph (1)(b), the undertaker elects to take conduct of the defence of any claim the undertaker will assume liability for all costs, expenses, damages, losses and liabilities arising from or in connection with, or ancillary to, any claim, demand, action or proceedings resulting from the design and carrying out of the highway wor

Road Safety Audits

~~132.~~141.—(1) The undertaker must not engage or permit the engagement of any audit team unless that audit team has first been approved by the local highway authority as suitable to undertake Road Safety Audits in accordance with the Road Safety Audit Standard.

(2) At any time during the detailed design stages the local highway authority may require that an interim Road Safety Audit be carried out in accordance with the Road Safety Audit Standard and be submitted to the local highway authority and if so required by the local highway authority any recommendations in such interim report must be implemented to the local highway authority's satisfaction.

(3) Prior to the approval of the detailed design information for any highway works, a Stage 2 Road Safety Audit must be carried out in respect of those works in accordance with the Road Safety Audit Standard and must be submitted to the local highway authority and if so required by the local highway authority any recommendations made in the Stage 2 report must be implemented to the local highway authority's satisfaction.

(4) Prior to the issue of the provisional certificate in respect of any highway works, a Stage 3 Road Safety Audit must be carried out for those works in accordance with the Road Safety Audit Standard and must be submitted to the local highway authority and if so required by the local highway authority any recommendations made in the Stage 3 report must be implemented to the local highway authority's satisfaction.

(5) The local highway authority will provide to the undertaker all information on any accident or incident resulting in damage to the highway which occurs in any phase of the highway works during the period of 12 months from the date of the provisional certificate.

(6) Subject to sub-paragraphs (7) and (8), the undertaker must submit Stage 4 Road Safety Audits for the highway works as required by and in line with the timescales stipulated in the Road Safety Audit Standard. The undertaker must comply with the findings of the Stage 4 Road Safety Audits and be responsible for all costs of and incidental to such audits.

(7) The undertaker will not be required to carry out a Stage 4 Road Safety Audit in respect of any highway works unless the information provided by the local highway authority under sub-paragraph (5) identifies accidents or road safety concerns that may reasonably be attributable to the design, construction or operation of the highway works.

~~(4)~~(8) In the absence of any such accidents or road safety concerns, the undertaker will not be required to carry out a Stage 4 Road Safety Audit.

Approvals

~~133.~~142. Any approvals, certificates, consents or agreements required or sought from or with the local highway authority pursuant to the provisions of this Part of this Schedule must not be unreasonably withheld or delayed and must be given in writing.

Street lighting

~~134.~~**143.** Notwithstanding any other provision of this Order, the design and installation of any street lighting must be carried out by the local highway authority at the cost of the undertaker.

Form 1- Form of Bond

~~135.~~**144.** Form 1 as referred to in paragraph 137~~27~~ (security) —

Form 1 – Form of Bond

BY THIS BOND DATED [ ] OF [ ]—

RWE Renewables UK Solar and Storage Limited incorporated and registered in England and Wales with company number 14539260whose registered office is at Windmill Hill Business Park, Whitehill Way, Swindon, Wiltshire, England, SN5 6PB ("the undertaker")

[ ] (Company Registration Number [ ]) whose registered office is at [ ] (the "Surety"),

are held and firmly bound to:

[CITY OF DONCASTER COUNCIL of Civic Office, Waterdale, Doncaster DN1 3BU ("the Council")] [NORTH LINCOLNSHIRE COUNCIL of Church Square House, 30-40 High Street, Scunthorpe DN15 6NL ("the Council")]

in the maximum aggregate total sum of £[ ] pounds to be paid to the Council for the payment of which sum the undertaker and the Surety bind themselves their successors and assigns.

1. The undertaker has agreed Protective Provisions with the Council which are included in Part 10 (for the protection of highway authorities) of Schedule 14 (protective provisions) to the Tween Bridge Solar Farm Order 202[ ] in which the undertaker was given the right at its own expense and subject to conditions to carry out temporary and permanent works, operations and activities in order to facilitate the construction, operation and maintenance of the Tween Bridge Solar Farm DCO Project (the "Highway Works").

2. This Bond is required under the said Protective Provisions.

NOW THE CONDITION of the above-written Bond is such that if the undertaker shall fail to duly perform and observe all the terms, provisions conditions and stipulations of the said Protective Provisions on the undertaker's part to be performed and observed according to the true intent and meaning thereof the Surety shall promptly, subject to the provisions of this Bond, pay to the Council a sum or sums demanded by them upon receipt by the Surety of a demand from the Council, in writing, stating that the undertaker is in breach of the Protective Provisions and stating the nature of the breach up to the amount of the above-written Bond PROVIDED ALWAYS that the giving by the Council of any extension of time for performing the said Protective Provisions or any stipulations therein contained and on the part of the undertaker to be performed or any other forgiveness or forbearance on the part of the Council or its successors or assigns shall not in any way release the Surety from any liability under the above-written Bond.

PART 11

FOR THE PROTECTION OF NORTHERN POWERGRID LIMITED

Application

145. For the protection of Northern Powergrid the following provisions have effect, unless otherwise agreed in writing between the undertaker and Northern Powergrid.

Interpretation

146. In this part of this Schedule—

"alternative apparatus" means alternative and / or replacement apparatus adequate to enable Northern Powergrid to fulfil its statutory functions in a manner not less efficient than previously;

"apparatus" means electric lines or electrical plant (as defined in the Electricity Act 1989) and communications cable or equipment used by Northern Powergrid in relation to it belonging to or maintained by Northern Powergrid and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

"authorised works" means so much of the works authorised by this Order which affect existing Northern Powergrid's apparatus within the Order limits;

"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;

"Northern Powergrid" means Northern Powergrid (Yorkshire) PLC (Company Number 04112320) whose registered address is Lloyds Court, 78 Grey Street, Newcastle upon Tyne NE1 6AF; and

"plan" includes all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed and shall include measures proposed by the undertaker to ensure the grant of sufficient land or rights in land necessary to mitigate the impacts of the works on Northern Powergrid's undertaking.

Conditionality

147.—(1) This Schedule does not apply to apparatus and / or alternative apparatus in respect of which the relations between the undertaker and Northern Powergrid are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

(2) Regardless of the temporary closure or restriction of use of streets under the powers conferred by article 16 of this Order (temporary closure or restriction of streets and public rights of way), Northern Powergrid is at liberty at all times to take all necessary access across any such temporarily closed or restricted street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

Acquisition of apparatus

148. Regardless of any provision in this Order or anything shown on the land plans, or contained in the book of reference, the undertaker shall not acquire any apparatus of Northern Powergrid otherwise than by agreement with Northern Powergrid such agreement not to be unreasonably withheld or delayed.

Alternative apparatus

149.—(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 in or over which access to any apparatus is enjoyed or requires that Northern Powergrid's apparatus is relocated or diverted, that apparatus must not be removed under this Schedule, and any right of Northern Powergrid to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided pursuant to a completed easement which shall include rights to retain and subsequently maintain the apparatus being replaced or diverted for the lifetime of that alterative apparatus, all to the reasonable satisfaction of Northern Powergrid in accordance with sub-paragraphs (2) to (5).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to Northern Powergrid 90 days' advance written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order Northern Powergrid reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to Northern Powergrid the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed:

(a) the undertaker must in the first instance use reasonable endeavours to acquire all necessary land interests or rights as Northern Powergrid may reasonably require for the relocation and construction of alternative apparatus and must use reasonable endeavours to procure all necessary rights to access and maintain Northern Powergrid's apparatus and alternative apparatus thereafter the terms of such access and maintenance to be agreed by Northern Powergrid (acting reasonably); and

(b) in the event that the undertaker is not able to procure the necessary land interest or rights referred to in the sub-paragraph (3)(a) Northern Powergrid must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably practicable and at the cost of the undertaker (subject to prior approval by the undertaker of its estimate of costs of doing so) use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for Northern Powergrid to use its compulsory purchase powers to this end.

(4) Subject to compliance with other agreements governing acquisition of land interests or rights, in the event that neither the undertaker nor Northern Powergrid can acquire all necessary land interests or rights which Northern Powergrid may reasonably require for the relocation and construction of alternative apparatus pursuant to sub-paragraphs (3)(a) and /or (b), the undertaker shall seek to utilise the full extent of its powers pursuant to paragraph 2 of Schedule 9 of this Order to acquire all such necessary land and /or rights on behalf of Northern Powergrid for the acquisition of any such land or land rights unless otherwise agreed by arbitration under article 45 (arbitration).

(5) Any alternative apparatus to be constructed in land of the undertaker under this Schedule must be constructed in such manner and in such line or situation as may be agreed between Northern Powergrid and the undertaker or in default of agreement settled by arbitration in accordance with article 45 (arbitration).

(6) Northern Powergrid must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 45 (Arbitration), and after the grant to Northern Powergrid 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.

Rights for alternative apparatus

150.—(1) Where, in accordance with the provisions of this Schedule, the undertaker affords to Northern Powergrid facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and Northern Powergrid or in default of agreement settled by arbitration in accordance with article 45 (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 Northern Powergrid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to Northern Powergrid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Authorised works

151.—(1) Not less than 90 days before starting the execution of any authorised works in, on or under any land purchased, held, appropriated or used under this Order that are near to (including conducting any activities whether intentionally or unintentionally, through for example ground or machinery collapse, which may affect Northern Powergrid's apparatus or encroach on safety distances to live equipment) or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 150(2) (rights for alternative apparatus), the undertaker must submit to Northern Powergrid a plan, section and description of the works to be executed and any such information as Northern Powergrid reasonably requires relating to those works.

(2) Those authorised 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 Northern Powergrid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and Northern Powergrid is entitled to watch and inspect the execution of those works.

(3) Any requirements made by Northern Powergrid under sub-paragraph (2) must be made within a period of 42 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If Northern Powergrid in accordance with sub-paragraph (3) and in consequence of the authorised works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, sub-paragraphs (1) to (6) apply as if the removal of the apparatus had been required by the undertaker under sub-paragraph (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 42 days before commencing the execution of any authorised 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 Northern Powergrid notice as soon as is reasonably practicable and a plan, section and description of those authorised works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

Expenses

152.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to Northern Powergrid within fifty one (51) days of the date of the receipt of an itemised invoice or claim all reasonable and proper expenses costs or charges incurred by Northern Powergrid—

(a) in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 150(2) (rights for alternative apparatus) including without limitation:

(i) any costs reasonably incurred by or compensation properly paid by Northern Powergrid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation in the event that Northern Powergrid acquires any necessary land and / or rights for alternative apparatus by

voluntary negotiation or elects to use its compulsory purchase powers to acquire any necessary rights all costs reasonably incurred as a result of such action;

(ii) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;

(iii) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;

(iv) the approval of plans;

(v) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;

(vi) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Schedule); and

(b) in assessing and preparing a design for its apparatus including alternative apparatus to address and accommodate the proposals of the undertaker whether or not the undertaker proceeds to implement those proposals or alternative or none at all, provided that if it so prefers Northern Powergrid may abandon apparatus that the undertaker does not seek to remove in accordance with paragraph 150(1) (rights for alternative apparatus) having first decommissioned such apparatus.

(2) Where any payment falls due pursuant to sub-paragraph (1), Northern Powergrid shall:

(a) provide an itemised invoice or reasonable expenses claim to the undertaker;

(b) provide "reminder letters" to the undertaker for payment to be made within the fifty days on the following days after the invoice or reasonable expenses claim to the undertaker:

(i) 15 days ("reminder letter 1"),

(ii) 29 days ("reminder letter 2"),

(iii) 43 days ("reminder letter 3"); and

(c) subject to first following the arbitration provisions in paragraph 154 (arbitration), be entitled to commence debt proceedings to recover any unpaid itemised invoice or reasonable expenses claim after 51 (fifty one) days of receipt of the same where payment has not been made.

(3) There is to be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Schedule, that value being calculated after removal and for the avoidance of doubt, if the apparatus removed under the provisions of this Schedule has nil value, no sum will be deducted from the amount payable under sub-paragraph (1) 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 article 45 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to Northern Powergrid by virtue of sub-paragraph (1) is to be reduced by the amount of that excess save where it is not possible on account of project time limits and/or supply issues to obtain the existing type of apparatus, capacity, dimensions or place at the existing depth in which case full costs shall be borne by the undertaker.

(4) For the purposes of sub-paragraph (2)—

(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 150(2) (rights for alternative apparatus); and

(b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

Indemnity

153.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the authorised works referred to in in paragraph 150(2) (rights for alternative apparatus), or in consequence of the, maintenance or failure of any of the authorised 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 it) in the course of carrying out such authorised works, including without limitation authorised works carried out by the undertaker under this Schedule or any subsidence resulting from any of these works any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of Northern Powergrid, or there is any interruption in any service provided by Northern Powergrid, or Northern Powergrid becomes liable to pay any amount to a third party as a consequence of any default, negligence or omission by the undertaker in carrying out the authorised works, the undertaker must—

(a) bear and pay the cost reasonably and properly incurred by Northern Powergrid in making good such damage or restoring the supply; and

(b) indemnify Northern Powergrid for any other expenses, loss, damages, penalty, proceedings, claims or costs incurred by or recovered from Northern Powergrid by reason or in consequence of any such damage or interruption or Northern Powergrid becoming liable to any third party.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker in respect of—

(a) any damage or interruption to the extent that it is attributable to the neglect or negligence of Northern Powergrid, its officers, employees, servants, contractors or agents; and

(b) any indirect or consequential losses which are not reasonably foreseeable.

(3) Northern Powergrid must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Northern Powergrid must, in respect of any matter covered by the indemnity given by the Undertaker in this paragraph, at all times act reasonably as it would as if settling third party claims on its own behalf from its own funds.

(5) Northern Powergrid must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies. If requested to do so by the undertaker, Northern Powergrid must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1). The undertaker shall only be liable under this paragraph 153 (indemnity) for claims reasonably incurred by Northern Powergrid.

(6) Subject to sub-paragraphs (3) and (4), the fact that any act or thing may have been done by Northern Powergrid on behalf of the undertaker or in accordance with a plan approved by Northern Powergrid or in accordance with any requirement of Northern Powergrid as a consequence of the authorised development or under its supervision will not (unless sub-paragraph (2) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (5) where the undertaker fails to carry out and execute the works properly with due care and attention and in a skillful and workman like manner or in a manner that does not materially accord with the approved plan or as otherwise agreed between the undertaker and the Northern Powergrid.

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

Arbitration

154. Any difference under the provisions of this Schedule, unless otherwise agreed is to be referred to and settled by arbitration in accordance with Article 45 (arbitration).

Removal of apparatus

155.—(1) Where in consequence of the proposed construction of any of the authorised works, the undertaker or Northern Powergrid requires the removal of apparatus under paragraph 150 (rights for alternative apparatus) or otherwise or Northern Powergrid makes requirements for the protection or alteration of apparatus under paragraph 151 (authorised works), the undertaker shall use its reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the need to ensure the safe and efficient operation of Northern Powergrid's undertaking taking into account the undertaker's desire for the efficient and economic execution of the authorised development and the undertaker and Northern Powergrid shall use reasonable endeavours to co-operate with each other for those purposes.

(2) If in consequence of an agreement reached in accordance with paragraph 148 (acquisition of apparatus) or the powers granted under this Order the access to any apparatus or alternative apparatus is materially obstructed, the undertaker shall provide such alternative means of access to such apparatus or alternative apparatus as will enable Northern Powergrid to maintain or use the said apparatus no less effectively than was possible before such obstruction.

Plans

156. The plans submitted to Northern Powergrid by the undertaker pursuant to this Schedule must be sent to Northern Powergrid at property@northernpowergrid.com or such other address as Northern Powergrid may from time to time appoint instead for that purpose and notify to the undertaker in writing.

Notice

157. Prior to carrying out any authorised works within the Order limits (as defined in this Order) Northern Powergrid must give written notice of the proposed works to the undertaker, such notice to include full details of the location of the proposed works, their anticipated duration, access arrangements, depths of the works, and any other information that may impact upon the works consented by this Order.

Co-operation

158. Where practicable, the undertaker and Northern Powergrid will make reasonable efforts to liaise and co-operate in respect of information that is relevant to the safe and efficient construction operation and maintenance of the authorised development. Such liaison shall be carried out where any authorised works are:

(a) within 15 metres of any above ground apparatus and/ or;

(b) within 15 metres of any apparatus and are to a depth of between 0 – 4 metres below ground level under any apparatus.

PART 12

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

Application

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

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and NGET, where the benefit of this Order is transferred or granted to another person under article 8 (consent to transfer benefit of Order)—

(a) any agreement of the type mentioned in sub-paragraph (1) has effect as if it had been made between NGET and the transferee or grantee (as the case may be); and

(b) written notice of the transfer or grant must be given to NGET 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 NGET (but without prejudice to paragraph 168(3)(b) (indemnity).

Interpretation

160. In this Part of this Schedule—

"acceptable credit provider" means a bank or financial institution with a credit rating that is not lower than:

(a) "A-" if the rating is assigned by Standard & Poor's Ratings Group or Fitch Ratings; and

(b) "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 authorised works; and (b) after the construction period of the authorised 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 Grid Electricity Transmission Plc; and

(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;

"acceptable security" means either:

(a) a parent company guarantee from a parent company in favour of NGET to cover the undertaker's liability to NGET to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to NGET and where required by NGET, accompanied with a legal opinion confirming the due capacity and authorisation of the parent company to enter into and be bound by the terms of such guarantee); or

(b) a bank bond or letter of credit from an acceptable credit provider in favour of NGET to cover the undertaker's liability to NGET for an amount of not less than £10,000,000.00 (ten million pounds) per asset per event up to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to NGET);

"alternative apparatus" means appropriate alternative apparatus to the satisfaction of NGET to enable NGET to fulfil its statutory functions in a manner no less efficient than previously;

"apparatus" means:

(a) any electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by NGET together with any replacement apparatus;

(b) such other apparatus constructed pursuant to the Order that becomes operational apparatus of NGET 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; and

"authorised works" has the same meaning as is given to the term "authorised development" in article 2(1) of this Order and includes any associated development authorised by this Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

"commence" and "commencement" in this Part of this Schedule have effect for the purposes of article 2 (interpretation) of this Order as if they include any below ground surveys, monitoring, groundwork 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 NGET (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 NGET'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;

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

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

"NESO" means National Energy System Operator as defined in the STC;

"parent company" means a parent company of the undertaker acceptable to and which shall have been approved by NGET acting reasonably;

"plan" or "plans" include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

"specified works" means any of the authorised works or activities 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 166(2) (retained apparatus: protection) 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 166(2) (retained apparatus: protection) or otherwise; and/or

(c) includes any of the activities that are referred to in development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines";

"STC" means the System Operator Transmission Owner Code prepared by the electricity Transmission Owners and NESO as modified from time to time;

"STC Claims" means any claim made under the STC against National Grid Electricity Transmission Plc arising out of or in connection with the de-energisation (whereby no electricity can flow to or from the relevant system through the generator or interconnector's equipment) of a generator or interconnector party solely as a result of the de-energisation of plant and apparatus forming part of National Grid Electricity Transmission Plc's transmission system which arises as a result of the authorised works;

"Transmission Owner" means as defined in the STC; and

"undertaker" means the undertaker as defined in article 2(1) of this Order.

On street apparatus

161. Except for paragraphs 162 (apparatus of NGET in stopped up streets), 166 (retained apparatus: protection), 167 (expenses) and 168 (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 NGET, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and NGET are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus of NGET in stopped up streets

162.—(1) Where any street is stopped up under article 15 (Construction and maintenance of altered streets), if NGET has any apparatus in the street or accessed via that street NGET has the same rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to NGET, or procure the granting to NGET of, legal easements reasonably satisfactory to NGET in respect of such apparatus and access to it prior to the stopping up of any such street or highway but nothing in this paragraph affects any right of the undertaker or NGET to require the removal of that apparatus under paragraph 166 (retained apparatus: protection) or the power of the undertaker, subject to compliance with this sub-paragraph, to carry out works under paragraph 166 (retained apparatus: protection).

(2) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 16 (temporary closure or restriction of streets and public rights of way), NGET 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

163. The undertaker, in the case of the powers conferred by article 21 (protective work to buildings), must exercise those powers so as not to obstruct or render materially less convenient the access to any apparatus without the prior written consent of NGET which must not be unreasonably withheld or delayed.

Removal of apparatus

164.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in or possesses temporarily any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of NGET to maintain that apparatus in

that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of NGET 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 NGET advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order NGET reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), secure any necessary consents for the alternative apparatus and afford to NGET to its satisfaction (taking into account paragraph 165(1) (facilities and rights for alternative apparatus) below) the necessary facilities and rights:

(a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and

(b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, NGET may in its sole discretion, 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 must not extend to the requirement for NGET to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between NGET and the undertaker.

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

Facilities and rights for alternative apparatus

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

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to NGET 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 172 (arbitration) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to NGET as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection

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

(2) In relation to specified works the plan to be submitted to NGET under sub-paragraph (1) must include a method statement and describe—

(a) the exact position of the works;

(b) the level at which these are proposed to be constructed or renewed;

(c) the manner of their construction or renewal including details of excavation, positioning of plant;

(d) the position of all apparatus;

(e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;

(f) any intended maintenance regimes;

(g) an assessment of risks of rise of earth issues; and

(h) a ground monitoring scheme, where required.

(3) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (1) must, in addition to the matters set out in sub-paragraph (2), include a method statement describing—

(a) details of any cable trench design including route, dimensions, clearance to pylon foundations;

(b) demonstration that pylon foundations will not be affected prior to, during and post construction;

(c) details of load bearing capacities of trenches;

(d) details of any cable installation methodology including access arrangements, jointing bays and backfill methodology;

(e) a written management plan for high voltage hazard during construction and ongoing maintenance of any cable route;

(f) written details of the operations and maintenance regime for any cable, including frequency and method of access;

(g) assessment of earth rise potential if reasonably required by NGET's engineers; and

(h) evidence that trench bearing capacity is to be designed to support overhead line construction traffic of up to and including 26 tonnes in weight.

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

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

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (6) or (8) provided that any conditions are communicated to the undertaker at least 14 days prior to works commencing; and

(b) must not be unreasonably withheld or delayed.

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

(7) Works executed under sub-paragraphs (2) or (3) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (6), as approved or as amended from time to time by agreement between the undertaker and NGET and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5), (7) or (9) by NGET for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and NGET will be entitled to watch and inspect the execution of those works.

(8) Where NGET requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or

schemes required and approved as part of the plan approved pursuant to this paragraph, such protective works must be carried out to NGET's reasonable satisfaction prior to the commencement of any specified works (or any relevant part thereof) for which protective works are required and NGET must give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(9) If NGET in accordance with sub-paragraphs (6) or (8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, sub-paragraphs (1), (2), (4) and (8) apply as if the removal of the apparatus had been required by the undertaker under this paragraph 166(2) (retained apparatus: protection).

(10) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the authorised development, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.

(11) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to NGET notice as soon as is reasonably practicable and a plan of those works and must—

(a) comply with sub-paragraphs (6) (7) and (8) insofar as is reasonably practicable in the circumstances; and

(b) comply with sub-paragraph (12) at all times.

(12) At all times when carrying out any works authorised under the Order, the undertaker must comply with NGET's policies for development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".

Expenses

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

(a) any costs reasonably incurred by or compensation properly paid by NGET in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by NGET as a consequence of NGET;

(i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 164(3) (removal of apparatus); or

(ii) exercising any compulsory purchase powers in the Order transferred to or benefitting NGET;

(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 172 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to NGET by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

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

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

(b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) Any amount which apart from this sub-paragraph would be payable to NGET in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on NGET 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

168.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised 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 or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of NGET, or there is any interruption in any service provided, or in the supply of any goods, by NGET, or NGET 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 NGET the cost reasonably and properly incurred by NGET in making good such damage or restoring the supply; and

(b) indemnify NGET for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from NGET, by reason or in consequence of any such damage or interruption or NGET becoming liable to any third party and including STC Claims or an Incentive Deduction other than arising from any default of NGET.

(2) The fact that any act or thing may have been done by NGET on behalf of the undertaker or in accordance with a plan approved by NGET or in accordance with any requirement of NGET or under its supervision will not (unless sub-paragraph (2) applies), excuse the undertaker from liability under the provisions of sub-paragraph (1) unless NGET 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) will 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 NGET, its officers, servants, contractors or agents;

(b) any authorised works and/or any other works authorised by this Part of this Schedule carried out by NGET 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 authorised works yet to be executed and not falling within this sub-paragraph 3(b) will be subject to the full terms of this Part of this Schedule including this paragraph 168 (indemnity) in respect of such apparatus; 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) NGET must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

(5) NGET 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 and if requested to do so by the undertaker, NGET 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 NGET.

(6) NGET 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.

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

(8) The undertaker must not commence construction (or permit the commencement of construction) of the authorised works on any land owned by NGET or in respect of which NGET has an easement or wayleave for its apparatus or any other interest or to carry out any works within 15 metres of NGET's apparatus until the following conditions are satisfied:

(a) unless and until NGET is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has first provided the acceptable security (and provided evidence that it shall maintain such acceptable security for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and NGET has confirmed the same to the undertaker in writing; and

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

(9) In the event that the undertaker fails to comply with sub-paragraph (8) of this Part of this Schedule, nothing in this Part of this Schedule shall prevent NGET from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

Enactments and agreements

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

170.—(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or NGET requires the removal of apparatus under paragraph 164(2) (removal of apparatus) or NGET makes requirements for the protection or alteration of apparatus under paragraph 165 (facilities and rights for alternative apparatus), the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of NGET's undertaking and NGET shall use its best endeavours to co-operate with the undertaker for that purpose.

(2) Whenever NGET's consent, agreement, approval or confirmation 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

171. If in consequence of the agreement reached in accordance with paragraph 166 (retained apparatus: protection) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable NGET to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

172. Save for differences or disputes arising under paragraph 166 (retained apparatus: protection) that relate to safety or maintaining the security of electricity supply, Any difference or dispute arising between the undertaker and NGET under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and NGET, be determined by arbitration in accordance with article 45 (arbitration) of this Order.

Notices

173. Notwithstanding article 47 (service of notices), any plans submitted to NGET by the undertaker pursuant to this Part must be submitted using the LSBUD system (https://lsbud.co.uk/), and box.development-liaison@nationalgrid.com, or to such other address as NGET may from time to time appoint instead for that purpose and notify to the undertaker in writing.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises RWE Renewables UK Solar and Storage Limited (referred to in this Order as the undertaker) to construct, operate, maintain and decommission a ground mounted solar photovoltaic generating station with a gross electrical output capacity over 50 megawatts and associated development. The Order would permit the undertaker to acquire, compulsorily or by agreement, land and rights in land and to use land for this purpose.

A copy of the Order plans and the book of reference mentioned in this Order and certified in accordance with article 44 of this Order (certification of plans and documents, etc.) may be inspected free of charge during working hours at City of Doncaster Council, Civic Office, Waterdale, Doncaster, DN1 3BU and North Lincolnshire Council, Scunthorpe Central, Carlton Street, Scunthorpe, North Lincolnshire, DN15 6TX.