Frodsham Solar

Draft Development Consent Order

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SUSTAINABLE INVESTMENTS

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STATUTORY INSTRUMENTS

202* No. ****

INFRASTRUCTURE PLANNING

The Frodsham Solar Farm Order 202*

Made - - - -	***
Coming into force - -	***

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

The application has been examined by the Examining Authority appointed by the Secretary of State pursuant to chapter 3 of Part 6 of the 2008 Act and carried out in accordance with chapter 4 of Part 6 of the Infrastructure Planning (Examination Procedure) Rules(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having considered the application together with the documents that accompanied it, and the representations made and not withdrawn, has, in accordance with section 74(2)(d) of the 2008 Act made a report and recommendation to the Secretary of State.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 had regard to the documents and matters referred to in section 105(2)(f) of the 2008 Act.

The Secretary of State, having decided the application, has determined to make an Order giving effect to the proposals comprised in the application on the terms that in the opinion of the Secretary of State are not materially different from those proposed in the application.

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

PART 1

PRELIMINARY

Citation and commencement

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

Interpretation

2.—(1) In this Order—

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

(**a**) 2008 c. 29. Section 37 was amended by section 137(5) of, and paragraph 5 of Schedule 13 to the Localism Act 2011 (c. 20).
(**b**) S.I. 2009.2264, amended by S.I 2010/439, S.I. 2010/602, S.I. 2012/635, S.I. 2012/2654, S.I. 2012/2732, S.I. 2013/522, S.I. 2013/755, S.I. 2014/469, S.I. 2014/2381, S.I. 2015/377, S.I. 2015/1682, S.I. 2017/524, S.I. 2017/572 and S.I. 2018/378.
(**c**) S.I. 2010/103.
(**d**) As amended by paragraph 29(1) and (3) of Part 1 of Schedule 13 to the Localism Act 2011 (c. 20).
(**e**) S.I. 2017/572.
(**f**) Section 105(2) was amended by paragraph 50 of Schedule 13 to the Localism Act 2011.
(**g**) As amended by paragraph 55 of Part 1 of Schedule 13 to the Localism Act 2011
(**h**) As amended by section 160 of the Housing and Planning Act 2016 (c. 22) and section 43 of the Wales Act 2017 (c. 4).
(**i**) As amended by section 140 and paragraph 60 of Part 1 of Schedule 13 to the Localism Act 2011.
(**j**) As amended by paragraph 62 of Part 1 of Schedule 13 to the Localism Act 2011.
(**k**) Ibid.
(**l**) 1961 c. 33.

"the 1965 Act" means the Compulsory Purchase Act 1965(a);

"the 1980 Act" means the Highways Act 1980(b);

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

"the 1984 Act" means the Road Traffic Regulation Act 1984(d);

"the 1988 Act" means the Road Traffic Act 1988(e);

"the 1989 Act" means the Electricity Act 1989(f);

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

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

"the 2000 Act" means the Countryside and Rights of Way Act 2000(i);

"the 2008 Act" means the Planning Act 2008(j);

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

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

"application document tracker" means the document of that name identified in the table at Schedule 10 and which is certified by the Secretary of State as the application document tracker for the purposes of this Order;

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

"book of reference" means the document of that name identified in the table at Schedule 10 and which is certified by the Secretary of State as the book of reference for the purposes of this Order;

"bridleway" has the same meaning as in section 329(1) (further provisions as to interpretation) of the 1980 Act and, in the relation to the authorised development, includes the right provided by section 30 (riding of pedal bicycles on bridleways) of the Countryside Act 1968(k);

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

"Canal and River Trust" means Canal & River Trust (company number 07807276), whose registered address is National Waterways Museum Ellesmere Port, South Pier Road, Ellesmere Port, Cheshire, England, CH65 4FW or a related or subsidiary company of the Canal & River Trust;

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

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

(**a**) 1965 c. 56.
(**b**) 1980 c. 66.
(**c**) 1981 c. 66.
(**d**) 1984 c. 27.
(**e**) 1988 c. 52.
(**f**) 1989 c. 29.
(**g**) 1990 c. 8.
(**h**) 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).
(**i**) 2000 c. 37.
(**j**) 2008 c. 29.
(**k**) 1968 c.41. Section 30 was amended by paragraph 2 of Schedule 7 to the Countryside and Rights of Way Act 2000.

"cycle track" has the same meaning as in section 329(1) (further provisions as to interpretation) of the 1980 Act;

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

"design parameters statement" means the document of that name identified in the table at Schedule 10 and which is certified by the Secretary of State as the design parameters statement for the purposes of this Order;

"design principles" means the document of that name identified in the table at Schedule 10 and which is certified by the Secretary of State as the design principles 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, data cables and optical fibre cables; and

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

"electronic transmission" means a communication transmitted—

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

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

"environmental statement" means the document of that name identified in the table in Schedule 10 and which is certified by the Secretary of State as the environmental statement for the purposes of this Order;

"flood risk assessment and drainage strategy" means the document of that name identified in the table at Schedule 10 and which is certified by the Secretary of State as the flood risk assessment and drainage strategy for the purposes of this Order;

"flood warning and evacuation plan" means the document of that name identified in the table at Schedule 10 and which is certified by the Secretary of State as the flood warning and evacuation plan for the purposes of this Order;

"footpath" and "footway" have the same meaning as in the 1980 Act;

"group company" means any (i) direct or indirect subsidiary company of the undertaker (ii) direct or indirect parent company of the undertaker or (iii) undertaking which shares the same ultimate parent company as the undertaker;

"hedgerows plans" means the document of that name identified in the table at Schedule 10 and which is certified by the Secretary of State as the hedgerows plans for the purposes of this Order;

"highway" and "highway authority" have the same meaning as in the 1980 Act(a);

"land and crown land plans" means the plans of that name identified in the table in Schedule 10 and which are certified by the Secretary of State as the land and crown land plans for the purposes of this Order;

"limits of deviation" means the limits of deviation shown for each numbered work on the works plans;

(**a**) "highway" is defined in section 328(1). For "highway authority" see section 1.

“maintain” includes inspect, repair, adjust, alter, remove, refurbish, reconstruct, replace and improve any part of the authorised development, to the extent that such works do not give rise to any materially new or materially different environmental effects to those identified in the environmental statement for the operation of the authorised development and “maintenance” and “maintaining” are to be construed accordingly;

“non-breeding bird mitigation strategy” means the document of that name identified in the table at Schedule 10 and which is certified by the Secretary of State as the non-breeding bird mitigation strategy for the purposes of this Order;

“Order land” means the land shown coloured pink and the land shown coloured blue on the land and crown land plans, which is described in the book of reference;

“Order limits” means the limits as shown on the works plans, within which the authorised development may be carried out;

“outline battery safety management plan” means the document of that name identified in the table at Schedule 10 and which is certified by the Secretary of State as the outline construction environmental 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 10 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 10 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 management plan” means the document of that name identified in the table at Schedule 10 and which is certified by the Secretary of State as the outline decommissioning environmental management plan for the purposes of this Order;

“outline drainage strategy” means the document of that name identified in the table at Schedule 10 and which is certified by the Secretary of State as the outline drainage strategy for the purposes of this Order;

“outline flood warning and evacuation plan” means the document of that name identified in the table at Schedule 10 and which is certified by the Secretary of State as the outline flood warning and evacuation plan for the purposes of this Order;

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

“outline public rights of way management plan” means the document of that name identified in the table at Schedule 10 and which is certified by the Secretary of State as the outline public rights of way management plan;

“outline skills, supply chain and employment plan” means the document of that name identified in the table at Schedule 10 and which is certified by the Secretary of State as the outline skills, supply chain and employment plan for the purposes of this Oder;

“outline soil management plan” means the document of that name identified in the table at Schedule 10 and which is certified by the Secretary of State as the outline soil management plan for the purposes of this Order;

“outline written scheme of archaeological investigation” means the document of that name identified in the table at Schedule 10 and which is certified by the Secretary of State as the outline written scheme of archaeological investigation for the purposes of this Order;

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

"parent company" has the same meaning as in section 1173 of the Companies Act 2006(b);

"permissive paths" means new paths providing restricted public access within the Order limits;

"permitted preliminary works" means all or any of—

(a) environmental surveys to be carried out pursuant to the construction environmental management plan approved under requirement 12 (construction environmental management plan);

(b) geotechnical surveys, and other investigations for the purpose of assessing ground conditions to be carried out pursuant to the ground conditions investigations and assessments strategy approved under requirement 17 (ground conditions);

(c) intrusive archaeological surveys to be carried out pursuant to the written scheme of archaeological investigation (or multiple written schemes of archaeological investigation) approved under requirement 18 (archaeological mitigation strategy);

(d) receipt and erection of construction plant and equipment;

(e) removal of plant and machinery;

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

(g) remedial work in respect of any contamination or other adverse ground conditions to be carried out pursuant to the ground conditions investigations and assessments strategy approved under requirement 17 (ground conditions);

(h) diversion and laying of apparatus;

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

(j) the temporary display of site notices or advertisements;

(k) site clearance (comprising vegetation removal and demolition of existing buildings and structures); or

(l) access and highway improvements and use, comprising works to create, improve, repair or maintain streets, roads, haul roads and access points within the limits of deviation for Work No. 8 shown on the Works Plans.

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

"relevant highway authority" means Cheshire West and Chester Council;

"relevant planning authority" means the local planning authority for the area in which the Order limits are situated;

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

"restricted byway" has the same meaning as in section 329(1) (further provisions as to interpretation) of the 1980 Act;

"SP Manweb" means SP Manweb PLC (Company No. 02366937) whose registered office is at 3 Prenton Way, Prenton, CH43 3ET or any successor company;

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

(a) 1981 c. 67.
(b) 2006 c. 46.
(c) 2003 c. 21.

"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(a);

"street works, public rights of way, vehicular usage and access plans" means the plans of that name identified in the table at Schedule 10 and which are certified by the Secretary of State as the street works, public rights of way, vehicular usage and access plans for the purposes of this Order;

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

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

"undertaker" means Frodsham Solar Limited (company number 14432433) or any person who has the benefit of this Order in accordance with articles 35 (benefit of the Order) and 36 (consent to transfer the benefit of the Order);

"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;

"working day" means any day apart from Saturday, Sunday or any statutory bank or public holiday; and

"works plans" means the plans of that name identified in the table at Schedule 10 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 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, references to the purposes of the authorised development includes the construction, maintenance, operation, use 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, access and 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 and shown on the works plans and a reference in this Order to a work designated by number.

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

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

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

(9) In this Order, references to materially new or materially different environmental effects to those identified in the environmental statement are not to be construed so as to include the avoidance, removal or reduction of an assessed adverse environmental effect or a positive environmental effect, or the increase of an assessed positive environmental effect.

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

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

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

Electronic communications

3.—(1) In this Order—

(a) references to documents, maps, plans, drawings, certificates or other documents, or to copies, include references to them in electronic form; and

(b) references to a form of communication being "in writing" include references to an electronic communication that satisfies the conditions in paragraph (2) and "written" and other cognate expressions are to be construed accordingly.

(2) The conditions are that—

(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; and

(b) the communication is—

(i) capable of being assessed by the recipient;

(ii) legible in all material respects; and

(iii) sufficiently permanent to be used for subsequent reference.

(3) 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 part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

(4) Any consent to the use of electronic communication given by a person may be revoked by that person in accordance with paragraph (5).

(5) 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 may not be less than seven days after the date on which the notice is given.

PART 2

PRINCIPAL POWERS

Development consent etc. granted by this Order

4.—(1) Subject to the provisions of this Order and the requirements, the undertaker is granted development consent for the authorised development to be carried out and to be decommissioned within the Order limits.

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

Operation of generating station

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

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

Power to maintain the authorised development

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

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

(3) This article does not authorise the carrying out of any works which are likely to give rise to any materially new or materially different environmental effects to those identified in the environmental statement for the operation of the authorised development.

Application and modification of statutory provisions

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

(a) section 23 (prohibition of obstructions, etc. in watercourses) of the Land Drainage Act 1991(a);

(b) section 32 (variation of awards)(b) of the Land Drainage Act 1991;

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

(d) section 28E (duties to sites of scientific interest) of the Wildlife and Countryside Act 1981(d); and

(e) the provisions of the Neighbourhood Planning Act 2017(e) insofar as they relate to the temporary possession of land under articles 30 (temporary use of land for constructing the authorised development) and 31 (temporary use of land for maintaining the authorised development) of this Order.

(2) For the purposes of section 9 (requirement of licence for felling) of the Forestry Act 1967, any felling comprised in the carrying out of any work or operation required for the purposes of the authorised development, or in connection with, the construction of the authorised development is deemed to be felling immediately required for the purposes of carrying out development authorised by planning permission granted under the 1990 Act under sub-paragraph (4) of that section.

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

"or

(k) for carrying out development which has been authorised by an order granting development consent pursuant to the Planning Act 2008.".

(4) Notwithstanding the provisions of section 208 (liability) of the 2008 Act, for the purposes of regulation 6 (meaning of "development") of the Community Infrastructure Levy Regulations 2010(g) 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 go only intermittently for the purpose of inspecting or maintaining fixed plant or machinery.

(5) Any details of the establishment, maintenance, management and monitoring regime for Work No. 6C that are approved under requirement 9(2)(j) which relate to land within the boundary of the

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

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

(**c**) 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).

(**d**) 1981 c. 69. Section 28E was inserted by section 75(1) of, and paragraph 1 of Schedule 9 to, the Countryside and Rights of Way Act 2000 (c. 37). It was amended by section 105(1) of, and paragraph 79 of Schedule 11 to, the Natural Environment and Rural Communities Act 2006 (c. 16).

(**e**) 2017 c. 20.

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

(**g**) S.I. 2010/948, amended by S.I. 2011/987; there are other amending instruments but none are relevant to this Order.

Mersey Estuary SSSI shall, on the date of approval, form part of the management scheme of the Mersey Estuary SSSI for the purposes of section 28J of the Wildlife and Countryside Act 1981(a).

Defence to proceedings in respect of statutory nuisance

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

(a) relates to premises used by the undertaker for the purposes of the authorised development or in connection with the construction, maintenance or decommissioning of the authorised development and that the nuisance is attributable to the construction, maintenance or decommissioning of the authorised development in accordance with a notice served under section 60 (control of noise on construction site) of the Control of Pollution Act 1974, or a consent given under section 61 (prior consent for work on construction site) of that Act, or any document approved under the provisions of Schedule 2 (requirements) of the Order; or

(b) is a consequence of the construction, maintenance or decommissioning of the authorised development and that it cannot reasonably be avoided; or

(c) is a consequence of the use of the authorised development and that it cannot be reasonably 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 the premises by the undertaker for the purposes of the authorised development, or in connection with the construction, maintenance or decommissioning of the authorised development.

PART 3

STREETS

Street works

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

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

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

(c) place and keep apparatus and electrical cables under the street;

(d) maintain, change the position or remove apparatus and electrical cables under the street;

(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 or licence for the purposes of sections 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the 1991 Act.

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

(a) 1981 c. 69 Section 28J was inserted by section 75(1) of, and paragraph 1 of Schedule 9 to, the Countryside and Rights of Way Act 2000 (c.37). It was amended by paragraph 79 of Schedule 11 to, the Natural Environment and Rural Communities Act 2006 (c.16).

(b) 1990 c. 43.

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

Power to alter layout, etc. of streets

10.—(1) The undertaker may for the purposes of the authorised development, or in connection with the authorised development, alter the layout of or carry out any works in the streets specified in column 2 of the table in Schedule 4 (permanent alteration of streets) permanently 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 paragraph (3), the undertaker may, for the purposes of the authorised development, or in connection with the authorised development, alter the layout of any street, including, notwithstanding article 4 (development consent etc. granted by this Order) any street outside of the Order limits and, without limitation on the scope of this paragraph, the undertaker may—

(a) alter the level or increase the width of any kerb, footway, cycle track or verge; and

(b) make and maintain passing places.

(3) The powers conferred by paragraph (2) may not be exercised without the consent of the street authority, such consent to be in a form reasonably required by the street authority.

(4) The undertaker must restore any street that has been temporarily altered under paragraph (2) to the reasonable satisfaction of the street authority.

(5) Paragraph (3) does not apply where the undertaker is the street authority for a street in which the works are being carried out.

(6) Paragraph (3) does not apply if the street authority has already provided detailed design approval pursuant to requirement 6(1) (detailed design approval) in relation to a street in which the undertaker seeks to use the powers given by paragraph (2).

Construction and maintenance of altered streets

11.—(1) The permanent alterations to each of the streets specified in Schedule 4 (permanent alteration of streets) to this Order must be completed to the reasonable satisfaction of the street authority, in a form reasonably required by the street authority, and, unless otherwise agreed by the street authority, the alterations must be maintained to the same condition 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) 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.

(3) For the purposes of a defence under paragraph (2), 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.

(4) Paragraphs (2) and (3) do not apply where the undertaker is the street authority for a street in which the works are being carried out.

Temporary prohibition or restriction of use of streets and public rights of way, and authorising vehicular use on public rights of way

12.—(1) Subject to paragraph (4) and (7), the undertaker may, for the purposes of the authorised development temporarily alter, divert, prohibit 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; and

(b) subject to paragraph (3), prevent all persons from passing along the street or public right of way.

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

(3) The undertaker must provide reasonable access for non-motorised users (including pedestrians) and vehicles going to or from premises abutting a street or public right of way affected by the temporary alteration, diversion, prohibition or restriction, of a street or public right of way under this article if there would otherwise be no such access.

(4) The undertaker must ensure vehicular access to Marsh Lock is available to the Canal & River Trust at all times.

(5) Without prejudice to the generality of paragraph (1), the undertaker may, subject to paragraph (7)—

(a) temporarily close the streets or public rights of way specified in column (2) in the table in Part 1 (streets and public rights of way subject to temporary closure) of Schedule 5 (temporary prohibition or restriction of use of streets and public rights of way, and authorising vehicular use on public rights of way) to the extent specified in column (3) of that table;

(b) temporarily alter, divert, prohibit the use of or restrict the use of the streets or public rights of way specified in column (2) of the table in Part 2 (temporary alteration, prohibition, diversion or restriction of use of streets and public rights of way) of Schedule 5 (temporary prohibition or restriction of use of streets and public rights of way, and authorising vehicular use on public rights of way) to the extent specified in column (3) of that table; and

(c) authorise the temporary use of motor vehicles on the public rights of way specified in column (2) of the table in Part 3 (temporary use of motor vehicles on public rights of way) of Schedule 5 (temporary prohibition or restriction of use of streets and public rights of way, and authorising vehicular use on public rights of way) to the extent specified in column (3) of that table.

(6) Paragraph (5)(c), and any authorisation given by the undertaker under it constitutes lawful authority for the purposes of section 34 (prohibition on driving mechanically propelled vehicles elsewhere than on roads) of the 1988 Act(a).

(7) The undertaker must not temporarily close, alter, divert, prohibit the use of or restrict the use of any street or public right of way or authorise the temporary use of motor vehicles on public rights of way pursuant to paragraphs (1) or (5) in part of the authorised development, without first

(a) 1988 c. 52.

having the public rights of way management plan for that part of the authorised development approved under requirement 15 (public rights of way).

(8) 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.

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

Permanent stopping up of, and creation of new public right of way and authorising vehicular use on public rights of way

13.—(1) Subject to paragraph (2) the undertaker may, for the purposes of the authorised development, permanently stop up Frodsham RB102 within the administrative borough of Cheshire West and Chester Council, shown as a dark brown line between the points M and N on the street works, public rights of way, vehicular usage and access plans.

(2) The undertaker must not permanently stop up the public right of way referred to in paragraph (1) until—

(a) the relevant highway authority has agreed the route for a substitute restricted byway shown as a light brown line between points M1 and N1 on the street works, public rights of way, vehicular usage and access plans; and

(b) the undertaker has provided a substitute restricted byway along the route agreed by the relevant highway authority under sub-paragraph (a).

(3) Subject to paragraph (4) the undertaker may, for the purposes of the authorised development, permanently stop up Frodsham FP81 within the administrative borough of Cheshire West and Chester Council, shown as a dark brown line between points P and T on the street works, public rights of way, vehicular usage and access plans.

(4) The undertaker must not permanently stop up the public right of way referred to in paragraph (3) until the undertaker has provided a bridleway along the route shown as a light brown line between points P1 and T1 on the street works, public rights of way, vehicular usage and access plans.

(5) Subject to paragraph (6) the undertaker may, for the purposes of the authorised development, permanently stop up Frodsham FP81 within the administrative borough of Cheshire West and Chester Council, shown as a dark brown line between points T and Q on the street works, public rights of way, vehicular usage and access plans.

(6) The undertaker must not permanently stop up the public right of way referred to in paragraph (5) until the undertaker has provided a cycle track along the route shown as a light brown line between points T1 and Q1 on the street works, public rights of way, vehicular usage and access plans.

(7) Subject to paragraph (8) the undertaker may, for the purposes of the authorised development, permanently stop up Frodsham FP93 within the administrative borough of Cheshire West and Chester Council, shown as a dark brown line between points R and S on the street works, public rights of way, vehicular usage and access plans.

(8) The undertaker must not permanently stop up the public right of way referred to in paragraph (7) until the undertaker has provided a bridleway along the route shown as a light brown line between points R1 and S1 on the street works, public rights of way, vehicular usage and access plans.

(9) The undertaker may authorise the use of motor vehicles on—

(a) Ellesmere Port and Neston RB40 / Frodsham RB106 and National Cycle Network Route 5 shown shaded light green between points PMV-1 and PMV-2 on the street works, public rights of way, vehicular usage and access plans;

(b) Frodsham RB103 / Frodsham RB98 shown shaded light green between points PMV-3 and PMV-4 on the street works, public rights of way, vehicular usage and access plans;

(c) Frodsham RB108 (Alder Lane) shown shaded light green between points PMV-5 and PMV-6 on the street works, public rights of way, vehicular usage and access plans; and

(d) Frodsham RB108 (Brook Furlong) shown shaded light green between points PMV-7 and PMV-8 on the street works, public rights of way, vehicular usage and access plans.

(10) Paragraph (7), and any authorisation given by the undertaker under it constitutes lawful authority for the purposes of section 34 (prohibition on driving mechanically propelled vehicles elsewhere than on roads) of the 1988 Act.

(11) If a car park is to be provided pursuant to a landscape and ecology management plan approved by the relevant planning authority under requirement 9 (landscape and ecology management plan), then from the date that such car park is constructed until the date that such car park is no longer available for public use—

(a) notwithstanding section 48 (restricted byways rights) of the 2000 Act, the use of motor and mechanically propelled vehicles by the public is authorised on Frodsham RB98 (Brook Furlong) and Frodsham RB98 (Moorditch Lane) to enable public access to and from the car park only; and

(b) the use of motor vehicles authorised pursuant to sub-paragraph (a) will not be an offence for the purposes of section 34 of the 1988 Act.

(12) Following the opening for public use of a public right of way that has been constructed, permanently altered or permanently diverted under the powers conferred by this Order, the undertaker must supply the surveying authority with plans showing that public right of way as constructed, permanently altered or permanently diverted together with a statement of the modifications required to the definitive map and statement.

(13) The plans and statement of modifications to the definitive statement referred to in paragraph (10) are deemed to be an order modifying the definitive map and statement made under section 53(3)(a)(a) (duty to keep definitive map and statement under continuous review) of the Wildlife and Countryside Act 1981.

(14) In this article—

(a) "definitive map and statement" has the meaning given to it by section 53(1) (duty to keep definitive map and statement under continuous review) of the Wildlife and Countryside Act 1981; and

(b) "surveying authority" has the meaning given to it by section 66(1) (interpretation of Part III)(b) of the Wildlife and Countryside Act 1981.

Access to works

14.—(1) The undertaker may, for the purposes of the authorised development and in connection with the authorised development—

(a) form and lay out the permanent means of access, or improve existing means of access, in the locations specified in Schedule 6 (access to works); and

(b) with the approval of the relevant planning authority after consultation with the highway authority in such a form as reasonably required by the highway authority, form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

(2) Paragraph (1)(b) does not apply if the relevant planning authority has already provided detailed design approval pursuant to requirement 6(1) (detailed design approval) for the access sought to be formed and laid out pursuant to paragraph (1)(b).

Agreements with street authorities

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

(a) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;

(b) any temporary closure, prohibition, restriction, alteration or diversion of a street authorised by this Order;

(c) the undertaking in the street of any of the works referred to in article 9 (street works), article 11(1) (construction and maintenance of altered streets) and article 14 (access to works); or

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

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

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

(2) If such an agreement provides that the street authority must undertake works on behalf of the undertaker the agreement may, without prejudice to the generality of paragraph (1)—

(a) make provision for the street authority to carry out any function under this Order which relates to the street in question;

(b) specify a reasonable time for the completion of the works; and

(c) contain such terms as to payment and otherwise as the parties consider appropriate.

Traffic regulation measures

16.—(1) Subject to the provisions of this article, the undertaker may make temporary provision for the purposes of the construction of the authorised development—

(a) as to the speed at which vehicles may proceed along any road;

(b) permitting, prohibiting or restricting the stopping, waiting, loading or unloading of vehicles on any road;

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

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

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

(2) In relation to any such temporary provision made under paragraph (1) the undertaker may temporarily place traffic signs and signals in any road, including roads outside of the Order limits, 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).

(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(b) when in accordance with regulation 3(5) of those regulations.

(4) Before exercising the power conferred by paragraph (1) the undertaker must—

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

(b) obtain the written consent of the traffic authority.

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

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

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

(**a**) S.I. 2016/362
(**b**) S.I. 2011/935.

(c) displayed a site notice containing the same information at each end of the length of road affected; and

(d) either—

(i) in relation to the construction of the authorised development only, have first obtained approval under requirement 14 (construction traffic management plan) for a construction traffic management plan for the phase of the authorised development in relation to which the power conferred by paragraph (1) is sought to be utilised; or

(ii) in relation to the decommissioning of the authorised development only, have first obtained approval under requirement 20 (decommissioning) for a decommissioning environmental management plan for the part of the authorised development in relation to which the power conferred by paragraph (1) is sought to be utilised.

(6) Any provision made under the powers conferred by paragraph (1) 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).

(7) Any provision made by the undertaker under paragraph (1)—

(a) must be made by written instrument in such form as the undertaker considers appropriate;

(b) has effect as if duly made by the traffic authority in whose area the road is situated as a traffic regulation order under the 1984 Act and the instrument by which it is effected may specify specific savings and exemptions to which the provision is subject; and

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

PART 4

SUPPLEMENTAL POWERS

Discharge of water

17.—(1) Subject to paragraphs (3), (4) and (9) the undertaker may use any watercourse or any public sewer or drain for the drainage of water for the purposes of the authorised development, or 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(b).

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

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

(a) in accordance with plans approved by the person to whom the sewer or drain belongs; and

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

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

(6) The undertaker must take such steps as are reasonably practicable to ensure that water discharged into a watercourse or public sewer or drain pursuant to this article does not enter the public highway.

(**a**) 2004 c. 18
(**b**) 1991 c. 56.

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

(8) In this article—

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

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

Protective works to buildings

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

(2) Protective works may be carried out—

(a) at any time before or during the construction of any part of the authorised development, in the vicinity of the building; or

(b) after the completion of that part of the authorised development in the vicinity of the building at any time up to the end of the period of five years beginning with the date of final commissioning; and

(c) to facilitate or during decommissioning of any part of the authorised development in the vicinity of the building.

(3) For the purpose of determining how the powers under this article are to be exercised, the undertaker may enter and survey any building falling within paragraph (1) and any land within its curtilage.

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

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

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

(5) Before exercising—

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

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

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

(d) a right under paragraph (4)(b) to enter land,

the undertaker must, except in the case of emergency, serve on the owners and occupiers of the building or land not less than 14 days' notice of its intention to exercise that right and, in a case falling within sub-paragraph (a), (c) or (d), specifying the protective works proposed to be carried out.

(6) Where a notice is served under paragraph (5)(a), (5)(c) or (5)(d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 42 (arbitration).

(a) S.I. 2016/1154.
(b) 1991 c. 57.

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

(8) Where—

(a) protective works are carried out under this article to a building; and

(b) within the period of five years beginning with the date of final commissioning it appears protective works are inadequate to protect the building against damage caused by the construction or use of that part of the authorised development,

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

(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 the 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—

(a) "emergency" means a situation where, if the relevant action is not taken, there will be adverse health, safety, security or environmental consequences that in the reasonable opinion of the undertaker would outweigh the adverse effects to the public (whether individual classes or generally as the case may be of taking that action).

(b) "protective works" in relation to a building means—

(i) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the construction, maintenance, decommissioning or use of the authorised development; and

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

Authority to survey and investigate the land

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

(a) survey or investigate the land;

(b) without prejudice to the generality of sub-paragraph (a), make trial holes or bore holes 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 and archaeological investigations on such land; and

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

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

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

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

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

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

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

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

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

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

Temporary suspension of navigation

20.—(1) Regardless of any other enactment or in any rule of law, the undertaker may—

(a) temporarily close; or

(b) temporarily restrict the passage of vessels in any way, in any part of the river Weaver within the Order limits that the undertaker deems necessary or expedient for the purposes of constructing, inspecting, maintaining, operating or decommissioning the authorised development.

(2) In exercise of the powers conferred by paragraph (1)—

(a) the undertaker must execute such works or do such things as may be required to ensure—

(i) that at any time no more of that part of the river Weaver which is within the Order limits is closed than is reasonably necessary in all the circumstances; and

(ii) that the works do not close any part of the river Weaver for longer than is reasonably necessary to complete those works.

(b) should it be necessary to close that part of the river Weaver that is within the Order limits to navigation, the undertaker must use its best endeavours to ensure that the minimum obstruction delay or interference is caused to vessels which may be using or intending to use the remaining part of the river Weaver that remains open for navigation.

(3) No later than three months before the date when a closure or restriction is due to commence the undertaker must—

(a) notify the Weaver Sailing and Ski Club and Frodsham Kayaking of when the closure or restriction is intended to take effect and their anticipated duration; and

(b) take such steps as it considers appropriate in the circumstances, to publicise the nature of the proposals including when they are intended to take effect and their anticipated duration.

(4) Paragraph (3) does not apply in the case of an emergency, or in any case where a proposed closure or restriction is intended to last for 48 hours or less, in which case the undertaker must take such steps as it considers practicable in the circumstances to inform persons of, and to publicise, the nature and anticipated duration of the proposed closure or restriction.

(5) Except in an emergency, a master of a vessel must not allow a vessel to enter into any part of the river Weaver within the Order limits that has been temporarily closed or subject to temporary restrictions under this article without first obtaining the consent of the undertaker which may attach reasonable conditions to any consent.

PART 5

POWERS OF ACQUISITION

Compulsory acquisition of land

21.—(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 23 (compulsory acquisition of rights), article 26 (acquisition of subsoil or airspace only), and article 44 (crown rights).

Time limit for exercise of authority to acquire land compulsorily

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

(a) no notice to treat is to be served under Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act; and

(b) no declaration is to be executed under section 4 (execution of declaration) of the 1981 Act as applied by article 25 (application of the 1981 Act).

(2) The authority conferred by article 30 (temporary use of land for constructing the authorised development) ceases at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

Compulsory acquisition of rights

23.—(1) Subject to paragraph (2) and article 30 (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 as may be required for any purpose for which that land may be acquired under article 21 (compulsory acquisition of land), by creating them as well as by acquiring rights already in existence.

(2) Subject to the provisions of this paragraph, article 24 (private rights) and article 32 (statutory undertakers), in the case of the Order land specified in column 1 of Schedule 7 (land in which only new rights etc. may be acquired) the undertaker's powers of compulsory acquisition are limited to the acquisition of existing rights and benefit of restrictive covenants over that land and the creation and acquisition of such new rights and the imposition of restrictive covenants for the purpose specified in relation to that land in column 2 of that Schedule.

(3) The powers in paragraph (1) and (2) may also be exercised by a statutory undertaker in any case where the exercise of those powers is required for the purpose of diverting, replacing or protecting apparatus of a statutory undertaker and where the undertaker, with the consent of the Secretary of State, transfers the power to a statutory undertaker pursuant to article 36 (consent to transfer the benefit of this Order).

(4) The powers in paragraph (1) and (2) may also be exercised by a party who has the benefit of the protective provisions in Schedules 13 to 26 in any case where the exercise of those powers is required for the purpose of diverting, replacing or protecting apparatus of the party with the benefit of the protective provisions in Schedule 13 to 26 and where the undertaker transfers the power to a party with the benefit of the protective provisions and the consent of the Secretary of State is not required pursuant to article 36(3) and the undertaker has notified the Secretary of State.

(5) Where, in consequence of paragraph (3) or (4) a statutory undertaker or a party with the benefit of the protective provisions in Schedules 13 to 26 exercises the powers in paragraph (1) and (2) in place of the undertaker, except in relation to the payment of compensation the liability

for which must remain with the undertaker, the statutory undertaker or party with the benefit of the protective provisions in Schedules 13 to 26 is to be treated for the purposes of this Order, and by any person with an interest in the land affected, as being the undertaker in relation to the acquisition of the rights in question.

(6) Subject to section 8 (other provisions as to divided land) and Schedule 2A (counter-notice requiring purchase of land) of the 1965 Act (as substituted by paragraph 5(8) of Schedule 8 (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.

(7) Schedule 8 (modification of compensation and compulsory purchase enactments for the creation of new rights and imposition of new restrictive covenants) has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of restrictive covenants.

(8) 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.

(9) The exercise by a statutory undertaker of any power in accordance with a transfer under paragraph (2) is subject to the same restrictions, liabilities and obligations as would apply under this Order if that power were exercised by the undertaker.

(10) This article is subject to article 44 (crown rights).

Private rights

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

(a) from the date of acquisition of the land, or of the right, or of the benefit of the restrictive covenant by the undertaker, whether compulsorily or by agreement; or

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

(c) on commencement of any activity authorised by this Order which interferes with or breaches those rights,

whichever is the earliest.

(2) Subject to the provisions of this article, all private rights or restrictive covenants over land subject to the compulsory acquisition of rights or the imposition of restrictive covenants under article 23 (compulsory acquisition of rights) cease to have effect in so far as their continuance would be inconsistent with the exercise of the right or compliance with the restrictive covenant—

(a) as from the date of the acquisition of the right or imposition of the restrictive covenant by the undertaker (whether the right is acquired compulsorily, by agreement or through the grant of a lease of the land by agreement); or

(b) on the date of entry on the land by the undertaker under section 11(1) (power of entry) of the 1965 Act in pursuance of the right,

whichever is the earliest.

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

(4) Any person who suffers loss by the extinguishment or suspension of any private right or restrictive covenant under this article is entitled to compensation in accordance with the terms of

section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) This article does not apply in relation to any right to which section 138 (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) of the 2008 Act or article 32 (statutory undertakers) applies.

(6) Paragraphs (1) to (3) have effect subject to—

(a) any notice given by the undertaker before—

(i) the completion of the acquisition of the land or the acquisition of rights or the imposition of restrictive covenants over or affecting the land;

(ii) the undertaker's appropriation of the land;

(iii) the undertaker's entry onto the land; or

(iv) the undertaker's taking temporary possession of the land,

that any or all of those paragraphs do not apply to any right specified in the notice; or

(b) any agreement made at any time between the undertaker and the person in or to whom the right in question is vested or belongs.

(7) If an agreement referred to in paragraph (6)(b)—

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

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

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

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

Application of the 1981 Act

25.—(1) The 1981 Act applies as if this Order were a compulsory purchase order.

(2) The 1981 Act, as applied by paragraph (1), has effect with the following modifications.

(3) In section 1 (application of the Act), for subsection 2 substitute—

"(2) This section applies to any Minister, any local or other public authority or any other body or person authorised to acquire land by means of a compulsory purchase order.".

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

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

(6) In section 5B(1) (extension of time limit during challenge) for "section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in 5A" substitute "section 118 (legal challenges relating to applications for orders granting development consent) of the 2008 Act, the five year period mentioned in article 22 (time limit for exercise of authority to acquire land compulsorily) of the Frodsham Solar Farm Order [20***].".

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

(8) In section 7 (constructive notice to treat), in subsection (1)(a) omit the words "(as modified by section 4 of the Acquisition of Land Act 1981)".

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

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

"(2) But see article 26(3) (acquisition of subsoil or airspace only) of the Frodsham Solar Farm Order [20**], which excludes the acquisition of subsoil only from this Schedule.".

(10) References to the 1965 Act in the 1981 Act must be construed as references to the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and as modified by article 28 (modification of Part 1 of the Compulsory Purchase Act 1965)) to the compulsory acquisition of land under this Order.

Acquisition of subsoil or airspace only

26.—(1) The undertaker may acquire compulsorily so much of, or such rights, and impose such restrictions, in the subsoil of the land referred to in paragraph (1) of article 21 (compulsory acquisition of land) or article 23 (compulsory acquisition of rights) as may be required for any purpose for which that land may be acquired or for which rights over or under the land may be acquired under those provisions instead of acquiring the rights or imposing restrictions over the whole of the land.

(2) Where the undertaker acquires any part of, or rights in, or imposes any restrictions in the subsoil of, or airspace over, land under paragraph (1), 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 or airspace only—

(a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act; and

(b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and

(c) section 153(4A) (blighted land: proposed acquisition of part interest: material detriment test) of the 1990 Act.

(4) Paragraphs (2) and (3) are to be disregarded where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

Power to override easements and other rights

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

(a) an interference with an interest or right to which this article applies; or

(b) a breach of a restriction as to the user of land arising by virtue of a contract.

(2) In this article "authorised activity" means—

(a) activities carried out for the purposes of the authorised development or in connection with 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 virtue of a contract.

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

(a) is payable under section 7 (measure of compensation in case of severance) or 10 (further provision as to compensation for injurious affection) of the 1965 Act; and

(b) is to be assessed in the same manner and subject to the same rules as in the case of other compensation under those sections where—

(i) the compensation is to be estimated in connection with a purchase under that Act; or

(ii) the injury arises from the execution of works on or use of land acquired under that Act.

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

(a) is liable to pay compensation by virtue of paragraph (4); and

(b) fails to discharge that liability,

the liability is enforceable against the undertaker.

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

Modification of Part 1 of the Compulsory Purchase Act 1965

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

(2) In section 4A(1) (extension of time limit during challenge) for "section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 4" substitute "section 118 (legal challenges relating to applications for orders granting development consent) of the 2008 Act, the five year period mentioned in article 22 (time limit for exercise of authority to acquire land compulsorily) of the Frodsham Solar Farm Order 202*.".

(3) In section 11A (powers of entry: further notice of entry)—

(a) in subsection (1)(a), after "land" insert "under that provision"; and

(b) in subsection (2), after "land" insert "under that provision".

(4) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for "section 4 of this Act" substitute "article 22 (time limit for exercise of authority to acquire land compulsorily) of the Frodsham Solar Farm Order [20**]".

(5) In Schedule 2A (counter-notice requiring purchase of land not in notice to treat)—

(a) for paragraphs 1(2) and 14(2) substitute—

"(2) But see article 26(3) (acquisition of subsoil or airspace only) of the Frodsham 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 18 (protective works to buildings), article 30 (temporary use of land for constructing the authorised development) or article 31 (temporary use of land for maintaining the authorised development) of the Frodsham Solar Farm Order 202*.".

Rights under or over streets

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

development and may use the subsoil or airspace for those purposes or any other purpose ancillary to the authorised development.

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

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

(a) any subway or underground building; or

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

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

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

Temporary use of land for constructing the authorised development

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

(a) enter on and take temporary possession of any of the land within the Order limits in respect of which no notice of entry has been served under section 11 of the 1965 Act (powers of entry) and no declaration has been made under section 4 of the 1981 Act (execution of declaration);

(b) remove any buildings, 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 must not, remain in possession of any land under this article for longer than reasonably necessary, and in any event must not, without the agreement of the owners of the land, remain in possession of any land under this article after the end of the period of one year beginning with the date of final commissioning of the part of the authorised development for which temporary possession of the land was taken unless the undertaker has, before the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act in relation to that land.

(5) Unless the undertaker has served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act or otherwise acquired the land or rights over land subject to temporary possession, the undertaker must before giving up possession of land of which

temporary possession has been taken under this article, remove all works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not required to—

(a) replace any building, structure, debris, drain or electric line removed under this article;

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

(c) remove any new road surface or other improvements carried out under this article to any street specified in Schedule 3 (streets subject to street works); or

(d) remove any fencing or boundary treatment installed by the undertaker under this article to replace or enhance fencing or boundary treatments; or

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

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

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, must be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(8) Nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (6).

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

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

(a) creating and acquiring new rights or imposing restrictions over any part of the Order land identified in Schedule 7 (land in which only new rights etc. may be acquired); or

(b) acquiring any part of the subsoil of (or rights in the subsoil of) that land under article 26 (acquisition of subsoil or airspace only) or any part of the subsoil of or airspace over that land under article 29 (rights under or over streets).

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

Temporary use of land for maintaining the authorised development

31.—(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 limits if such possession is reasonably required for the purpose of maintaining the authorised development;

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

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

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

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

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

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

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

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

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

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, must be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(8) Nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the maintenance of the authorised development, other than loss or damage for which compensation is payable under paragraph (6).

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

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

(11) In this article "the maintenance period" means the period of five years beginning with the date of final commissioning of the part of the authorised development for which temporary possession is required under this article except in relation to landscaping or ecological works where "the maintenance period" means such period as set out in the landscape and ecology management plan which is approved by the relevant planning authority pursuant to requirement 9 (landscape and ecology management plan) beginning with the date on which that part of the landscaping is completed.

Statutory undertakers

32. Subject to the provisions of Schedule 13 to Schedule 26 (protective provisions) the undertaker may—

(a) acquire compulsorily, or acquire new rights or impose restrictive covenants over, the land belonging to statutory undertakers shown on the land and crown land plans within the Order land; and

(b) extinguish the rights of, remove, relocate the rights of or reposition the apparatus belonging to statutory undertakers over or within the Order land.

Apparatus and rights of statutory undertakers in streets

33. Where a street is altered or diverted or its use is temporarily prohibited or restricted under article 9 (street works), article 10 (power to alter layout, etc. of streets), article 11 (construction and maintenance of altered streets) or article 12 (temporary prohibition or restriction of use of streets and public rights of way, and authorising vehicular use on public rights of way) any statutory undertaker whose apparatus is under, in, on, along or across the street has the same powers and rights in respect of that apparatus, subject to Schedule 13 – Schedule 26 (protective provisions), as if this Order had not been made.

Recovery of costs of new connections

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

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

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

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

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

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

(4) In this article—

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

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

PART 6

MISCELLANEOUS AND GENERAL

Benefit of the Order

35. Subject to article 36 (consent to transfer the benefit of the Order), the provisions of this Order have effect solely for the benefit of the undertaker save for Work No. 4A(iii) in relation to which the provisions of this Order have effect for the benefit of the undertaker and SP Manweb.

Consent to transfer the benefit of the Order

36.—(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 and such related statutory rights as may be agreed between the undertaker and the transferee; and

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

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

(3) The consent of the Secretary of State is required for the exercise of the powers of paragraph (1) except where—

(a) the transferee or lessee is the holder of a licence under section 6 (licences authorising supply etc.) of the 1989 Act;

(a) 2003 c. 21.

(b) the transferee or lessee is the beneficiary of the protective provisions in Schedules 13 to 26 (protective provisions) where the transfer or lease of the provisions of this Order relates to the undertaking of works that are required as a result of the operation of the protective provisions in Schedules 13 to 26 for that transferee or lessee;

(c) the transferee or lessee is an entity (whether that entity is a group company of the undertaker or any other entity) that is responsible for the on-going management of any part of Work No. 6, the identity of which has been agreed by the local planning authority in consultation with Natural England, following approvals given under requirement 9 (landscape and ecology management plan); or

(d) 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 and the relevant planning authority in writing before transferring or granting a benefit referred to in paragraph (1).

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

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

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

(c) the powers to be transferred or granted;

(d) pursuant to paragraph (8), the restrictions, liabilities and obligations that will apply to the person exercising the powers transferred or granted;

(e) where relevant, a plan showing the works or areas to which the transfer or grant relates; and

(f) a copy of the document effecting the transfer or grant.

(6) The date specified under paragraph (5)(b) must not be earlier than the expiry of fourteen (14) working days from the date of the receipt of the notification.

(7) The notification given must be signed by the undertaker and the person to whom the benefit of the powers will be transferred or granted as specified in that notification.

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

(a) the benefit transferred or granted ("the transferred benefit") must include any rights that are conferred, and any obligations that are imposed, by virtue of the provisions to which the benefit relates;

(b) the transferred benefit will reside exclusively with the transferee or, as the case may be, the lessee and the transferred benefit will not be enforceable against the undertaker; and

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

Application of landlord and tenant law

37.—(1) This article applies to—

(a) any agreement for leasing to any person the whole or any part of the authorised development or the right to operate the same; and

(b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised development, or any part of it,

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

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

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

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

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

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

Planning permission, etc.

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

(a) not itself a development for which development consent is required under the 2008 Act or part of such a development; or

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

then the construction, maintenance, use or operation of that development under the terms of the planning permission does not constitute a breach of the terms of this order.

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

(3) To the extent that any development carried out or used—

(a) pursuant to a planning permission granted under section 57 (requirement of planning permission) or section 73 (determination of applications to develop land without compliance with conditions previously attached) of the 1990 Act, including if changed by a determination by the local planning authority under section 96A (power to make non-material changes to planning permission or permission in principles) of the 1990 Act, or compliance with any conditions of that permission; or

(b) pursuant to any development consent order granted under section 114 (grant or refusal of development consent) of the 2008 Act, including any corrections or amendments to that development consent order made under section 119 (correction of errors in development consent decisions) or section 153 (changes to, and revocation of, orders granting development consent) of the 2008 act, or compliance with the terms of that development consent order,

is inconsistent with the exercise of any power, right or obligation under this order or the authorised development—

(c) that inconsistency is to be disregarded for the purposes of establishing whether any development which is the subject matter of that planning permission or development consent order is capable of physical implementation; and

(d) in respect of that inconsistency, no enforcement action under the 1990 Act or the 2008 Act may be taken, whether that inconsistency relates to land inside or outside the Order limits.

(4) Any development or any part of a development within the Order limits which is constructed or used under the authority of any permission falling under paragraphs (1) or (3) is deemed not to be a breach of, or inconsistent with, this Order and does not prevent the authorised development being carried out or used or any other power or right under this Order being exercised.

(5) In paragraph (3) "enforcement action" means any enforcing action under Part 7 (enforcement) of the 1990 Act or Part 8 of the 2008 Act, as relevant.

Felling or lopping of trees and removal of hedgerows

39.—(1) The undertaker may fell or lop 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 construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development;

(b) constituting a danger to persons using the authorised development; or

(c) obstructing or interfering with the passage of construction vehicles to the extent necessary for the purposes of construction or decommissioning of the authorised development.

(2) In carrying out any activity authorised by paragraph (1) the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

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

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

(5) Notwithstanding paragraph (4), the undertaker may, for the purposes of the authorised development or in connection with the authorised development, remove the hedgerows specified in Schedule 9 (hedgerows to be removed) and shown on the hedgerows plan.

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

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

Certification of plans and documents, etc.

40.—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of all documents and plans listed in the table at Schedule 10 (documents and plans to be certified) for certification that they are true copies of the documents referred to in this Order.

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

(a) S.I. 1997/1160.

No double recovery

41. Compensation is not payable in respect of the same matter both under this Order and under any enactment, any contract or any rule of law.

Arbitration

42.—(1) Any difference under any provision of this Order, unless otherwise provided for, is to be referred to and settled in arbitration in accordance with the rules set out in Schedule 11 (arbitration rules) of this Order, by a single arbitrator to be agreed upon by the parties, within 14 days of receipt of the notice of arbitration, or if the parties fail to agree within the time period stipulated, to be appointed on application of either party (after giving written notice to the other) by the Secretary of State.

(2) 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

43. Schedules 13 to 26 (protective provisions) have effect.

Crown rights

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

(a) belonging to His Majesty in right of the Crown and forming part of The Crown Estate without the consent in writing of the Crown Estate Commissioners;

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

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

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

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

Service of notices

45.—(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;

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

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

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

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

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

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

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

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

Procedure in relation to certain approvals etc.

46.—(1) Where an application is made to or request is made of, a consenting authority for any consent, agreement or approval required or contemplated by any of the provisions of the Order (not including the requirements), such consent, agreement or approval to be validly given, must be given in writing.

(2) Where paragraph (1) applies to any consent, agreement or approval, such consent, agreement or approval must not be unreasonably withheld or delayed.

(a) 1978 c. 30.

(3) Schedule 12 (procedure for the discharge of requirements) has effect in relation to all consents, agreements or approvals required, granted, refused or withheld in relation to the requirements.

(4) Save for applications made pursuant to Schedule 12 and where stated to the contrary if, within eight 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 undertaker of its disapproval and the grounds of disapproval, it is deemed to have approved the application or request.

(5) 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 (4).

(6) Schedule 12 does not apply in respect of any consents, agreements or approvals contemplated by the provisions of Schedule 13 to 26 (protective provisions) or any dispute under article 18(6) (protective work to buildings) to which sub-paragraph (4) applies.

(7) In this article "consenting authority" means the relevant planning authority, highway authority, traffic authority, street authority, the owner of a watercourse, sewer or drain or the beneficiary of any of the protective provisions contained in Schedule 13 to 26.

Guarantees in respect of payment of compensation

47.—(1) The undertaker must not exercise the powers conferred by the provisions referred to in paragraph (2) in relation to any part of the Order limits 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) in respect of the exercise of the relevant provision in relation to that part of the Order limit; 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) in respect of the exercise of the relevant provision in relation to that part of the Order limit.

(2) The provisions are—

(a) article 21 (compulsory acquisition of land);

(b) article 23 (compulsory acquisition of rights);

(c) article 24 (private rights);

(d) article 29 (rights under or over streets);

(e) article 30 (temporary use of land for constructing the authorised development);

(f) article 31 (temporary use of land for maintaining the authorised development); and

(g) article 32 (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.

Compulsory acquisition of land – incorporation of the mineral code

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

(a) 1981 c. 67.

(a) for “the acquiring authority” substitute “the undertaker”;

(b) for the “undertaking” substitute “authorised development”; and

(c) paragraph 8(3) is not incorporated.

Signatory text

Name
Address Parliamentary Under Secretary of State
Date Department

SCHEDULE 1

Article 4

AUTHORISED DEVELOPMENT

1. In this Schedule—

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

"mounting structure" means a frame or rack made of galvanised steel, anodised aluminium or other material designed to support the solar modules and will provide for a fixed south facing orientation and mounted on piles driven into the ground or pillars fixed to a concrete foundation;

"PV module" means a solar photovoltaic panel or module designed to convert solar irradiance to electrical energy;

"substation" means a substation containing electrical equipment required to switch, transform, convert electricity and provide reactive power compensation;

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

"transformer" means a structure serving to transform electricity to a higher voltage which will either be a string transformer or a central container transformer.

2. In the administrative borough of Cheshire West and Chester Council 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 the following works—

Work No. 1— a ground mounted solar photovoltaic generating station with a gross electrical output capacity of over 50 megawatts including—

(a) solar PV modules fitted to mounting structures and associated foundations;

(b) inverters;

(c) transformers;

(d) switchgear; and

(e) electrical and communication cables.

And the associated development within the meaning of section 115(2) of the 2008 Act includes—

Work No. 2— a battery energy storage system compound comprising—

(a) **Work No. 2A—** BESS A: works in connection with a battery energy storage system including—

(i) battery storage units (BSU);

(ii) transformer / power conversion system (PCS) units and ancillary equipment;

(iii) switchgear and control room;

(iv) reinforced concrete foundation slab;

(v) concrete piling;

(vi) car parking and access roads;

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

(viii) drainage infrastructure including bunds and firewater storage and suppression systems.

(b) **Work No. 2B—** BESS B: works in connection with a battery energy storage system including—

(i) battery storage units (BSU);

(ii) transformer / power conversion system (PCS) units and ancillary equipment;

(iii) switchgear and control room;

(iv) reinforced concrete foundation slab;

(v) concrete piling;

(vi) car parking and access roads;

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

(viii) drainage infrastructure including bunds and firewater storage and suppression systems.

Work No. 3— works in connection with an onsite substation and associated works including—

(a) Work No. 3A—Substation A: an onsite substation compound including—

(i) substation;

(ii) switch room buildings;

(iii) electrical control equipment;

(iv) control building;

(v) storage areas;

(vi) welfare facilities;

(vii) offices;

(viii) workshop;

(ix) store;

(x) car parking and access roads;

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

(xii) drainage infrastructure including bunds.

(b) **Work No. 3B—** Substation B: an onsite substation compound including—

(i) substation;

(ii) switch room buildings;

(iii) electrical control equipment;

(iv) control building;

(v) storage areas;

(vi) welfare facilities;

(vii) offices;

(viii) workshop;

(ix) store;

(x) car parking and access roads;

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

(xii) drainage infrastructure including bunds.

Work No. 4— connection works from Work No.3 comprising—

(a) **Work No. 4A—** works to create an electrical connection from Work No. 3 to Frodsham SPEN Substation including—

(i) above ground and below ground 132kV electrical and communication cables connecting Work No. 3 to the Frodsham SPEN Substation;

(ii) pylons; and

(iii) works to the Frodsham SPEN Substation to facilitate connection of the authorised development to the Frodsham SPEN Substation; and

(b) **Work No. 4B—** works to lay underground 132kV electrical and communication cables from Frodsham Solar Substation (Work No.3) to nearby businesses.

Work No. 5— works to lay electrical cables and communication cables including—

(a) electrical and communication cables connecting Work No. 1 to Work No.3;

(b) electrical and communication cables connecting Work No. 2 to Work No.3; and

(c) electrical and communication cables connecting Work No. 1 to Work No.2.

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

(a) **Work No. 6A—** green infrastructure works including—

(i) native species hedgerows, individual trees and grassland;

(ii) open water habitats and reedbeds;

(iii) improvements to existing public rights of way;

(iv) skylark habitat;

(v) permissive paths;

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

(vii) laying down of internal access tracks;

(viii) improvement, maintenance repair and use of existing streets and private tracks;

(ix) car park;

(x) signage and information boards;

(xi) bird hides and screens;

(xii) benches;

(xiii) viewing areas; and

(xiv) bike stands.

(b) **Work No. 6B—** works to create and maintain skylark habitat; and

(c) **Work No. 6C—** works to create and maintain a Non-Breeding Bird Mitigation Area including—

(i) earthworks including bunds, embankments, ground reprofiling, infilling of voids;

(ii) scrapes and waterbodies;

(iii) water level management systems including sluices, pipework, pumps and associated control equipment;

(iv) use of geotextiles or clay liners water retention; and

(v) installation of predator control fencing.

Work No. 7— construction, maintenance and decommissioning compounds including—

(a) areas of hardstanding;

(b) car park;

(c) site and welfare offices, canteens and workshops;

(d) area to store materials and equipment;

(e) storage and waste skips;

(f) area for download and turning;

(g) security infrastructure, including camera, perimeter fencing and lighting;

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

(i) electricity, water, waste water and telecommunications connections.

Work No. 8— access and highway improvements and use, comprising works to create, improve, repair or maintain streets, roads, haul roads and access points.

Ancillary Works

In connection with and in addition to Work Nos. 1 to 8, further ancillary or related development comprising such other works or operations for the purposes of or in connection with the construction, operation, maintenance and decommissioning of the authorised development but only insofar as they are unlikely to give rise to any materially new or materially different environmental effects to those identified in the environmental statement, including—

(a) laying down of internal access tracks;

(b) temporary footpath diversions;

(c) ramps, means of access, carparks;

(d) crossings of watercourses and roads;

(e) improvement, maintenance, repair and use of existing streets, private tracks, public rights of way and access roads;

(f) sustainable drainage systems including runoff outfalls, attenuation areas, general drainage and irrigation infrastructure, systems and improvements or extensions to existing drainage and irrigation systems;

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

(h) construction and decommissioning compounds, including site and welfare offices and areas to store materials and equipment;

(i) joint bays, link boxes, cable ducts, cable protection, joint protection, manholes, marker posts, underground cable markers, tiles and tape, communications chambers, fibre optic cables and other works associated with cable laying;

(j) foundations for structures, buildings, plant and machinery;

(k) works to alter the course of, or otherwise interfere with, non-navigable rivers, streams or watercourses;

(l) 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; and

(m) earthworks, 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;

and further ancillary or related development comprising such other works or operations as may be necessary or expedient for the purposes of or in connection with the construction, operation, maintenance and decommissioning of the authorised development but only within the Order limits and insofar as they are unlikely to give rise to any materially new or materially different environmental effects to those identified in the environmental statement.

SCHEDULE 2

Article 4

REQUIREMENTS

Interpretation

1. In this Schedule—

"ground conditions investigations and assessments strategy" means a strategy setting out the undertaker's proposals for investigating, assessing, monitoring, and where necessary, remediating ground conditions, contamination and ground stability matters as they pertain to the phase of the authorised development to which the strategy relates, including in respect of—

(a) unexploded ordnance assessment;

(b) ground investigations;

(c) remediation strategies and verification reports;

(d) materials management;

(e) piling risk assessment;

(f) approach to be taken for dealing with ground conditions in respect of Work No. 6C;

(g) earthworks specifications;

(h) peat investigations; and

(i) soil sampling and investigations.

"required decommissioning timing provisions" means the provisions set out in section 2.5 of the outline operational environmental management plan; and

"decommissioning timing provisions" means the provisions relating to the timing for decommissioning works to take place as included in the operational environmental management plan approved under requirement 13 (operational environmental management plan).

Commencement of the authorised development

2. The authorised development must not begin after the expiration of five years from the date this Order comes into force.

Phasing of the authorised development and date of final commissioning

3.—(1) No phase 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 pursuant to sub-paragraph (1) must include a timetable for the construction of the phase or phases of the authorised development and a plan identifying the phasing areas.

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

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

Requirement for written approval

4. Where under any of the requirements the approval, agreement or confirmation of the relevant planning authority or another person is required, that approval, agreement or confirmation must be provided in writing.

Approved details and amendments to them

5.—(1) Subject to sub-paragraph (3) with respect to the documents certified under article 40 (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 for approval any amendments to any of the Approved Documents, Plans, Details or Schemes and, following approval by the relevant planning authority, the relevant Approved Documents, Plans, Details or Schemes is to be taken to include the amendments as so approved pursuant to this paragraph.

(2) Approval under sub-paragraph (1) for the amendments to any of the Approved Documents, Plans, Details or Schemes must not be given except where it has been demonstrated to the satisfaction of the relevant planning authority that the subject matter of the approval sought is unlikely to give rise to any materially new or materially different environmental effects to those identified in the environmental statement.

(3) Sub-paragraph (1) does not apply to the book of reference and the land and crown land plans.

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; and

(h) the anti-reflective coating to be used on the solar modules in Work No. 1,

relating to that phase have been submitted and approved in writing by the relevant planning authority and, in relation to the anti-reflective coating to be used on the solar modules in Work No. 1 only, Natural England.

(2) The authorised development must be designed and constructed in accordance with the design parameters statement.

(3) The authorised development must be designed and constructed in accordance with the design principles and the details submitted under sub-paragraph (1) must include a statement to confirm how the design principles have been complied with in the details that have been submitted.

(4) Any part of the authorised development may be designed and constructed to deviate from the design parameters set out in the design parameters statement if the undertaker has first sought and obtained approval for such deviations from the relevant planning authority (who must be satisfied that the deviations will not lead to materially new or materially different environmental effects to those identified in the environmental statement) prior to the commencement of that part of the authorised development.

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

Battery safety management

7.—(1) Work No. 2 must not commence until a battery safety management plan has been submitted to and approved by the relevant planning authority, such approval to be in consultation

with Cheshire Fire and Rescue Service, Cheshire West and Chester Council's Emergency Planning Team, National Highways and the Environment Agency.

(2) The battery safety management plan submitted under sub-paragraph (1) must—

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

(b) be accompanied by an emergency response plan; and

(c) be substantially in accordance with the outline battery safety management plan.

(3) The battery safety management plan must be implemented as approved and maintained throughout the construction, operation and decommissioning of the authorised development.

Permitted preliminary works

8. The permitted preliminary works must be carried out in accordance with the measures set out in appendix 2-3 of the environmental statement.

Landscape and ecology management plan

9.—(1) No phase of the authorised development may commence, and no part of the permitted preliminary works for that phase comprising vegetation removal may start, until a landscape and ecology management plan (which must be substantially in accordance with the outline landscape and ecology management plan) for that phase has been submitted to and approved by the relevant planning authority in consultation with Natural England and National Highways.

(2) The landscape and ecology management plan submitted under sub-paragraph (1) must include details of all proposed hard and soft landscaping works and ecological mitigation and enhancement measures (as applicable for the relevant numbered work) for that phase and where applicable include for that phase—

(a) the location, number, species, size and planting density of any proposed planting including details of any proposed tree and hedgerow planting and the proposed times of such planting;

(b) any hedgerows proposed for removal (and confirmation of hedgerows to be retained);

(c) cultivation, importing of materials and other operations to ensure plant establishment;

(d) existing trees to be retained and trees to be removed;

(e) an implementation timetable, including details of the phasing of delivery of landscaping measures;

(f) how the plan proposals will contribute to the achievement of a quantified uplift of a minimum of 20% in habitat units, 10% in watercourse units and 75% in hedgerow units for the authorised development as a whole during the operation of the authorised development, to be quantified using the statutory biodiversity metric calculation tool published by DEFRA;

(g) how the landscaping and ecological measures proposed in the plan will be managed, monitored and maintained during the operational life of the authorised development to the date on which the decommissioning environmental management plan is implemented pursuant to requirement 20 (decommissioning);

(h) the ecological surveys required to be carried out prior to commencement of a numbered work within that phase, or following completion of a numbered work within that phase, in order to monitor the effect of, or inform, the ecological mitigation, net gain in biodiversity measures and associated monitoring regime to be taken forward within that phase, following those initial surveys;

(i) the final routing, specification and maintenance regime for each permissive path;

(j) details of the establishment and management regime (including a programme) for Work No.6B; and

(k) details of the design, establishment, maintenance, management and monitoring regime (including a programme) for Work No. 6C (which must be substantially in accordance with the outline non-breeding bird mitigation strategy) which must include a New Zealand pygmyweed control and management strategy, which must be prepared following consultation by the undertaker with Natural England and the Royal Society for the Protection of Birds.

(3) Any hedgerow, shrub or tree planted as part of the approved plan that, within a period of five years after planting, is removed, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of a species and size agreed with the relevant planning authority.

(4) Each phase of the authorised development must be carried out in accordance with the landscape and ecology management plan approved under sub-paragraph (1) for that phase.

(5) The permission for the public to make use of any permissive path listed within the landscape and ecology management plan ceases on the date of decommissioning for that phase of the authorised development.

Fencing and other means of enclosure

10.—(1) No phase of the authorised development may commence, and no part of the permitted preliminary works for that phase comprising the provision of temporary means of enclosure may start, until written details of all proposed temporary fences, walls or other means of enclosure, including those set out in the construction environmental management plan, for that phase have been submitted to and approved by the relevant planning authority in consultation with the Environment Agency.

(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 in consultation with the Environment Agency.

(3) The details submitted under sub-paragraph (2) must be in accordance with the design parameters statement and the design principles.

(4) Any construction site must remain securely fenced in accordance with the approved details under sub-paragraph (1) at all times during the 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) Any permanent fencing, walls or other means of enclosure for that phase approved under sub-paragraph (2) must be completed prior to the date of final commissioning in respect of such phase.

(7) Any permanent fencing, walls or other means of enclosure must be carried out in accordance with the details approved under sub-paragraph (2) and properly maintained for the operational lifetime of the phase of the authorised development.

Surface and ground water management

11.—(1) No phase of the authorised development may commence until details of the surface water drainage strategy (which must be substantially in accordance with section 11 of the flood risk assessment and drainage strategy) for that phase has been submitted to and approved by the relevant planning authority such approval, to be in consultation with the lead local flood authority and the Environment Agency and, in respect of a phase that involves Work No. 4A only, the Canal and River Trust.

(2) The design and operation of any phase of the authorised development must be carried out and maintained in accordance with the outline drainage strategy approved under sub-paragraph (1) for that phase.

(3) No phase of the authorised development may commence until a construction ground water and surface water management plan (which must include measures in relation to ground and surface water monitoring during construction and one year after construction) for that phase has

been submitted to and approved by the relevant planning authority, such approval to be in consultation with the lead local flood authority, the Environment Agency, and in respect of Work No. 4A only, the Canal and River Trust.

(4) The construction of any phase of the authorised development must be carried out in accordance with the approved construction ground water and surface water management plan for that phase.

Construction environmental management plan

12.—(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, such approval to be in consultation with the Environment Agency, National Highways and—

(a) in respect of any construction environmental management plan which relates to Work No. 6C only, Natural England; and

(b) in respect of any construction environmental management plan which relates to Work No. 4A only, the Canal and River Trust.

(2) The construction environmental management plan submitted for approval under sub-paragraph (1) must be substantially in accordance with the outline construction environmental management plan to the extent that it is applicable to that phase and must be accompanied by, or include, the following, where applicable to that phase—

(a) an invasive non-native species management plan;

(b) an environmental incident management and pollution prevention plan;

(c) an unexpected contamination protocol;

(d) a flood warning and evacuation plan (which must be substantially in accordance with the outline flood warning and evacuation plan);

(e) an unexploded ordnance management plan;

(f) a construction noise management plan;

(g) fish rescue plan;

(h) a construction dust management plan;

(i) a construction waste management plan; and

(j) a stakeholder communication plan.

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

(4) For the purposes of this paragraph only—

(a) "commence" includes—

(i) any permitted preliminary works comprising above ground site preparation for temporary facilities for the use of contractors;

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

(iii) receipt and erection of construction plant and equipment to be utilised for Work No. 6C, or where such receipt and erection is to take place within 110 metres of the limits of deviation of Work No. 6C in the period November to February inclusive; and

(iv) remedial work in respect of any contamination or other adverse ground conditions where this relates to Work No. 6C.

(b) "phase" includes—

(i) any permitted preliminary works comprising above ground site preparation for temporary facilities for the use of contractors;

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

(iii) receipt and erection of construction plant and equipment to be utilised for Work No. 6C, or where such receipt and erection is to take place within 110 metres of the limits of deviation of Work No. 6C in the period November to February inclusive; and

(iv) remedial work in respect of any contamination or other adverse ground conditions where this relates to Work No. 6C within a phase.

Operational environmental management plan

13.—(1) Prior to the date of final commissioning for any phase of the authorised development, an operational environmental management plan (including, or accompanied by, the plans listed in sub-paragraph (2)) for that phase must be submitted to and approved by the relevant planning authority, such approval to be in consultation with the Environment Agency and National Highways.

(2) The operational environmental management plan submitted for approval under sub-paragraph (1) must include decommissioning timing provisions that are consistent with the required decommissioning timing provisions and be otherwise substantially in accordance with the outline operational environmental management plan to the extent that it is applicable to that phase and must be accompanied by, or include the following—

(a) an invasive non-native species management plan;

(b) a flood warning and evacuation plan (which must be substantially in accordance with the outline flood warning and evacuation plan);

(c) an environmental incident management and pollution prevention plan;

(d) an unexpected contamination protocol;

(e) measures in relation to environmental and traffic management to be undertaken during replacement activities; and

(f) waste management plan.

(3) The operation of any phase of the authorised development must be carried out and maintained in accordance with the approved operational environmental management plan for that phase.

Construction traffic management plan

14.—(1) No phase of the authorised development may commence until a construction traffic management plan (which must be substantially in accordance with the outline construction traffic management plan) for that phase has been submitted to and approved by the relevant planning authority, such approval to be in consultation with National Highways and the relevant highways authority and, in respect of any construction traffic management plan which relates to Work No. 4A only, the Canal and River Trust.

(2) Any construction traffic management plan submitted under sub-paragraph (1) must include a construction travel plan (which must be substantially in accordance with section 4.4 of the outline construction traffic management plan).

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

Public rights of way

15.—(1) No phase of the authorised development may commence until a public rights of way management plan (which must be substantially in accordance with the outline public rights of way management plan) for that phase has been submitted to and approved by the relevant planning authority, in consultation with the relevant highway authority and National Highways.

(2) The public rights of way management plan must be implemented as approved.

Soil management plan

16.—(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 for that phase in consultation with Natural England and the Environment Agency.

(2) The soil management plan must be substantially in accordance with the outline soil management plan and consistent with, and, where they are available, taking account of the results of, the ground conditions investigations and assessments strategy.

(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.

Ground conditions

17.—(1) No phase of the authorised development may commence, and no part of the permitted preliminary works for that phase comprising demolition or decommissioning of existing structures, intrusive environmental surveys, geotechnical surveys and other investigations for the purpose of assessing ground conditions, diversion and laying of apparatus, and remedial work in respect of any contamination or other adverse ground conditions, may start until a ground conditions investigations and assessments strategy for that phase has been submitted to and approved by the relevant planning authority, such approval to be in consultation with the Environment Agency and, in respect of Work No. 4A only, the Canal and River Trust.

(2) The carrying out of any phase of the authorised development must be undertaken in accordance with the ground conditions investigations and assessments strategy approved pursuant to sub-paragraph (1) for that phase.

Archaeological mitigation strategy

18.—(1) No phase of the authorised development may commence until an archaeological mitigation strategy, including any required written scheme of archaeological investigation (or multiple written schemes of archaeological investigation) which must be in substantial accordance with the outline written scheme of archaeological investigation, for that phase has been submitted to and approved by the relevant planning authority, in consultation with Cheshire Archaeology Planning Advisory Service and Historic England.

(2) Any archaeological mitigation strategy submitted under sub-paragraph (1), to the extent that it is applicable to that phase of the authorised development, must include details of the measures set out in section 11.9 of chapter 11 of the environmental statement.

(3) The authorised development must be implemented in accordance with the archaeological mitigation strategy approved pursuant to paragraph (1).

(4) For the purposes of this paragraph only—

(a) "commence" includes archaeological surveys and investigations, geotechnical surveys and other investigations for the purposes of assessing ground condition, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of apparatus and demolition of existing buildings and structures; and

(b) "phase" includes any permitted preliminary works comprising archaeological surveys and investigations, geotechnical surveys and other investigations for the purposes of assessing ground condition, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of apparatus and demolition of existing buildings and structures.

Skills, supply chain and employment

19.—(1) No phase of the authorised development may commence until a skills, supply chain and employment plan for construction (which must be substantially in accordance with the outline skills, supply chain and employment plan) in relation to that phase has been submitted to and approved by the relevant planning authority for that phase.

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

(3) Prior to the date of final commissioning of any phase of the authorised development, a skills, supply chain and employment plan for operation (which must be substantially in accordance with the outline skills, supply chain and employment plan) in relation to that phase has been submitted to and approved by the relevant planning authority for that phase.

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

(5) Any skills, supply chain and employment plan approved under sub-paragraph (1) or sub-paragraph (3) must be implemented as approved.

Decommissioning

20.—(1) Decommissioning works must commence no later than the earlier of—

(a) in respect of all of the authorised development, 40 years following the date of the final commissioning of Work No. 1 that is the subject of the last notice given by the undertaker pursuant to requirement 3(4) (phasing of the authorised development and date of final commissioning); or

(b) in respect of any phase of the authorised development, prior to the end of the timeframes set out in the decommissioning timing provisions where those provisions are engaged in respect of that phase.

(2) Prior to the commencement of any part of any decommissioning works the undertaker must submit to the relevant planning authority for approval, in consultation with the Environment Agency, National Highways and the relevant highway authority, a decommissioning environmental management plan (including, or accompanied by, the plans listed in sub-paragraph (3) for that part).

(3) The plan submitted and approved under sub-paragraph (2) must be substantially in accordance with the relevant part of the outline decommissioning environmental management plan, include a programme for the decommissioning works that are the subject of the plan and must be accompanied by, or include the following, where applicable to that phase—

(a) measures to manage impacts to public rights of way;

(b) a decommissioning traffic management plan;

(c) a decommissioning groundwater and surface water management plan;

(d) an invasive non-native species management plan;

(e) an environmental incident management and pollution prevention plan;

(f) an unexpected contamination protocol;

(g) a flood warning and evacuation plan;

(h) a skills, supply chain and employment plan for the decommissioning works;

(i) a decommissioning noise management plan;

(j) a decommissioning dust management plan; and

(k) a decommissioning waste management plan.

(4) The plan submitted to and approved pursuant to sub-paragraph (2) must be implemented as approved for the decommissioning works to which it relates.

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

SCHEDULE 3

Article 9

STREETS SUBJECT TO STREET WORKS

Interpretation

1. In this Schedule—

"cable works" means works to place, retain and maintain underground apparatus.

(1) *Area*	*(2)* *Street*	*(3)* *Description of the street works*
Cheshire West and Chester Council	Public Right of Way – Frodsham RB106 and National Cycling Network Route 5	Cable works beneath the width of the highway for the length shown shaded in hatched light blue between point SW1-1 and point SW1-2 on sheet 2 of the street works, public rights of way, vehicular usage and access plans
Cheshire West and Chester Council	Unnamed track	Cable works beneath the width of the highway for the length shown shaded in hatched light blue between point SW2-1 and point SW2-2 on sheet 2 of the street works, public rights of way, vehicular usage and access plans
Cheshire West and Chester Council	Public Right of Way – Frodsham RB103	Cable works beneath the width of the highway for the length shown shaded in hatched light blue between point SW3-1 and point SW3-2 on sheet 2 of the street works, public rights of way, vehicular usage and access plans
Cheshire West and Chester Council	Public Right of Way - Frodsham RB98	Cable works beneath the width of the highway for the length shown shaded in hatched light blue between point SW4-1 on sheet 2 and point SW4-2 on sheet 3 of the street works, public rights of way, vehicular usage and access plans
Cheshire West and Chester Council	Unnamed track	Cable works beneath the width of the highway for the length shown shaded in hatched light blue between point SW5-1 and point SW5-2 on sheet 3 of the street works, public rights of way, vehicular usage and access plans
Cheshire West and Chester Council	Alder Lane – Public Right of Way Frodsham RB108	Cable works beneath the width of the highway for the length shown shaded in hatched light

		blue with reference SW6 on sheets 3 and 4 of the street works, public rights of way, vehicular usage and access plans
Cheshire West and Chester Council	Alder Lane – Public Right of Way Frodsham RB108	Cable works beneath the width of the highway for the length shown in hatched light blue with reference SW7 on sheets 3 and 4 of the street works, public rights of way, vehicular usage and access plans
Cheshire West and Chester Council	Alder Lane – Public Right of Way Frodsham RB108	Cable works beneath the width of the highway for the length shown shaded in hatched light blue between point SW8-1 and point SW8-2 on sheets 3 and 4 of the street works, public rights of way, vehicular usage and access plans
Cheshire West and Chester Council	Public Right of Way Frodsham FP81	Cable works beneath the width of the highway for the length shown in hatched light blue with reference SW9 on sheets 4 and 5 of the street works, public rights of way, vehicular usage and access plans

SCHEDULE 4

Articles 10 and 11

PERMANENT ALTERATION OF STREETS

(1) *Area*	*(2)* *Street*	*(3)* *Description of alteration*
Cheshire West and Chester Council	Alder Lane – Public Right of Way Frodsham RB108	Works for the provision of a permanent means of access shown shaded orange with reference AS-1 on sheets 3 and 4 of the street works, public rights of way, vehicular usage and access plans
Cheshire West and Chester Council	Alder Lane – Public Right of Way Frodsham RB108 and Public Right of Way Frodsham FP91	Works for the provision of a permanent means of access shown shaded orange with reference AS-2 on sheets 3 and 4 of the street works, public rights of way, vehicular usage and access plans
Cheshire West and Chester Council	Public Right of Way Frodsham FP81	Works for the provision of a permanent means of access shown shaded orange with reference AS-3 on sheets 4 and 5 of the street works, public rights of way, vehicular usage and access plans

SCHEDULE 5

Article 12

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

PART 1

STREETS AND PUBLIC RIGHTS OF WAY SUBJECT TO TEMPORARY CLOSURE

(1) *Area*	*(2)* *Public right of way*	*(3)* *Measure*
Cheshire West and Chester Council	Public Right of Way - Frodsham RB103 north from Lordship Lane (RB40) Shown as purple line from a start point shown as reference C1 on sheet 2 of the street works, public rights of way, vehicular usage and access plans for a distance of 250 m in a generally northerly direction to the point shown as reference D1 on sheet 2 of the street works, public rights of way, vehicular usage and access plans.	Closed to all traffic save for traffic under the direction of the undertaker
Cheshire West and Chester Council	Public Right of Way - Frodsham RB98 Shown as purple line from a start point shown as reference D1 on sheet 2 of the street works, public rights of way, vehicular usage and access plans for a distance of 1120 m in a generally north-easterly direction to the point shown as reference D2 on sheets 2 and 3 of the street works, public rights of way, vehicular usage and access plans	Closed to all traffic save for traffic under the direction of the undertaker
Cheshire West and Chester Council	Public Right of Way - Frodsham RB98 Shown as purple line from a start point shown as reference E1 on sheets 3 and 4 of the street works, public rights of way, vehicular usage and access plans for a distance of 890 m in a generally westerly direction to the point shown as	Closed to all traffic save for traffic under the direction of the undertaker

	reference E2 on sheets 2 and 3 of the street works, public rights of way, vehicular usage and access plans	
Cheshire West and Chester Council	Public Right of Way – Frodsham FP93 Shown as purple line from a start point shown as reference K on sheet 5 of the street works, public rights of way, vehicular usage and access plans for a distance of 350 m in a generally south-easterly direction to the point shown as reference L on sheet 5 of the street works, public rights of way, vehicular usage and access plans	Closed to all traffic save for traffic under the direction of the undertaker
Cheshire West and Chester Council	Public Right of Way – Frodsham RB99 Shown as purple line from a start point shown as reference I on sheets 3 and 4 of the street works, public rights of way, vehicular usage and access plans for a distance of 410 m in a generally south-easterly direction to the point shown as reference O on sheets 3 and 4 of the street works, public rights of way, vehicular usage and access plans	Closed to all traffic save for traffic under the direction of the undertaker

PART 2

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

(1) *Area*	*(2)* *Street or public right of way subject to temporary prohibition or restriction of use*	*(3)* *Extent of temporary alteration, prohibition, diversion or restriction of use of street or public right of way*
Cheshire West and Chester Council	Public Right of Way – Ellesmere Port and Neston RB40 / Frodsham RB106 and National Cycle Network Route 5	Public right of way to be temporarily altered, restricted, diverted or use prohibited (but with cyclists able to use the right of way at all times) shown shaded hatched pink between the point marked A on sheet 1 and the point marked B on sheet 2 of the street works, public rights of way, vehicular usage and access plans

Cheshire West and Chester Council	Public Right of Way – Frodsham RB102 (Alder Lane)	Public right of way to be temporarily altered, restricted, diverted or use prohibited shown shaded hatched pink between the points marked F and G on sheets 3 and 4 of the street works, public rights of way, vehicular usage and access plans
Cheshire West and Chester Council	Public Right of Way – Frodsham RB108 (Brook Furlong) and Frodsham RB99 (Brook Furlong)	Public right of way to be temporarily altered, restricted, diverted or use prohibited shown shaded hatched pink between the points marked H and I on sheets 3 and 4 of the street works, public rights of way, vehicular usage and access plans
Cheshire West and Chester Council	Public Right of Way – Frodsham FP81	Public right of way to be temporarily altered, restricted, diverted or use prohibited at the proposed managed crossing point shown in bright green and marked as point J on sheets 4 and 5 of the street works, public rights of way, vehicular usage and access plans

PART 3

TEMPORARY USE OF MOTOR VEHICLES ON PUBLIC RIGHTS OF WAY

(1) *Area*	*(2)* *Public right of way*	*(3)* *Measures*
Cheshire West and Chester Council	Public Right of Way – Frodsham RB99 (Brook Furlong)	Motor vehicles authorised by the undertaker may pass along, or cross, the length of the public right of way shown shaded dark green between the points marked TMV-1 and TMV-2 on sheets 3 and 4 of the street works, public rights of way, vehicular usage and access plans
Cheshire West and Chester Council	Public Right of Way – Frodsham FP81 (Weaver Lane)	Motor vehicles authorised by the undertaker may pass along, or cross, the length of the public right of way shown shaded dark green between the points marked TMV-3 and TMV-4 on sheets 4 and 5 of the street works, public rights of way, vehicular usage and access plans

Cheshire West and Chester Council	Public Right of Way – Frodsham FP93	Motor vehicles authorised by the undertaker may pass along, or cross, the length of the public right of way shown shaded dark green between the points marked TMV-5 and TMV-6 on sheet 5 of the street works, public rights of way, vehicular usage and access plans
Cheshire West and Chester Council	Public Right of Way – Frodsham RB98	Motor vehicles authorised by the undertaker may pass along, or cross, the length of public right of way shown shaded dark green between the points marked TMV-2 and TMV-7 on sheets 3 and 4 of the street works, public rights of way, vehicular usage and access plans

SCHEDULE 6

Article 14

ACCESS TO WORKS

(1) *Area*	*(2)* *Street*	*(3)* *Description of means of access*
Cheshire West and Chester Council	Alder Lane – Public Right of Way Frodsham RB108	Provision of a permanent means of access to the authorised development between points marked A3-1 and A3-2 on sheets 3 and 4 of the street works, public rights of way, vehicular usage and access plans
Cheshire West and Chester Council	Alder Lane – Public Right of Way Frodsham RB108	Provision of a permanent means of access to the authorised development between points A5-1 and A5-2 on sheets 3 and 4 of the street works, public rights of way, vehicular usage and access plans
Cheshire West and Chester Council	Alder Lane – Public Right of Way Frodsham RB108	Provision of a permanent means of access to the authorised development between points A6-1 and A6-2 on sheets 3 and 4 of the street works, public rights of way, vehicular usage and access plans
Cheshire West and Chester Council	Alder Lane – Public Right of Way Frodsham RB108	Provision of a permanent means of access to the authorised development between points marked A7-1 and A7-2 on sheets 3 and 4 of the street works, public rights of way, vehicular usage and access plans
Cheshire West and Chester Council	Alder Lane – Public Right of Way Frodsham RB108 and Public Right of Way Frodsham FP91	Provision of a permanent means of access to the authorised development between points A8-1 and A8-2 on sheets 3 and 4 of the street works, public rights of way, vehicular usage and access plans
Cheshire West and Chester Council	Alder Lane – Public Right of Way Frodsham RB108 and Public Right of Way Frodsham FP91	Provision of a permanent means of access to the authorised development between points marked between points A9-1 and A9-2 on sheets 3 and 4 of the street works, public rights of way, vehicular usage and access

		plans
Cheshire West and Chester Council	Public Right of Way Frodsham FP81	Provision of a permanent means of access to the authorised development between points A10-1 and A10-2 on sheet 4 of the street works, public rights of way, vehicular usage and access plans
Cheshire West and Chester Council	Public Right of Way Frodsham FP81	Provision of a permanent means of access to the authorised development between points marked between points A11-1 and A11-2 on sheet 4 of the street works, public rights of way, vehicular usage and access plans

SCHEDULE 7

Article 23

LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED

Interpretation

1. In this Schedule—

"private wire connection cable rights" means rights over land to, for the purposes of the authorised development and in connection with the authorised development to:

(a) Install, use, support, protect, inspect, alter, remove, replace, retain, renew, improve and maintain underground electrical cable, earthing cable, optical fibre cable, data cable, telecommunications cable and other apparatus, works associated with such cable including bats, ducts, protection and safety measures and equipment, and other apparatus and structures;

(b) Remain, pass and repass on foot, with or without vehicles, plant and machinery (including rights to lay and use any temporary surface or form a temporary compound) for all purposes in connection with the authorised development; and

(c) Restrict and remove the erection of buildings or structures, restrict the altering of ground levels, restrict and remove the planting oof trees or carrying out operations or actions (including but not limited to blasting and piling) which may obstruct, interrupt or interfere with the exercise of the rights or damage the authorised development.

"SPEN connection cable rights" means rights over land to, for the purposes of the authorised development and in connection with the authorised development:

(a) install, use, support, protect, inspect, alter, remove, replace, retain, renew, improve and maintain underground and above ground electrical cables, earthing cable, optical fibre cable, data cable, telecommunications cable and other apparatus, pylons and works associated with such cables and pylons including bays, ducts, protection and safety measures and equipment, and other apparatus and structures;

(b) remain, pass and repass on foot, with or without vehicles, plant and machinery (including rights to lay and use any temporary surface or form a temporary compound) for all purposes in connection with the authorised development; and

(c) restrict and remove the erection of buildings or structures, restrict the altering of ground levels, restrict and remove the planting of trees or carrying out operations or actions (including but not limited to blasting and piling) which may obstruct, interrupt or interfere with the exercise of the rights or damage the authorised development.

"SPEN substation connection rights" means rights over land to, for the purposes of the authorised development and in connection with the authorised development:

(a) install, use, support, protect, inspect, alter, remove, replace, retain, renew, improve and maintain electrical cable, earthing cable, optical fibre cable, data cable, telecommunications cable and other services, works associated with such cable including bays, ducts, protection and safety measures and equipment, and other apparatus and structures and to connect such cable and services to the SPEN Frodsham substation;

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

(c) remain, pass and repass on foot, with or without vehicles, plant and machinery (including rights to lay and use any temporary surface or form a temporary compound) for all purposes in connection with Work No. 4A;

(d) restrict and remove the erection of buildings or structures, restrict the altering of ground levels, restrict and remove the planting of trees or carrying out operations or actions (including but not limited to blasting and piling) which may obstruct, interrupt or interfere with the exercise of the rights or damage the authorised development; and

(e) install, use, support, protect, inspect, alter, remove, replace, retain, renew, improve and maintain soft landscaping and biodiversity measures.

"access, use and improvement rights" means rights over land to, for the purposes of the authorised development and in connection with the authorised development—

(a) alter, improve, form, maintain, retain, use (with or without vehicles, plant and machinery) access roads, access tracks, and means of access to and within the authorised development including visibility splays and to remove and traverse impediments to such access;

(b) pass and repass on foot, with or without vehicles, plant and machinery (including rights to lay and use any temporary surface).

"access, use, improvement and creation rights" means rights over land to, for the purposes of the authorised development and in connection with the authorised development—

(a) alter, improve, form, maintain, retain, use (with or without vehicles, plant and machinery) access roads, access tracks, and means of access to and within the authorised development including visibility splays and to remove and traverse impediments to such access;

(b) remove, reinstate, modify and create means of access to the authorised development including visibility splays and to remove impediments to such access; and

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

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

(1) *Plot reference number shown on the Land and Crown Land Plans*	*(2)* *Purposes for which rights over land may be required and restrictive covenants imposed*
1-1, 1-2, 1-3	access use rights.
1-4, 1-5, 2-1, 2-2	access, use and improvement rights.
2-3	access, use and improvement rights and private wire connection cable rights.
2-4, 2-5, 2-6, 2-7	access, use and improvement rights.
2-8, 2-9	access, use and improvement rights and private wire connection cable rights.
2-10, 2-12, 2-14, 2-15, 2-17	access, use and improvement rights.
2-11, 2-13, 2-16, 2-20, 2-23, 2-24, 2-25, 2-26, 3-3	access, use and improvement rights and private wire connection cable rights.
3-2, 3-7, 3-15, 3-18, 3-19, 3-20, 3-22, 3-35, 3-38, 3-41, 3-44, 4-8	access, use, improvement and creation rights.
3-10	access, use, improvement and creation rights and private wire connection cable rights.
4-1	access, use and improvement rights and private wire connection cable rights.
4-3, 4-6, 4-9, 4-11, 4-12, 4-14	access, use and improvement rights.
5-2, 5-6	access, use, improvement and creation rights.
5-8b	access use rights.
5-3, 5-4, 5-15, 5-16	SPEN connection cable rights.
5-17, 5-18	SPEN connection cable rights and SPEN substation connection rights.
5-19, 5-20, 5-21, 5-22, 5-23	access use rights.

SCHEDULE 8

Article 23

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

Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land are to apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right or the imposition of a restrictive covenant as they apply as respects compensation on the compulsory purchase of land and interests in land.

2.—(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1973(a) has effect subject to the modifications set out in sub-paragraph (2).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 (measure of compensation in case of severance) of the 1965 Act as substituted by paragraph 5—

(a) for the words "land is acquired or taken from" substitute "a right or restrictive covenant over land is purchased from or imposed on"; and

(b) for the words "acquired or taken from him" substitute "over which the right is exercisable or the restrictive covenant enforceable".

3.—(1) Without limitation on the scope of paragraph 1, the 1961 Act has effect subject to the modifications set out in sub-paragraph (2).

(2) In section 5A(5A) (relevant valuation date) of the 1961 Act omit the words after "if-" and substitute—

"(5A) If—

(a) the acquiring authority enters on land for the purpose of exercising a right in pursuant of a notice of entry under section 11(1) of the 1965 Act (as modified by paragraph 5(5) of Schedule 8 to the Frodsham Solar Farm Order [20**];

(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 8 to the Frodsham Solar Farm Order [20**]) 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 21 (compulsory acquisition of land) and as modified by article 28 (modification of Part 1 of the Compulsory Purchase Act 1965), applies to the compulsory acquisition of a right by the creation of a new right under article 23 (compulsory acquisition of rights)—

(a) with the modifications specified in paragraph 5; and

(a) 1973 c. 26.

(b) with such other modifications as may be necessary.

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

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

(a) the right acquired or to be acquired, or the restriction imposed or to be imposed; or

(b) the land over which the right is or is to be exercisable, or the restriction is to be enforceable.

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

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

(4) The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

(a) section 9(4) (failure by owners to convey);

(b) paragraph 10(3) of Schedule 1 (owners under incapacity);

(c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and

(d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

are modified to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired or the restrictive covenant which is to be imposed is vested absolutely in the acquiring authority.

(5) Section 11(a) (powers of entry) 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 21 (compulsory acquisition of land), it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant (which is deemed for this purpose to have been created on the date of service of the notice); and sections 11A(b) (powers of entry: further notices of entry), 11B(c) (counter-notice requiring possession to be taken on specified date), 12(d) (penalty for unauthorised entry) and 13(e) (refusal to give possession to acquiring authority) of the 1965 Act are modified correspondingly.

(6) Section 20(f) (tenants at will, etc.) 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

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(**a**) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No.1), sections 186(2), 187(2) and 188 of, and paragraph 6 of Schedule 14 and paragraph 3 of Schedule 16 to, the Housing and Planning 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

interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right or enforcement of the restrictive covenant in question.

(7) Section 22 (interests omitted from purchase) of the 1965 Act as modified by article 28(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 to the 1965 Act (counter notice requiring purchase of land not in notice to treat substitute—

"SCHEDULE 2A

COUNTER-NOTICE REQUIRING PURCHASE OF LAND

1.—(1**)** This Schedule applies where an acquiring authority serves a notice to treat in respect of a right over, or restrictive covenant affecting, the whole or part of a house, building or factory and have not executed a general vesting declaration under section 4 of the 1981 Act as applied by article 25 (application of the 1981 Act) of the Frodsham Solar Farm Order [20**] in respect of the land to which the notice to treat relates.

(2) But see article 26(3) (acquisition of subsoil or airspace only) of the Frodsham Solar Farm Order [20**] 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 cause by the giving and withdrawal of the notice.

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

SCHEDULE 9

Article 39

HEDGEROWS TO BE REMOVED

(1) *Area*	*(2)* *Number of hedgerow and extent of removal*
Cheshire West and Chester Council	Removal of part of the hedgerow shown approximately within the area identified by orange line on the hedgerows plans (Sheet 3 and Sheet 4 of 5), reference H1
Cheshire West and Chester Council	Removal of part of the hedgerow shown approximately within the area identified by orange line on the hedgerows plans (Sheet 3 and Sheet 4 of 5), reference H2
Cheshire West and Chester Council	Removal of part of the hedgerow shown approximately within the area identified by orange line on the hedgerows plans (Sheet 3 and Sheet 4 of 5), reference H3
Cheshire West and Chester Council	Removal of part of the hedgerow shown approximately within the area identified by orange line on the hedgerows plans (Sheet 3 and Sheet 4 of 5), reference H4
Cheshire West and Chester Council	Removal of part of the hedgerow shown approximately within the area identified by orange line on the hedgerows plans (Sheet 3 and Sheet 4 of 5), reference H5
Cheshire West and Chester Council	Removal of part of the hedgerow shown approximately within the area identified by orange line on the hedgerows plans (Sheet 3 and Sheet 4 of 5), reference H6
Cheshire West and Chester Council	Removal of part of the hedgerow shown approximately within the area identified by orange line on the hedgerows plans (Sheet 3, Sheet 4 and Sheet 5 of 5), reference H7
Cheshire West and Chester Council	Removal of part of the hedgerow shown approximately within the area identified by orange line on the hedgerows plans (Sheet 3, Sheet 4 and Sheet 5 of 5), reference H8
Cheshire West and Chester Council	Removal of part of the hedgerow shown approximately within the area identified by orange line on the hedgerows plans (Sheet 3, Sheet 4 and Sheet 5 of 5), reference H9
Cheshire West and Chester Council	Removal of part of the hedgerow shown approximately within the area identified by orange line on the hedgerows plans (Sheet 3, Sheet 4 and Sheet 5 of 5), reference H10
Cheshire West and Chester Council	Removal of part of the hedgerow shown approximately within the area identified by orange line on the hedgerows plans (Sheet 3, Sheet 4 and Sheet 5 of 5), reference H11
Cheshire West and Chester Council	Removal of part of the hedgerow shown approximately within the area identified by orange line on the hedgerows plans (Sheet 3, Sheet 4 and Sheet 5 of 5), reference H12

Cheshire West and Chester Council	Removal of part of the hedgerow shown approximately within the area identified by orange line on the hedgerows plans (Sheet 3, Sheet 4 and Sheet 5 of 5), reference H13
Cheshire West and Chester Council	Removal of part of the hedgerow shown approximately within the area identified by orange line on the hedgerows plans (Sheet 3, Sheet 4 and Sheet 5 of 5), reference H14
Cheshire West and Chester Council	Removal of part of the hedgerow shown approximately within the area identified by orange line on the hedgerows plans (Sheet 4 and Sheet 5 of 5), reference H15
Cheshire West and Chester Council	Removal of part of the hedgerow shown approximately within the area identified by orange line on the hedgerows plans (Sheet 4 and Sheet 5 of 5), reference H16
Cheshire West and Chester Council	Removal of part of the hedgerow shown approximately within the area identified by orange line on the hedgerows plans (Sheet 3, Sheet 4 and Sheet 5 of 5), reference H17
Cheshire West and Chester Council	Removal of part of the hedgerow shown approximately within the area identified by orange line on the hedgerows plans (Sheet 3, Sheet 4 and Sheet 5 of 5), reference H18
Cheshire West and Chester Council	Removal of part of the hedgerow shown approximately within the area identified by orange line on the hedgerows plans (Sheet 4 and Sheet 5 of 5), reference H19
Cheshire West and Chester Council	Removal of part of the hedgerow shown approximately within the area identified by orange line on the hedgerows plans (Sheet 4 and Sheet 5 of 5), reference H20
Cheshire West and Chester Council	Removal of part of the hedgerow shown approximately within the area identified by orange line on the hedgerows plans (Sheet 4 and Sheet 5 of 5), reference H21
Cheshire West and Chester Council	Removal of part of the hedgerow shown approximately within the area identified by orange line on the hedgerows plans (Sheet 4 and Sheet 5 of 5), reference H22
Cheshire West and Chester Council	Removal of part of the hedgerow shown approximately within the area identified by orange line on the hedgerows plans (Sheet 4 and Sheet 5 of 5), reference H23
Cheshire West and Chester Council	Removal of part of the hedgerow shown approximately within the area identified by orange line on the hedgerows plans (Sheet 4 and Sheet 5 of 5), reference H24
Cheshire West and Chester Council	Removal of part of the hedgerow shown approximately within the area identified by orange line on the hedgerows plans (Sheet 4 and Sheet 5), reference H25
Cheshire West and Chester Council	Removal of part of the hedgerow shown approximately within the area identified by orange line on the hedgerows plans (Sheet 4 and Sheet 5 of 5), reference H26

Cheshire West and Chester Council	Removal of part of the hedgerow shown approximately within the area identified by orange line on the hedgerows plans (Sheet 4 and Sheet 5 of 5), reference H27
Cheshire West and Chester Council	Removal of part of the hedgerow shown approximately within the area identified by orange line on the hedgerows plans (Sheet 5 of 5), reference H28
Cheshire West and Chester Council	Removal of part of the hedgerow shown approximately within the area identified by orange line on the hedgerows plans (Sheet 5 of 5), reference H29
Cheshire West and Chester Council	Removal of part of the hedgerow shown approximately within the area identified by orange line on the hedgerows plans (Sheet 5 of 5), reference H30
Cheshire West and Chester Council	Removal of part of the hedgerow shown approximately within the area identified by orange line on the hedgerows plans (Sheet 5 of 5), reference H31
Cheshire West and Chester Council	Removal of part of the hedgerow shown approximately within the area identified by orange line on the hedgerows plans (Sheet 5 of 5), reference H32
Cheshire West and Chester Council	Removal of part of the hedgerow shown approximately within the area identified by orange line on the hedgerows plans (Sheet 5 of 5), reference H33
Cheshire West and Chester Council	Removal of part of the hedgerow shown approximately within the area identified by orange line on the hedgerows plans (Sheet 5 of 5), reference H34
Cheshire West and Chester Council	Removal of part of the hedgerow shown approximately within the area identified by orange line on the hedgerows plans (Sheet 5 of 5), reference H35
Cheshire West and Chester Council	Removal of part of the hedgerow shown approximately within the area identified by orange line on the hedgerows plans (Sheet 5 of 5), reference H36
Cheshire West and Chester Council	Removal of part of the hedgerow shown approximately within the area identified by orange line on the hedgerows plans (Sheet 4 and Sheet 5 of 5), reference H37
Cheshire West and Chester Council	Removal of part of the hedgerow shown approximately within the area identified by orange line on the hedgerows plans (Sheet 4 and Sheet 5 of 5), reference H38
Cheshire West and Chester Council	Removal of part of the hedgerow shown approximately within the area identified by orange line on the hedgerows plans (Sheet 4 and Sheet 5 of 5), reference H39

SCHEDULE 10

Article 40

DOCUMENTS AND PLANS TO BE CERTIFIED

(1) *Document name*	*(2)* *Document reference*	*(3)* *Revision number*	*(4)* *Date*
book of reference	4.3	P08	October 2026
design parameters statement	7.1	P05	March 2026
design principles	8.34	P02	January 2026
environmental statement	Volume 1 Volume 2 Volume 3 Volume 4 Non-Technical Summary Technical Note on Replacements Note on updated Construction Resourcing Schedule	- - - - - P01 P01	As listed in the application document tracker December 2025 December 2025
flood risk assessment and drainage strategy	6.2	P02	July 2025
application document tracker	1.5	P010	April 2026
hedgerows plans	2.7	P02	July 2025
land and crown land plans	2.2	P05	October 2026
outline battery safety management plan	7.8	P05	April 2026
outline construction environmental management plan	7.5	P07	April2026
outline construction traffic management plan	7.5	P06	April 2026
outline decommissioning environmental management plan	7.7	P06	March 2026
outline drainage strategy	8.35	P02	January 2026
outline flood warning and evacuation plan	8.8	P03	March 2026
outline non-breeding bird mitigation strategy	8.32	P06	April 2026
outline skills, supply chain and employment plan	7.11	P02	April 2026
outline landscape and ecology management plan	7.13	P07	April 2026

outline operational environmental management plan	7.6	P07	April 2026
outline public rights of way management plan	7.9	P05	March 2026
outline soil management plan	7.10	P03	March 2026
outline written scheme of archaeological investigation	7.18	P01	July 2025
street works, public rights of way, vehicular usage and access plans	2.4	P02	March 2026
works plans	2.3	P03	March 2026

SCHEDULE 11

Article 42

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;

(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;

(c) any objection 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 ten 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;

(b) only for such a period that is necessary to achieve fairness between the parties.

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

Costs

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

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

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

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

Confidentiality

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

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

SCHEDULE 12 Article 46

PROCEDURE FOR THE DISCHARGE OF REQUIREMENTS

Interpretation

1. In this Schedule—

"discharge" means any consent, agreement or approval required by—

(a) a requirement;

(b) a document referred to by a requirement; or

(c) a document that has been approved pursuant to a requirement;

"requirement consultee" means any body or authority named in a requirement as a body to be consulted by the relevant planning authority in discharging that requirement; and

"start date" means the date of the notification given by the Secretary of State under paragraph 4(2)(c).

Applications made under requirement

2.—(1) Where an application has been made to the relevant planning authority for any discharge, the relevant planning authority must give notice to the undertaker of its decision on the application within a period of eight weeks beginning with the later of—

(a) the day immediately following that on which the application is received by the authority;

(b) the day immediately following that on which further information has been supplied by the undertaker under paragraph 3; or

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

(2) Subject to paragraph 4, 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 to be taken to have granted all parts of the application (without any condition or qualification) at the end of that period.

(3) Any application made to the relevant planning 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 to those identified in the environmental statement and if it will then it must be accompanied by information setting out what those effects are.

(4) Where an application has been made to the relevant planning authority for any consent, agreement or approval required by a requirement included in this Order and the relevant planning authority does not determine the application within the period set out in sub-paragraph (1) and is accompanied by a report pursuant to sub-paragraph (3) which states that the subject matter of such application is likely to give rise to any materially new or materially different environmental effects to those identified in the environmental statement then the application is to be taken to have been refused by the relevant planning authority at the end of that period.

(5) Where an application has been made to the relevant planning authority for any discharge, the undertaker will also submit a copy of that application to any requirement consultee.

Further information and consultation

3.—(1) In relation to any application to which this Schedule applies, the relevant planning authority may request such reasonable further information from the undertaker as is necessary to enable it to consider the application.

(2) In the event that the relevant planning authority considers such further information to be necessary and the provision governing or requiring the application does not specify that consultation with a requirement consultee is required, the relevant planning authority must, within 20 working days of receipt of the application, notify the undertaker in writing specifying the further information required.

(3) If the provision governing or requiring the application specifies that consultation with a requirement consultee is required, the relevant planning authority must issue the consultation to the requirement consultee within 10 working days of receipt of the application, and must notify the undertaker in writing specifying any further information the relevant planning authority considers necessary or that is requested by the requirement consultee within 10 working days of receipt of such a request and in any event within 20 working days of receipt of the application (or such other period as is agreed in writing between the undertaker and the relevant planning authority).

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

(5) Where further information is requested under this paragraph in relation to part only of an application, that part is to be treated as separate from the remainder of the application for the purposes of calculating time periods in paragraph 2 and paragraph 3.

Appeals

4.—(1) The undertaker may appeal in the event that—

(a) the relevant planning authority refuses an application for any discharge or grants it subject to conditions;

(b) the relevant planning authority is deemed to have refused an application pursuant to paragraph 2(4);

(c) on receipt of a request for further information pursuant to paragraph 3 the undertaker considers that either the whole or part of the specified information requested by the relevant planning authority is not necessary for consideration of the application; or

(d) on receipt of any further information requested, the relevant planning authority notifies the undertaker that the information provided is inadequate and requests additional information which the undertaker considers is not necessary for consideration of the application.

(2) The steps to be followed in the appeal process are as follows—

(a) any appeal by the undertaker must be made within 42 days of the date of the notice of the decision or the determination, or (where no determination has been made) the expiry of the time period set out in paragraph 2(1), giving rise to the appeal referred to in sub-paragraph (1);

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

(c) the Secretary of State must appoint a person to determine the appeal as soon as reasonably practicable and must forthwith notify the appeal parties of the identity of the appointed person and the address to which all correspondence for the appointed person's attention should be sent;

(d) the relevant planning authority and any requirement consultee must submit written representations to the appointed person in respect of the appeal within 10 working days of the start date and must ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;

(e) the undertaker may make any counter-submissions to the appointed person within 10 working days of receipt of written representations pursuant to paragraph (d);

(f) the appointed person must make their decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable and in any event within 30 working days of the deadline for the receipt of counter-submissions pursuant to paragraph (e); and

(g) the appointment of the person pursuant to paragraph (c) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(3) In the event that the appointed person considers that further information is necessary to enable the appointed person to consider the appeal they must, within five working days of the appointed person's appointment, 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.

(4) Any further information required pursuant to sub-paragraph (3) must be provided by the relevant party to the appointed person and the other appeal parties on the date specified by the appointed person (the "specified date"), and the appointed person must notify the appeal parties of the revised timetable for the appeal on or before that day. The revised timetable for the appeal must require submission of written representations to the appointed person within 10 working days of the specified date, but otherwise the process and time limits set out in paragraphs (2)(d) to (2)(f) of sub-paragraph (2) apply.

(5) The appointed person may—

(a) allow or dismiss the appeal; or

(b) reverse or vary any part of the decision 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 them in the first instance.

(6) The appointed person may proceed to a decision on an appeal taking into account only such written representations as have been sent within the relevant time limits.

(7) 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 them that there is sufficient material to enable a decision to be made on the merits of the case.

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

(9) If an approval is given by the appointed person pursuant to this Schedule, it is to be deemed to be an approval for the purpose of Schedule 2 (requirements) as if it had been given by the relevant planning authority. The relevant planning authority may confirm any determination given by the appointed person in identical form in writing but a failure to give such confirmation (or a failure to give it in identical form) is not to be taken to affect or invalidate the effect of the appointed person's determination.

(10) Save where a direction is given pursuant to sub-paragraph (11) requiring 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.

(11) On application by the relevant planning authority or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid.

(12) In considering whether to make any such direction pursuant to sub-paragraph (11) and the terms on which it is to be made, the appointed person must have regard to advice on planning appeals and award costs published in Planning Practice Guidance: Appeals (March 2014) or any circular or guidance which may from time to time replace it.

Fees

5.—(1) Where an application is made to the relevant planning authority in respect of any discharge, the fee prescribed under regulation 16(1)(b) of the Town and Country Planning (Fees

for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012(a) (as may be amended or replaced from time to time) is to apply for the discharge of each requirement (whether dealt with in separate applications or combined with a single application) and must be paid to the relevant planning authority for each application.

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

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

(b) the relevant planning authority failing to determine the application within the relevant period as determined under paragraph 2(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 for determining the application has been agreed pursuant to paragraph 2(1) of this Schedule.

(a) S.I. 2012/2920 as amended by Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) (Amendment) Regulations 2025/342.

SCHEDULE 13

Article 43

PROTECTIVE PROVISIONS FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

1. For the protection of the utility undertakers referred to in this Schedule, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the utility undertakers concerned, or unless any other provisions in Schedules 14 to 26 of this Order apply to the utility undertaker concerned.

2. In this Schedule—

"alternative apparatus" means alternative apparatus adequate to enable the utility undertaker in question to fulfil its statutory functions in a manner not less efficient than previously;

"apparatus" means—

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

(b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;

(c) in the case of a water undertaker—

(i) mains, pipes or other apparatus belonging to or maintained by that utility undertaker for the purposes of water supply; and

(ii) any water mains or service pipes (or part of a water main or service pipe) that is the subject of an agreement to adopt made under section 51A of the Water Industry Act 1991; and

(d) in the case of a sewerage undertaker—

(i) any drain or works vested in the utility undertaker under the Water Industry Act 1991(b); and

(ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,

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

"functions" includes powers and duties;

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

"utility undertaker" means—

(a) any licence holder within the meaning of Part 1 of the Electricity Act 1989;

(b) a gas transporter within the meaning of Part 1 of the Gas Act 1986(c);

(c) water undertaker within the meaning of the Water Industry Act 1991; and

(d) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991,

for the area of the authorised development, and in relation to any apparatus, means the utility undertaker to whom it belongs or by whom it is maintained.

(**a**) 1989 c. 29.
(**b**) 1991 c. 56.
(**c**) 1986 c. 44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c. 45), and was further amended by section 76 of the Utilities Act 2000 (c. 27).

3. This Schedule does not apply to apparatus in respect of which the relations between the undertaker and the utility undertaker are regulated by the provisions of Part 3 of the 1991 Act.

4. Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 12 (temporary prohibition or restriction of use of streets and public rights of way, and authorising vehicular use on public rights of way), a utility undertaker is at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

5. Regardless of any provision in this Order or anything shown on the land and crown land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

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

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

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

(4) Any alternative apparatus to be constructed in land of the undertaker under this 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 42 (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 42 (arbitration), and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the utility undertaker in question that it desires itself to execute any work, or part of any work, in connection with the construction or removal of apparatus in any land controlled by the undertaker, that work, instead of being executed by the utility undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker.

(7) Nothing in sub-paragraph (6) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

7.—(1) Where, in accordance with the provisions of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 42 (arbitration).

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

8.—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 6(2), the undertaker must submit to the utility undertaker in question a plan, section and description of the works to be executed.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the utility undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the utility undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by a utility undertaker under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If a utility undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 7 apply as if the removal of the apparatus had been required by the undertaker under paragraph 6(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the utility undertaker in question notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

9.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker the reasonable expenses incurred by that utility undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 6(2).

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

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

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 42 (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 the utility undertaker in question by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

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

(a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the execution of any such works as are referred to in paragraph 6(2); and

(b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a utility undertaker in respect of works by virtue of sub-paragraph (1), if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

10.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 6(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any utility undertaker, the undertaker must—

(a) bear and pay the cost reasonably incurred by that utility undertaker in making good such damage or restoring the supply; and

(b) make reasonable compensation to that utility undertaker for any other direct expenses, loss, damages, penalty or costs incurred by the utility undertaker,

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

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of a utility undertaker, its officers, servants, contractors or agents.

(3) A utility undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

11. Nothing in this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and a utility undertaking in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

SCHEDULE 14

Article 43

PROTECTIVE PROVISIONS FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

1.—(1) For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the operator, or unless any other provisions of Schedules 13 to 26 of this Order apply to the operator.

(2) In this Schedule—

"the 2003 Act" means the Communications Act 2003(a);

"electronic communications apparatus" has the same meaning as in the electronic communications code;

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

"electronic communications code network" means—

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

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

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

"operator" means the operator of an electronic communications code network.

2. The exercise of the powers of article 32 (statutory undertakers) is subject to Part 10 (undertakers' works affecting electronic communications apparatus) of the electronic communications code.

3.—(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 direct expenses, loss, damages, penalty or costs incurred by it, by reason, or in consequence of, any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.

(3) The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(a) 2003 c. 21.

(4) Any difference arising between the undertaker and the operator under this Schedule must be referred to and settled by arbitration under article 42 (arbitration).

4. This Schedule does not apply to—

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

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

5. Nothing in 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.

SCHEDULE 15

Article 43

PROTECTIVE PROVISIONS FOR THE PROTECTION OF CADENT GAS LIMITED

Application

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

Interpretation

2. In this Schedule—

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

"apparatus" means any gas mains, pipelines, pipes, pressure governors, ventilators, cathodic protection (including transformed rectifiers and any associated groundbeds or cables), cables, marker posts, black valves or other apparatus belonging to, or maintained by, Cadent for the purposes of Cadent's undertaking together with any replacement apparatus and such other apparatus constructed pursuant to this Order that becomes operational apparatus of Cadent for the purposes of Cadent's undertaking and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

"authorised works" has the same meaning as is given to the term "authorised development" in article 2 (interpretation) and includes any associated development authorised by the Order and for the purposes of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

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

"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" includes any below ground surveys, monitoring, work operations, remedial work in respect of any contamination or other adverse ground condition, the receipt and erection of construction plant and equipment, and non-intrusive investigations for the purposes of assessing ground conditions, but does not include erection of fencing to site boundaries or marking out of site boundaries, installation of environmental mitigation measures, and "commencement", "commenced" and cognate expressions are to be construed accordingly;

"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 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;

(a) 1986 c. 44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c. 45), and was further amended by section 76 of the Utilities Act 2000 (c. 27).

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

"ground monitoring scheme" means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, must require the undertaker to submit for Cadent's approval a ground mitigation scheme;

"ground subsidence event" means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

"in" in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

"maintain" and "maintenance" have effect as if Cadent's existing apparatus was authorised development and as if the term maintain includes protect and use;

"parent company" means a parent company of the undertaker acceptable to Cadent;

"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;

"protective works" means the underpinning, strengthening and any other works the purpose of which is to prevent damage to or interference with Cadent's apparatus that may be caused by the carrying out, maintenance or use of the authorised works;

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

"specified works" means any of the authorised works or activities (including maintenance) 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 sub-paragraph 7(2) or otherwise;

(b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under sub-paragraph 7(2) 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.

On Street apparatus

3.—(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 4, 9, and 12; and

(b) where sub-paragraph (2) applies, paragraphs 7 and 8.

(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 9 (street works) or any other powers in the Order generally, s85 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.

(4) The protective provisions in this Schedule apply and take precedence over article 32 (statutory undertakers) and 34 (recovery of costs of new connections) of the Order which do not apply to Cadent.

Apparatus of Cadent in temporarily closed streets

4.—(1) Where any street is closed under article 12 (temporary prohibition or restriction of use of streets and public rights of way, and authorising vehicular use on public rights of way), or Part 1 (streets and public rights of way subject to temporary closure) of Schedule 5 (temporary prohibition or restriction of use of streets and public rights of way, and authorising vehicular use on public rights of way), if Cadent has any apparatus in the street or accessed via that street Cadent is entitled to the same rights in respect of such apparatus as it enjoyed immediately before the closure and the undertaker must grant to Cadent, or procure the granting to Cadent of, legal easements reasonably satisfactory to Cadent in respect of such apparatus and access to it prior to the closure of any such street or highway, but nothing in this paragraph affects any right of the undertaker or of Cadent to require the removal of that apparatus under paragraph 7.

(2) Subject to sub-paragraph (3) below, and notwithstanding the temporary alteration, diversion or restriction of use of any street under the powers of article 12 (temporary prohibition or restriction of use of streets and public rights of way, and authorising vehicular use on public rights of way), or Part 1 (streets and public rights of way subject to temporary closure) of Schedule 5 (temporary prohibition or restriction of use of streets and public rights of way, and authorising vehicular use on public rights of way), Cadent will be at liberty at all times and at Cadent's own risk to take all reasonable access across any such street and to execute and do all such works and things in, upon or under any such street as it would have been entitled to do immediately before such temporary alteration, diversion or restriction in respect of any apparatus which at the time of the closure or diversion was in that street.

(3) In taking access pursuant to sub-paragraph (2) above, Cadent must—

(a) comply with any plans produced by the undertaker pursuant to its obligations under the Construction (Design and Management) Regulations 2015; and

(b) comply with all relevant health and safety legislation, guidance, protocols and procedures.

Protective works to buildings

5.—(1) The undertaker, in the case of the powers conferred by article 18 (protective work to buildings) so as not to obstruct or render less convenient the access to any apparatus without the written consent of Cadent (such consent not to be unreasonably withheld or delayed) 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 the 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), must—

(a) pay compensation to Cadent for any reasonable loss sustained by it; and

(b) indemnify Cadent against all claims, demands, proceedings, reasonable 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 provided that at all times Cadent will be under an obligation to take all reasonable steps to mitigate its loss

(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, admission of liability 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.

Acquisition of land

6.—(1) Regardless of any provision in this Order or anything shown on the land and crown land plans or contained in the book of reference to the Order, the undertaker may not appropriate or

acquire from Cadent any interest in land or appropriate, acquire, extinguish, interfere with or override any easement or other interest in land of Cadent otherwise than by agreement.

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

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

(4) Any agreement or consent granted by Cadent under paragraph 9 or any other paragraph of this Schedule, will be taken to constitute agreement under sub-paragraph (1).

(5) As a condition of an agreement under sub-paragraph (1) that involves de-commissioned apparatus being left in situ Cadent must use reasonable endeavours to surrender (and the undertaker must accept any surrender) of its existing easement or other interest in land in respect of such decommissioned apparatus to the reversionary landowner. If Cadent is not released by the reversionary landowner from all liabilities in respect of such de-commissioned apparatus the undertaker shall take on such liabilities in respect of such de-commissioned apparatus from the date of such surrender.

(6) Where an undertaker acquires land which is subject to any Cadent right or interest (including, without limitation, easements and agreements relating to rights or other interests) and the provisions of paragraph 7 do not apply, the undertaker must, unless Cadent agrees otherwise—

(a) retain any notice of Cadent's easement, right or other interest on the title to the relevant land when registering the undertaker's title to such acquired land; and

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

Removal of apparatus

7.—(1) If, in the exercise of the powers conferred by this Order, including pursuant to any agreement reached in accordance with paragraph 6, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be decommissioned or removed and any right of Cadent to maintain that apparatus in that land must not be extinguished or interfered with until alternative apparatus has been constructed, is in operation, and the facilities and rights referred to in sub-paragraph (2) have been provided, to the reasonable satisfaction of Cadent and in accordance with sub-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to Cadent advance written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers

conferred by this Order Cadent reasonably needs to move or remove any of its apparatus) the undertaker must afford to Cadent to its reasonable satisfaction (taking into account paragraph 8(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 must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to assist the undertaker in obtaining the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall 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 Schedule must be constructed in such manner and in such line or position as may be agreed between Cadent and the undertaker or settled by arbitration pursuant to article 42 (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 Schedule.

Facilities and rights for alternative apparatus

8.—(1) Where, in accordance with the provisions 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 (in Cadent's reasonable opinion) 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 reasonable opinion) than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed (in Cadent's reasonable opinion), 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 15 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

9.—(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); and

(b) must not be unreasonably withheld or delayed.

(5) For the purposes of sub-paragraph (4)(b) it will be deemed 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 unless the undertaker makes provision to notify Cadent that such access is to be prevented for any time, but that Cadent will be able to access apparatus during any such period in relation to any emergency relating to, or failure of, its apparatus.

(6) In relation to any work 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.

(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 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 reasonably 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.

(9) If Cadent, in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 3 and 6 to 8 apply as if the removal of the apparatus had been required by the undertaker under paragraph 7(2).

(10) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the 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 (in Cadent's reasonable opinion) for the safeguarding of its apparatus and can recover any such costs associated with the further protective works in line with paragraph 10.

(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 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

10.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to Cadent on demand, all documented charges, costs and expenses reasonably 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 authorised works as are referred to in this Schedule including without limitation—

(a) any costs reasonably and properly incurred by or compensation properly paid by Cadent in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs (including professional fees) incurred by Cadent as a consequence of Cadent;

(i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 7(3) if it elects to do so; and/or

(ii) exercising any compulsory purchase powers under this Order transferred to or benefitting Cadent;

(b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;

(c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;

(d) the approval of plans;

(e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;

(f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Schedule;

(g) any watching brief pursuant to sub-paragraph 9(7).

Indemnity

11.—(1) Subject to sub-paragraph (2) and (3), if by reason or in consequence of the construction of any such works authorised by 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 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 an 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 and provided that all times Cadent will be under an obligation to take reasonable steps to mitigate its loss, the undertaker will—

(a) bear and pay on demand 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 cost 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 part of the authorised works carried out by Cadent in the exercise of any functions conferred by this Order pursuant to a grant to transfer under article 36 (consent to transfer benefit of the Order) of the Order.

(4) Cadent must:

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

(6) Cadent 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 Cadent's reasonable ability and control to do so and which expressly excludes and obligation to mitigate liability arising from third parties which is outside of Cadent's control and if reasonably requested to do so by the undertaker Cadent must provide and explanation of how the claim has been minimised, where relevant.

Enactments and agreements

12. Except where this Schedule provides otherwise, nothing in this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Cadent in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

13.—(1) Where in consequence of the proposed construction of any phase of the authorised works, the undertaker or Cadent requires the removal of apparatus under paragraph 7(2) or Cadent makes requirements for the protection or alteration of apparatus under paragraph 9, the undertaker must use its reasonable endeavours to co-ordinate the execution of the works in the interests of

safety and the efficient and economic execution of the 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, it must not be unreasonably withheld or delayed.

Access

14. If in consequence of any agreement reached in accordance with paragraph 6(1) or the powers conferred by this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative rights and means of access to such apparatus as will enable Cadent to maintain or use the apparatus no less effectively than was possible before such obstruction (in Cadent's reasonable opinion). For the avoidance of doubt, where the undertaker cannot grant such alternative rights and means of access to such apparatus by virtue of not being in possession of the requisite land rights, the undertaker shall use reasonable endeavours to assist in the securing of the requisite rights and means of access.

Arbitration

15. Save for differences or disputes arising under sub-paragraphs 7(2) and 7(4) any difference or dispute arising between the undertaker and Cadent under this Schedule must, unless otherwise agreed in writing between the undertaker and Cadent, be determined by arbitration in accordance with article 42 (arbitration).

Notices

16. Notwithstanding article 45 (service of notices) any plans submitted to Cadent by the undertaker pursuant to sub-paragraph 9(1) must be sent via email to Cadent Gas Limited Plant Protection at plantprotection@cadentgas.com copied by e-mail to [redacted]@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.

SCHEDULE 16

Article 43

PROTECTIVE PROVISIONS FOR THE PROTECTION OF NATIONAL GAS TRANSMISSION PLC AS GAS UNDERTAKER

Application

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

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and National Gas, where the benefit of this Order is transferred or granted to another person under article 36 (Consent to transfer the benefit of the Order)—

(a) any agreement of the type mentioned in sub-paragraph (1) has effect as if it had been made between National Gas and the transferee or grantee (as the case may be); and

(b) written notice of the transfer or grant must be given to National Gas on or before the date of that transfer or grant.

(3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to National Gas (but without prejudice to paragraph 11(3)(b) of this Schedule).

Interpretation

2.—(1) In this Schedule—

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

"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 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 [redacted] 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 Gas;

(b) pollution liability for third party property damage and third party bodily damage arising from any pollution/contamination event with a (sub)limit of indemnity of not less than [redacted]

"acceptable security" means either—

(a) a parent company guarantee from a parent company in favour of National Gas to cover the undertaker's liability to National Gas to a total liability cap of [redacted] (in a form reasonably satisfactory to National Gas and where required by National Gas, accompanied with a legal opinion confirming the due capacity and

(a) 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).

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 National Gas to cover the undertaker's liability to National Gas 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 National Gas);

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

"apparatus" means any mains, pipes or other apparatus belonging to or maintained by National Gas for the purposes of gas supply together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of National Gas for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

"authorised works" has the same meaning as is given to the term "authorised development" in article 2 (interpretation) of this Order and includes any associated development authorised by the Order and for the purposes of this Schedule includes the use and maintenance of the authorised development and construction of any works authorised by this Schedule;

"commence" and "commencement" has the same meaning as in article 2 (interpretation) of this Order save that for the purposes of this Schedule shall include any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment;

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

"functions" includes powers and duties;

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

"ground monitoring scheme" means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which , if exceeded, shall require the undertaker to submit for National Gas's approval a ground mitigation scheme;

"ground subsidence event" means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

"in" in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

"maintain" and "maintenance" shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of National Gas, including to construct, use, repair , alter , inspect, renew or remove the apparatus;

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

"Network Code" means the network code prepared by National Gas pursuant to Standard Special Condition A11(3) of its Gas Transporter's Licence, which incorporates the Uniform Network Code, as defined in Standard Special Condition A11(6) of National Gas's Gas Transporters Licence, as both documents are amended from time to time;

"Network Code Claims" means any claim made against National Gas by any person or loss suffered by National Gas under the Network Code arising out of or in connection with any failure by National Gas to make gas available for off take at, or a failure to accept gas tendered for delivery from, any entry point to or exit point from the gas national transmission system as a result of the authorised works or any costs and/or expenses incurred by National Gas as a result of or in connection with, it taking action (including purchase or buy back of capacity) for the purpose of managing constraint or potential constraint on the gas national transmission system which may arise as a result of the authorised works;

"plan" or "plans" include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

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

"specified works" means any of the authorised works 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 7(2) or otherwise; and/or

(b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 7(2) or otherwise; and/or

(c) includes any of the activities that are referred to in paragraph 8 of T/SP/SSW/22 (National Gas's policies for safe working in proximity to gas apparatus, "Specification for safe working in the vicinity of National Gas, High pressure Gas pipelines and associated installation requirements for third parties"; and

"undertaker" means the undertaker as defined in article 2 (interpretation) of this Order.

On Street Apparatus

3. Except for paragraphs 4 (apparatus of National Gas in temporarily restricted streets), 9 (retained apparatus: protection of gas undertaker), 10 (expenses) and 11 (indemnity) of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of National Gas, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Gas are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus of National Gas in temporarily restricted streets

4. Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 12 (temporary prohibition or restriction of use of streets and public rights of way, and authorising vehicular use on public rights of way), National Gas is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

Protective works to buildings

5. The undertaker, in the case of the powers conferred by article 18 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Gas.

Acquisition of land

6.—(1) Regardless of any provision in this Order or anything shown on the land and crown land plans or contained in the book of reference to the Order, the undertaker may not (a) appropriate or acquire or take temporary possession of any land or apparatus or (b) appropriate, acquire,

extinguish, interfere with or override any easement, other interest or right and/or apparatus of National Gas otherwise than by agreement.

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

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

(4) Any agreement or consent granted by National Gas under paragraph 9 or any other paragraph of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).

Removal of apparatus

7.—(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 Schedule and any right of National Gas to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Gas in accordance with sub-paragraph (2) to (5).

(2) If, for the purpose of executing any works in , on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Gas advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case(or if in consequence of the exercise of any of the powers conferred by this Order National Gas reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), secure any necessary consents for the alternative apparatus and afford to National Gas to its satisfaction (taking into account paragraph 8(1) below) the necessary facilities and rights—

(a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and

(b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Gas 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 shall not extend to the requirement for National Gas 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 Schedule must be constructed in such manner and in such line or situation as may be agreed between National Gas and the undertaker.

(5) National Gas must, after the alternative apparatus to be provided or constructed has been agreed, and subject to a written diversion agreement having been entered into between the parties and the grant to National Gas of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Schedule.

Facilities and rights for alternative apparatus

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

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Gas than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject the matter may be referred to arbitration in accordance with paragraph 15 (arbitration) of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to National Gas as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection of gas undertaker

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

(2) In relation to specified works the plan to be submitted to National Gas under sub-paragraph (1) must include a method statement and describe—

(a) the exact position of the works;

(b) the level at which these are proposed to be constructed or renewed;

(c) the manner of their construction or renewal including details of excavation, positioning of plant etc;

(d) the position of all apparatus;

(e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and

(f) any intended maintenance regimes.

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

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

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5) or (6); and,

(b) must not be unreasonably withheld.

(5) In relation to any work to which sub-paragraphs (1) and/or (2) apply, National Gas may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage for the provision of protective

works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

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

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

(8) If National Gas in accordance with sub-paragraph (5) or (7) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 3 and 6 to 8 apply as if the removal of the apparatus had been required by the undertaker under paragraph 7(2).

(9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the specified works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(10) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Gas notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances and comply with sub-paragraph (11) at all times.

(11) At all times when carrying out any works authorised under the Order the undertaker must comply with National Gas's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Gas, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22" and HSE's "HS(~G)47 Avoiding Danger from underground services".

(12) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker shall implement an appropriate ground mitigation scheme save that National Gas retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 10.

Expenses

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

(a) any costs reasonably incurred by or compensation properly paid by National Gas in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Gas as a consequence of National Gas;

(i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 7(3); or

(ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Gas;

(b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;

(c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;

(d) the approval of plans;

(e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works; and

(f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Schedule.

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this 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 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 15 (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 National Gas by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

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

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

(b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) Any amount which apart from this sub-paragraph would be payable to National Gas in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on National Gas any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

Indemnity

11.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by 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 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 National Gas, or there is any interruption in any service provided, or in the supply of any goods or energy, by National Gas, or National Gas becomes liable to pay any amount to any third party, the undertaker will—

(a) bear and pay on demand accompanied by an invoice or claim from National Gas the cost reasonably and properly incurred by National Gas in making good such damage or restoring the supply; and

(b) indemnify National Gas for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Gas, by reason or in consequence of any such damage or interruption or National Gas becoming liable to any third party and including Network Code Claims other than arising from any default of National Gas.

(2) The fact that any act or thing may have been done by National Gas on behalf of the undertaker or in accordance with a plan approved by National Gas or in accordance with any requirement of National Gas or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless National Gas fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of—

(a) any damage or interruption to the extent that it is attributable to the neglect or default of National Gas, its officers, servants, contractors or agents;

(b) any authorised works and/or any other works authorised by this Schedule carried out by National Gas as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article 36 (consent to transfer the benefit of the 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-section (b) will be subject to the full terms of this Schedule including this paragraph 11; and/or

(c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable.

(4) National Gas must give the undertaker reasonable 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) National Gas must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(6) National Gas must use 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 National Gas's reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of National Gas's control and if reasonably requested to do so by the undertaker National Gas must provide an explanation of how the claim has been minimised, where relevant.

(7) Not to commence construction (and not to permit the commencement of such construction) of the authorised works on any land owned by National Gas or in respect of which National Gas has an easement or wayleave for its apparatus or any other interest or to carry out any works within 15 metres of National Gas's apparatus until the following conditions are satisfied—

(a) unless and until National Gas 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 National Gas has confirmed the same to the undertaker in writing; and

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

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

Enactments and agreements

12. Save to the extent provided for to the contrary elsewhere in this Schedule or by agreement in writing between National Gas and the undertaker, nothing in this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and National Gas in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

13.—(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or National Gas requires the removal of apparatus under paragraph 7(2) or National Gas makes requirements for the protection or alteration of apparatus under paragraph 9, the undertaker shall 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 National Gas's undertaking and National Gas shall use its best endeavours to co-operate with the undertaker for that purpose.

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

Access

14. If in consequence of the agreement reached in accordance with paragraph 6(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable National Gas to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

15. Save for differences or disputes arising under paragraph 7(2), 7(4), 8(1) and 9 any difference or dispute arising between the undertaker and National Gas under this Schedule must, unless otherwise agreed in writing between the undertaker and National Gas, be determined by arbitration in accordance with article 42 (arbitration).

Notices

16. Notwithstanding article 45 (service of notices), any plans submitted to National Gas by the undertaker pursuant to paragraph 9 must be submitted using the LSBUD system

(https://lsbud.co.uk/) or such other address as National Gas may from time to time appoint instead for that purpose and notify to the undertaker in writing.

SCHEDULE 17

Article 43

PROTECTIVE PROVISIONS FOR THE PROTECTION OF FRODSHAM WIND FARM LIMITED

1. For the protection of Frodsham Wind, the following provisions have effect, unless otherwise agreed in writing between the undertaker and Frodsham Wind.

2. In this Schedule—

"apparatus" means any cables, structures or other infrastructure belonging to or maintained by Frodsham Wind;

"Frodsham Wind" means Frodsham Wind Farm Limited (company number 07075301), whose registered office is at c/o Foresight Group LLP, The Shard, 32 London Bridge Street, London, SE1 9SG and any successor in title to the Frodsham Wind Farm site;

"Frodsham Wind Operations" means the assets and operations within the Order limits vested in Frodsham Wind;

"Frodsham Wind Farm site" means any of the Order land in which Frodsham Wind owns the freehold interest;

"in", in a context referring to apparatus in land, includes a reference to apparatus under, over or upon land;

"specified works" means any works forming any part of the authorised development that will or may affect the apparatus or access to them including all works within 15 metres of the apparatus, whether carried out by the undertaker or any third party in connection with the authorised development; and

"works details" means—

(a) plans and sections;

(b) details of the proposed method of working and timing of execution of works;

(c) details of the vehicle access routes for construction and operational traffic; and

(d) any further particulars provided in response to a request under paragraph 5(1).

Streets

3. This Schedule does not apply to apparatus in respect of which the relations between the undertaker and Frodsham Wind are regulated by the provisions of Part 3 (Streets) of the 1991 Act.

4. Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 12 (temporary prohibition or restriction of use of streets and public rights of way, and authorising vehicular use on public rights of way), Frodsham Wind 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 including any apparatus which at the time of the prohibition or restriction was in that street.

Consent of specified works under this Schedule

5.—(1) Not less than 28 days before starting the execution of any specified works, the undertaker must submit to Frodsham Wind the works details for the specified works and such further particulars as Frodsham Wind may, within 28 days from the day on which the works details are submitted under this paragraph, reasonably require.

(2) No restricted works are to be commenced until the works details in respect of those works submitted under sub-paragraph (1) have been approved by Frodsham Wind.

(3) Any approval of Frodsham Wind required under sub-paragraph (1) must not be unreasonably withheld or delay but may be given subject to such reasonable requirements Frodsham Wind may require to be made for the protection of the apparatus, or for securing access to it, and Frodsham Wind is entitled to watch and inspect the execution of those works.

(4) The works referred to in sub-paragraph (1) must be carried out in accordance with the works details approved under sub-paragraph (2) and any requirements imposed on the approval under sub-paragraph (3).

(5) Where there has been a reference to an arbitrator in accordance with paragraph 8 and the arbitrator give approval for the works details, the works referred to in sub-paragraph (1) must be carried out in accordance with the approval and conditions contained in the decision of the arbitrator under paragraph 8.

(6) Nothing in this paragraph precludes the undertaker from submitting at any time, but in no case less than 28 days before commencing the execution of any specified 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.

(7) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case, it must give to Frodsham Wind notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) insofar as is reasonably practicable in the circumstances.

Expenses

6. The undertaker must pay to Frodsham Wind the reasonable expenses incurred by Frodsham Wind in connection with the approval of plans and the inspection of any specified works.

Indemnity

7.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works referred to in paragraph 5 to this Schedule any damage is caused to Frodsham Wind Operations, or there is any interruption in any service provided, or in the supply of any goods, by Frodsham Wind, the undertaker must—

(a) bear and pay the cost reasonably incurred by Frodsham Wind in making good such damage or restoring the supply; and

(b) make reasonable compensation to Frodsham Wind for any other expenses, loss, damages, penalty or costs incurred by Frodsham Wind, 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—

(a) any damage or interruption to the extent that it is attributable to the act, neglect or default of Frodsham Wind, its officers, employees, servants, contractors or agents; and/or

(b) any indirect or consequential loss of Frodsham Wind or 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) Frodsham Wind 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) Frodsham Wind 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 7 applies.

(5) If requested to do so by the undertaker, Frodsham Wind 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).

(6) The undertaker shall only be liable under this paragraph 7 for claims reasonably incurred by Frodsham Wind.

Arbitration

8. Any difference or dispute arising between the undertaker and Frodsham Wind under this Schedule must, unless otherwise agreed in writing between the undertaker and Frodsham Wind, be referred to and settled by arbitration in accordance with article 42 (arbitration).

SCHEDULE 18

Article 43

PROTECTIVE PROVISIONS FOR THE PROTECTION OF SP MANWEB AS ELECTRICITY UNDERTAKER

Application

1. The following provisions have effect for the protection of SP Manweb unless otherwise agreed in writing between the undertaker and SP Manweb.

Interpretation

2. In this Schedule—

"alternative apparatus" means appropriate alternative apparatus to enable SP Manweb to fulfil its statutory functions in a manner no less efficient than previously (to the reasonable satisfaction of SP Manweb);

"apparatus" means electric lines or electrical plant as defined in the 1989 Act, belonging to or maintained by SP Manweb together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of SP Manweb for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

"authorised development" has the same meaning as is given to the term "authorised development" in article 2 (interpretation) of this Order and includes any associated development authorised by the Order and for the purposes 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 in article 2 (interpretation) of this Order and commencement must be construed to have the same meaning;

"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 and/or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Schedule;

"functions" includes powers and duties;

"in" in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

"maintain" and "maintenance" includes the ability and right to do any of the following in relation to any apparatus or alternative apparatus of SP Manweb including construct, use, repair, alter, inspect, renew or remove the apparatus;

"plan" or "plans" include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed; and

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

(a) will or may be situated under, 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 5(2) or otherwise;

(b) is reasonably likely to adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 5(2) or otherwise; and/or

(c) include any of the works that are referred to in SP Manweb's polices or directions specific to these works either during construction or as built near overhead lines and set out in EN43-8 Electrical Networks Association Technical Standards and HSE's guidance note GS6 "Avoidance of Danger from Overhead Lines" and guidance note HSG47 "Avoiding Danger from Underground Services".

On Street Apparatus

3. Except for paragraphs 7, 8 and 9 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 SP Manweb, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and SP Manweb are regulated by the provisions of Part 3 of the 1991 Act.

Acquisition of land

4.—(1) Regardless of any provision in this Order or anything shown on the land and crown land plans or contained in the book of reference to the Order, the undertaker may not appropriate or acquire or take temporary possession of any land interest of SP Manweb or appropriate, acquire, extinguish, interfere with or override any easement or other interest or right and/or apparatus of SP Manweb otherwise than by agreement including that from SP Manweb's grantors (such agreement not to be unreasonably withheld or delayed).

(2) As a condition of agreement between the parties in sub-paragraph (1), prior to the carrying out of any phase of the authorised development (or in such other timeframe as may be agreed between SP Manweb and the undertaker) that are subject to the requirements of this Schedule that will cause any conflict with or breach the terms of any easement and/or other legal or land interest of SP Manweb and/or affects the provisions of any enactment or agreement regulating the relations between SP Manweb and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as SP Manweb reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between SP Manweb and the undertaker acting reasonably and which must be no less favourable on the whole to SP Manweb unless otherwise agreed by SP Manweb, and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised development.

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

(4) No agreement or consent granted by SP Manweb under any other paragraph of this Schedule constitutes agreement under sub-paragraph (1).

Removal of apparatus

5.—(1) If, in the exercise of the agreement reached in accordance with paragraph 4 or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this Schedule and any right of SP Manweb 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 SP Manweb in accordance with sub-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of executing any specified 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 SP Manweb at least 56 days' advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the

exercise of any of the powers conferred by this Order SP Manweb 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 SP Manweb to its satisfaction (taking into account paragraph 6(1) below) the necessary facilities and rights—

(a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and

(b) subsequently for the use and 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, SP Manweb 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.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Schedule must be constructed in such manner and in such line or situation as may be agreed between SP Manweb and the undertaker.

(5) SP Manweb must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the prior grant to SP Manweb 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 Schedule.

(6) Where there is any inconsistency or duplication between the provisions set out in this Schedule relating to the relocation and/or removal of apparatus/including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by SP Manweb and/or other enactments relied upon by SP Manweb as of right or other use in relation to the apparatus, then the provisions in this Schedule must prevail.

Facilities and rights for alternative apparatus

6.—(1) Where, in accordance with the provisions of this Schedule, the undertaker affords to or secures for SP Manweb 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 SP Manweb and must be no less favourable on the whole to SP Manweb than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by SP Manweb.

(2) If the facilities and rights to be afforded by the undertaker and agreed with SP Manweb under sub-paragraph (1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to SP Manweb than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject in the matter will be referred to arbitration in accordance with paragraph 13 of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to SP Manweb as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case. In respect of the appointment of an arbitrator under this sub-paragraph, article 42 (arbitration) applies.

Retained apparatus: Protection of SP Manweb as Electricity Undertaker

7.—(1) Not less than 56 days before the commencement of any specified works the removal of which has not been required by the undertaker under paragraph 5(2), the undertaker must submit to SP Manweb a plan of the works to be executed and seek from SP Manweb details of the underground extent of their electricity tower foundations.

(2) In relation to specified works which will or may be situated on, over, under or within (i) 15 metres measured in any direction of any apparatus, or (ii) involve embankment works within 15m of any apparatus, the plan to be submitted to SP Manweb under sub-paragraph (1) must include a method statement which, as far as is relevant, is consistent with the outline construction method statement together with the outline code of construction practice or, in both cases, as subsequently updated and approved and provided by the undertaker to SP Manweb in accordance with EN43-8 Electrical Networks Association Technical Standards and HSE's guidance note GS6 "Avoidance of Danger from Overhead Lines" and guidance note HSG47 "Avoiding Danger from Underground Services" and show and describe—

(a) the exact position of the specified works;

(b) the level at which the specified works are proposed to be constructed or renewed;

(c) the manner of their construction or renewal;

(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) In relation to any specified works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity supports or 15 metres for 132kV apparatus or between any two or more adjacent electricity supports which are within the Order limits or within 10 metres of the Order limits, the plan to be submitted under sub-paragraph (1) must include a method statement which, in addition to the matters set out in sub-paragraph (2), must—

(a) describe details of any cable trench design including route, dimensions, clearance to support foundations;

(b) demonstrate that support foundations will not be affected prior to, during and post construction;

(c) describe load bearing capacities of trench supporting structures;

(d) describe details of cable installation methodology including access arrangements, jointing bays and backfill methodology;

(e) provide a written management plan for high voltage hazard during construction and ongoing maintenance of the cable route;

(f) provide written details of the operations and maintenance regime for the cable, including frequency and method of access;

(g) provide an assessment of earth rise potential if reasonably required by SP Manweb's engineers; and

(h) provide evidence that trench collapse resistance and supporting structures bearing capacity are to be designed to 26 tonnes to take the weight of overhead line construction traffic.

(4) The undertaker must not commence any works to which sub-paragraph (2) or (3) applies until SP Manweb has given written approval of the plan so submitted provided that SP Manweb must not unreasonably delay notification of its approval or disapproval.

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

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (7) or (9); and

(b) must not be unreasonably withheld or delayed.

(6) If after the expiry of 56 days SP Manweb has not communicated approval or disapproval, SP Manweb is deemed to have approved the plans as supplied.

(7) In relation to any work requiring the submission of a plan under sub-paragraph (1), SP Manweb 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 or for the purpose of providing or securing proper and convenient means of access to any apparatus and SP Manweb

must notify the undertaker of such modifications within a period of 56 days beginning with the date on which the plan required under sub-paragraph (1) has been submitted to SP Manweb.

(8) Works requiring the submission of a plan under sub-paragraph (1) must only be executed in accordance with the plan as approved or as amended from time to time by agreement between the undertaker and SP Manweb and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5), (7) or (9) by SP Manweb for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and SP Manweb will be entitled to watch and inspect the execution of those works.

(9) Where SP Manweb reasonably 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 SP Manweb's reasonable satisfaction prior to the commencement of any authorised development (or any relevant part thereof) for which protective works are required and SP Manweb must give 56 days' notice of such works from the date of submission of a plan pursuant to sub-paragraph (1) (except in an emergency).

(10) If SP Manweb in accordance with sub-paragraphs (7) or (9) 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) to (3) and (7) to (9) apply as if the removal of the apparatus had been required by the undertaker under paragraph 5(2).

(11) 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 the specified works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph must apply to and in respect of the new plan.

(12) The undertaker must 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 the SP Manweb notice as soon as is reasonably practicable and a plan of those works and must—

(a) comply with sub-paragraphs (7), (8) and (9) insofar as is reasonably practicable in the circumstances; and

(b) comply with sub-paragraph (13) at all times.

(13) At all times when carrying out any works authorised under the Order, the undertaker must comply with statutory requirements and guidelines for development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines" in relation to any apparatus and aligning with SP Manweb guidelines.

Expenses

8.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to SP Manweb on demand all reasonable charges, costs and expenses reasonably incurred by SP Manweb in direct consequence of the execution of any authorised development including without limitation in respect of—

(a) any costs reasonably incurred by or compensation properly paid by SP Manweb in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by SP Manweb as a consequence of SP Manweb—

(i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 5(3); and/or

(ii) exercising any compulsory purchase powers in the Order transferred to or benefitting SP Manweb;

(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 (including any temporary protective works and their removal); and

(f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Schedule.

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this 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 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 42 (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 SP Manweb by virtue of sub-paragraph (1) will 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 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 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) An amount which apart from this sub-paragraph would be payable to SP Manweb in respect of works by virtue of sub-paragraph (1) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on SP Manweb 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

9.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised development by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by it) in the course of carrying out such works, including without limitation 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 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 SP Manweb, or if there is any interruption in any service provided, or in the supply of any goods by SP Manweb, or SP Manweb becomes liable to pay any amount to any third party, the undertaker must—

(a) bear and pay on demand accompanied by an invoice or claim from SP Manweb the cost reasonably and properly incurred by SP Manweb in making good such damage or restoring the supply; and

(b) indemnify SP Manweb for any other expenses, loss, demands, proceedings, damages, claims, penalties or costs incurred by or recovered from SP Manweb, by reason or in

consequence of any such damage or interruption or SP Manweb becoming liable to any third party as aforesaid other than arising from any default of SP Manweb,

provided that at all times SP Manweb will be under an obligation to take reasonable steps to mitigate its loss.

(2) The fact that any act or thing may have been done by SP Manweb on behalf of the undertaker or in accordance with a plan approved by SP Manweb or in accordance with any requirement of SP Manweb as a consequence of the authorised development or under its supervision does not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this paragraph where the undertaker fails to carry out and execute the works properly with due care and attention and in a skilful and workmanlike manner or in a manner that does not materially accord with the approved plan (or as otherwise agreed between the undertaker and SP Manweb pursuant to paragraph 8).

(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 SP Manweb, its officers, employees, contractors or agents;

(b) any authorised development and/or any other works authorised by this Schedule carried out by SP Manweb as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the 2008 Act or article 35 (benefit of the Order) subject to the proviso that once such works become apparatus ("new apparatus"), any authorised development yet to be executed and not falling within this sub-paragraph (b) will be subject to the full terms of this Schedule including this paragraph in respect of such new apparatus; and/or

(c) any indirect or consequential loss of SP Manweb or 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) SP Manweb must give the undertaker reasonable notice of any claim or demand and no settlement, admission of liability or compromise or demand, unless payment is required in connection with a statutory compensation scheme, is to be made without first consulting the undertaker and considering its representations.

Enactments and agreements

10. Save to the extent provided for to the contrary elsewhere in this Schedule or by agreement in writing between SP Manweb and the undertaker, nothing in this Schedule will affect the provisions of any enactment or agreement regulating the relations between the undertaker and SP Manweb 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

11.—(1) Where in consequence of the proposed construction of any of the authorised development, the undertaker or SP Manweb requires the removal of apparatus under paragraph 5(2) or SP Manweb makes requirements for the protection or alteration of apparatus under paragraph 7, the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of SP Manweb's undertaking and SP Manweb must use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever SP Manweb'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 SP Manweb is required, it must not be unreasonably withheld or delayed.

Access

12. If in consequence of the agreement reached in accordance with paragraph 4(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable SP Manweb to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

13. Save for differences or disputes arising under paragraphs 5(1), 5(2), 5(4), 6(1) and 7 any difference or dispute arising between the undertaker and SP Manweb under this Schedule must, unless otherwise agreed in writing between the undertaker and SP Manweb, determined by arbitration in accordance with article 42 (arbitration).

SCHEDULE 19

Article 43

PROTECTIVE PROVISIONS FOR THE PROTECTION OF SHELL U.K. LIMITED

1. The provisions of this Schedule have effect for the protection of Shell unless otherwise agreed in writing between the undertaker and Shell.

Interpretation

2. In this Schedule—

"alternative apparatus" means alternative apparatus adequate to enable Shell to fulfil its functions as a pipe-line operator in a manner no less efficient than previously and having regard to Shell's standards for the construction and operation of a pipeline;

"alternative rights" means new rights for the construction and for access to and for the use, protection, inspection, maintenance, repair and renewal of apparatus or alternative apparatus including any restrictions on the landowner and occupiers for the protection of the apparatus or alternative apparatus and to allow Shell to perform its functions in a manner not less efficient than under the existing rights and having regard to Shell's standards for the construction and operation of a pipeline;

"apparatus" means the pipeline and storage system owned by Shell within or adjacent to the Order limits and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus and includes any ancillary works and apparatus all protective wrappings, valves, sleeves and slabs, cathodic protection units, together with ancillary cables and markers and such legal interest and benefit of property rights and covenants as are vested in Shell in respect of those items and, where the context allows, includes alternative apparatus;

"Shell" means Shell U.K. Limited (company number 00140141), whose registered address is Shell Centre, London, SE1 7NA and any successor in title;

"existing rights" means the rights and benefits of covenants enjoyed by Shell in land 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;

"plan" includes all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary to describe the works to be executed; and

"specified work" means any works that are near to, or will or are likely to affect any apparatus or power supply to any apparatus including—

(a) all intrusive or non-intrusive works within 15 metres of any apparatus;

(b) the crossing of apparatus by other utilities;

(c) the use of explosives within 400 metres of any apparatus; and

(d) piling, undertaking of a 3D seismic survey or the sinking boreholes within 30 metres of any apparatus,

whether carried out by the undertaker or any third party in connection with the authorised development.

Acquisition of apparatus

3.—(1) Despite any provision in this Order or anything shown on the land and crown land plans or if the Order covers any interest in any land in which any apparatus is placed or over which

existing rights are enjoyed by Shell, the undertaker must not acquire any apparatus or acquire, suspend, extinguish or affect any of the existing rights, otherwise than in accordance with this Schedule or by agreement with Shell.

(2) Where the undertaker acquires land which is subject to any existing rights and the provisions of paragraph 4 do not apply, the undertaker must retain any notice of the existing rights on the title to the relevant land when registering the undertaker's title to such acquired land.

Removal of apparatus and rights for alternative apparatus

4.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that any apparatus is relocated or diverted, that apparatus must not be removed by the undertaker and any right of Shell to maintain and use that apparatus in that land and to gain access to it must not be extinguished until alternative apparatus has been constructed and is in operation, and access to it has been provided, to the reasonable satisfaction of Shell.

(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, it must give Shell 56 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 Shell reasonably needs to remove any apparatus) the undertaker must, subject to sub-paragraph (3), afford to Shell the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently grant alternative rights for the maintenance of that apparatus in accordance with paragraph 5.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, the undertaker must afford to and, if necessary, acquire for the benefit of Shell the necessary facilities and rights for the construction, maintenance and use of the alternative apparatus and access to it.

(4) 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 Shell and the undertaker or in default of agreement settled by arbitration in accordance with article 42 (arbitration).

(5) Shell must, after the alternative apparatus to be provided or constructed has been agreed or settled in accordance with article 42 (arbitration), and after the grant to Shell of any such facilities and rights as are referred to in sub-paragraph (2), 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 allow the undertaker to remove) any redundant apparatus required by the undertaker to be removed under the provisions of this Schedule.

(6) Irrespective of sub-paragraph (5), if the undertaker gives notice in writing to Shell that it desires itself to execute any work, or part of any work in connection with the construction, removal or decommissioning of apparatus in the land of the undertaker or the construction of alternative apparatus, that work, instead of being executed by Shell, must be executed by the undertaker without unnecessary delay under the superintendence, if required, and to the reasonable satisfaction of Shell.

(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 3000 millimetres of the apparatus without Shell's consent unless that apparatus is redundant and disconnected from Shell's remaining system and is more than 3000 millimetres from any live apparatus.

Facilities and rights for alternative apparatus

5.—(1) Where, in accordance with the provisions of this Schedule, the undertaker affords to Shell 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 Shell in accordance with this paragraph or in default of agreement settled by arbitration in accordance with article 42 (arbitration).

(2) Alternative rights must be granted before any alternative apparatus is brought into use or any existing rights extinguished.

(3) The undertaker must grant Shell alternative rights by way of a deed of grant of easement, substantially in the form of Shell's precedent from time to time. If any third party is required to be involved for the grant of alternative rights, the undertaker must secure their agreement at its own cost.

(4) Nothing in this Schedule or contained in the alternative rights requires Shell to divert or remove any alternative apparatus installed in accordance with the provisions of this Schedule and any other agreement between Shell and the undertaker.

(5) In settling those terms and conditions for the alternative rights in respect of alternative apparatus the arbitrator must give effect to all reasonable requirements of the undertaker and Shell for ensuring the safety and efficient operation of the authorised development and the apparatus respectively.

(6) 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 Shell 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 Shell as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection

6.—(1) Unless a shorter period is otherwise agreed in writing between the undertaker and Shell, not less than 35 days before commencing any specified work in relation to apparatus the removal of which has not been required by the undertaker under sub-paragraph 4(2) the undertaker must submit to Shell a plan of the works to be executed.

(2) The plan to be submitted to Shell under sub-paragraph (1) must include a method statement and describe—

(a) the exact position of the works;

(b) the level at which these are proposed to be constructed or renewed;

(c) the manner of their construction or renewal including details of excavation, positioning of plant etc.;

(d) the position of all apparatus;

(e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;

(f) any intended maintenance regime; and

(g) and any other information reasonably required by Shell to assess the works.

(3) The specified work must be executed only in accordance with the plan submitted under sub-paragraph (1) and approved by Shell, and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (4) by Shell for the alteration or otherwise for the protection of the apparatus, or for securing access to it; and Shell is entitled to watch and inspect the execution of the specified work and the undertaker must follow any reasonable instructions from Shell for the safety of the apparatus and those working nearby.

(4) Any reasonable requirements made by Shell under sub-paragraph (2) must be made within a period of 21 days (unless a shorter period is otherwise agreed in writing between the undertaker and Shell) beginning with the date on which a plan under sub-paragraph (1) is submitted to it.

(5) If Shell in accordance with sub-paragraph (2) 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, this paragraph applies as if the removal of the apparatus had been required by the undertaker under paragraph 4(2) but the undertaker is not required to serve Shell with a new notice under paragraph 4.

(6) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time but (unless otherwise agreed in writing between the undertaker and Shell) in no case less than 28 days before commencing any specified work, 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.

(7) The undertaker is not 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 Shell notice of the works it intends to carry out to remedy the emergency together with a plan as soon as is reasonably practicable and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

(8) In relation to any works which will or may be situated on, over, under or within 15 metres measured in any direction of apparatus, or (wherever situated) impose any load directly upon the apparatus or involve embankment works within 15 metres of the apparatus, the plan to be submitted to Shell under sub-paragraph (1) must include a material statement describing—

(a) the exact position of the work;

(b) the level at which the work is to be constructed or renewed;

(c) the manner of its construction or renewal;

(d) the position of the apparatus; and

(e) by way of detailed drawings, every alteration proposed to be made to the apparatus.

Cathodic protection testing

7. Where in the reasonable opinion of the undertaker—

(a) the authorised development might interfere with the existing cathodic protection forming part of any apparatus; or

(b) any apparatus might interfere with the proposed or existing cathodic protection forming part of the authorised development,

Shell and the undertaker must co-operate in undertaking the tests which the undertaker considers reasonably necessary for ascertaining the nature and extent of such interference and measures for providing or preserving cathodic protection.

Expenses

8.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to Shell the reasonable costs and expenses incurred by Shell in, or in connection with—

(a) the inspection, removal, alteration or protection of any apparatus;

(b) the execution of any works required by this Schedule including the purchase, installation and commission of alternative apparatus;

(c) the review and assessment of plans;

(d) the watching and inspecting the execution of any specified work, any associated works and any works undertaken by third parties as a result of any specified work (including the assessment of plans); or

(e) imposing reasonable requirements for the protection or alteration of apparatus affected by the authorised development or works as a consequence of the authorised development,

which may reasonably be required in consequence of the execution of any such works as are required under this Schedule or are authorised by the Order.

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

(3) Upon the submission of proper and reasonable estimates of costs and expenses to be incurred by Shell, the undertaker must pay Shell sufficiently in advance to enable Shell to undertake its obligations under this Schedule in a manner that is neutral to its cashflow provided that in the event that the costs incurred by Shell are less than the amount paid by the undertaker pursuant to this sub-paragraph (3) then Shell must promptly repay any overpayment to the undertaker.

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

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or in default of agreement settled by arbitration in accordance with article 42 (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 Shell by virtue of sub-paragraph (1) must be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type of operations, capacity, dimensions or place at the existing depth in which case full costs must be borne by the undertaker.

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

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

(b) the placing of apparatus that is to Shell's current specification and standards for diversions and protective works must not be treated as a placing of apparatus of better type, greater capacity, greater dimensions or greater depth than those of the existing apparatus; and

(c) 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 must be treated as if it also had been agreed or had been so determined.

Damage to property and other losses

9.—(1) Subject to the following provisions of this paragraph, the undertaker must make reasonable compensation to Shell—

(a) for all loss, damage, liability, costs and expenses reasonably suffered or incurred by Shell for which Shell is legally liable as a result of legally sustainable claims brought against Shell by any third party solely arising out of the carrying out of any relevant works;

(b) for the cost reasonably incurred by Shell in making good any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) arising from or caused by the carrying out of any relevant works and the authorised development; and

(c) for the cost reasonably incurred by Shell in stopping, suspending and restoring the supply through its pipe-line and make reasonable compensation to Shell for any other expenses, losses, damages, penalty or costs incurred by Shell by reason or in consequence of any

such damage or interruption provided that the same arises in consequence of the carrying out of any relevant works and the authorised development.

(2) The fact that any act or thing may have been done by Shell on behalf of the undertaker or in accordance with a plan approved by Shell or in accordance with any requirement of Shell or under its supervision does not, subject to sub-paragraph (3), excuse the undertaker from liability under the provisions of sub-paragraph (1).

(3) Irrespective of anything to the contrary elsewhere in this Schedule—

(a) the undertaker and Shell must at all times take reasonable steps to prevent and mitigate any loss, damage, liability, claim, cost or expense recoverable from the other under this Schedule; and

(b) neither the undertaker nor Shell are liable for any loss, damage, liability, claim, cost or expense suffered or incurred by the other to the extent that the same are incurred as a result of or in connection with the sole, partial or complete breach of this Schedule or negligence arising out of an act, omission, default or works of the other, its officers, servants, contractors or agents.

(4) 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 Shell, its officers, employees, contractors or agents;

(b) any authorised development and/or any other works authorised by this Schedule carried out by Shell as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the 2008 Act or article 35 (benefit of the Order) subject to the proviso that once such works become apparatus ("new apparatus"), any authorised development yet to be executed and not falling within this sub-paragraph (b) will be subject to the full terms of this Schedule including this paragraph in respect of such new apparatus; and/or

(c) any indirect or consequential loss of Shell or 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.

(5) Shell must give to the undertaker reasonable notice of any claim or demand to which this paragraph 9 applies. If Shell agrees (such agreement not to be unreasonably withheld or delayed), the undertaker may at its own expense conduct all negotiations for the settlement of the same and any litigation that may arise therefrom. Shell must not compromise or settle any claim or demand or make any admission which might be prejudicial to the claim or demand without the undertaker's consent (such consent not to be unreasonably withheld). Shell must, at the request of the undertaker, afford all reasonable assistance for the purpose of contesting any such claim or action, and is entitled to be repaid all reasonable expenses incurred in so doing.

(6) Nothing in this Schedule excludes or limits the liability of the undertaker for death or personal injury resulting from the negligence of the undertaker or any of its officers, employees or agents.

(7) In this paragraph "relevant works" means such of the authorised development as—

(a) does, will or is likely to affect any apparatus; or

(b) involves a physical connection or attachment to any apparatus.

Co-operation and reasonableness

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

(2) The undertaker and Shell must act reasonably in respect of any given term of this Schedule and, in particular, (without prejudice to generality) where any consent or expression of satisfaction is required by of this Schedule it must not be unreasonably withheld or delayed.

Miscellaneous

11. Nothing in this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Shell in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made provided that the terms of the relevant enactment or agreement are not inconsistent with the provisions of this Order, including this Schedule. In the case of any inconsistency, the provisions of this Order, including this Schedule, prevail.

SCHEDULE 20

Article 43

PROTECTIVE PROVISIONS FOR THE PROTECTION OF ESSAR LTD

1. The provisions of this Schedule have effect for the protection of Essar unless otherwise agreed in writing between the undertaker and Essar.

Interpretation

2. In this Schedule—

"alternative apparatus" means alternative apparatus adequate to enable Essar to fulfil its functions as a pipe-line operator in a manner no less efficient than previously and having regard to Essar's standards for the construction and operation of a pipeline;

"alternative rights" means new rights for the construction and for access to and for the use, protection, inspection, maintenance, repair and renewal of apparatus or alternative apparatus including any restrictions on the landowner and occupiers for the protection of the apparatus or alternative apparatus and to allow Essar to perform its functions in a manner not less efficient than under the existing rights and having regard to Essar's standards for the construction and operation of a pipeline;

"apparatus" means the pipeline and storage system owned by Essar within or adjacent to the Order limits and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus and includes any ancillary works and apparatus all protective wrappings, valves, sleeves and slabs, cathodic protection units, together with ancillary cables and markers and such legal interest and benefit of property rights and covenants as are vested in Essar in respect of those items and, where the context allows, includes alternative apparatus;

"Essar" means Essar LTD and any successor in title;

"existing rights" means the rights and benefits of covenants enjoyed by Essar in land 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;

"plan" includes all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary to describe the works to be executed; and

"specified work" means any works that are near to, or will or are likely to affect any apparatus or power supply to any apparatus including—

(a) all intrusive or non-intrusive works within 15 metres of any apparatus;

(b) the crossing of apparatus by other utilities;

(c) the use of explosives within 400 metres of any apparatus; and

(d) piling, undertaking of a 3D seismic survey or the sinking boreholes within 30 metres of any apparatus,

whether carried out by the undertaker or any third party in connection with the authorised development.

Acquisition of apparatus

3.—(1) Despite any provision in this Order or anything shown on the land and crown land plans or if the Order covers any interest in any land in which any apparatus is placed or over which

existing rights are enjoyed by Essar, the undertaker must not acquire any apparatus or acquire, suspend, extinguish or affect any of the existing rights, otherwise than in accordance with this Schedule or by agreement with Essar.

(2) Where the undertaker acquires land which is subject to any existing rights and the provisions of paragraph 4 do not apply, the undertaker must retain any notice of the existing rights on the title to the relevant land when registering the undertaker's title to such acquired land.

Removal of apparatus and rights for alternative apparatus

4.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that any apparatus is relocated or diverted, that apparatus must not be removed by the undertaker and any right of Essar to maintain and use that apparatus in that land and to gain access to it must not be extinguished until alternative apparatus has been constructed and is in operation, and access to it has been provided, to the reasonable satisfaction of Essar.

(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, it must give Essar 56 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 Essar reasonably needs to remove any apparatus) the undertaker must, subject to sub-paragraph (3), afford to Essar the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently grant alternative rights for the maintenance of that apparatus in accordance with paragraph 6.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, the undertaker must afford to and, if necessary, acquire for the benefit of Essar the necessary facilities and rights for the construction, maintenance and use of the alternative apparatus and access to it.

(4) 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 Essar and the undertaker or in default of agreement settled by arbitration in accordance with article 42 (arbitration).

(5) Essar must, after the alternative apparatus to be provided or constructed has been agreed or settled in accordance with article 42 (arbitration), and after the grant to Essar of any such facilities and rights as are referred to in sub-paragraph (2), 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 allow the undertaker to remove) any redundant apparatus required by the undertaker to be removed under the provisions of this Schedule.

(6) Irrespective of sub-paragraph (5), if the undertaker gives notice in writing to Essar that it desires itself to execute any work, or part of any work in connection with the construction, removal or decommissioning of apparatus in the land of the undertaker or the construction of alternative apparatus, that work, instead of being executed by Essar, must be executed by the undertaker without unnecessary delay under the superintendence, if required, and to the reasonable satisfaction of Essar.

(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 3000 millimetres of the apparatus without Essar's consent unless that apparatus is redundant and disconnected from Essar's remaining system and is more than 3000 millimetres from any live apparatus.

Facilities and rights for alternative apparatus

5.—(1) Where, in accordance with the provisions of this Schedule, the undertaker affords to Essar 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 Essar in accordance with this paragraph or in default of agreement settled by arbitration in accordance with article 42 (arbitration).

(2) Alternative rights must be granted before any alternative apparatus is brought into use or any existing rights extinguished.

(3) The undertaker must grant Essar alternative rights by way of a deed of grant of easement, substantially in the form of Essar's precedent from time to time. If any third party is required to be involved for the grant of alternative rights, the undertaker must secure their agreement at its own cost.

(4) Nothing in this Schedule or contained in the alternative rights requires Essar to divert or remove any alternative apparatus installed in accordance with the provisions of this Schedule and any other agreement between Essar and the undertaker.

(5) In settling those terms and conditions for the alternative rights in respect of alternative apparatus the arbitrator must give effect to all reasonable requirements of the undertaker and Essar for ensuring the safety and efficient operation of the authorised development and the apparatus respectively.

(6) 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 Essar 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 Essar as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection

6.—(1) Unless a shorter period is otherwise agreed in writing between the undertaker and Essar, not less than 35 days before commencing any specified work in relation to apparatus the removal of which has not been required by the undertaker under sub-paragraph 4(2) the undertaker must submit to Essar a plan of the works to be executed.

(2) The plan to be submitted to Essar under sub-paragraph (1) must include a method statement and describe—

(a) the exact position of the works;

(b) the level at which these are proposed to be constructed or renewed;

(c) the manner of their construction or renewal including details of excavation, positioning of plant etc.;

(d) the position of all apparatus;

(e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;

(f) any intended maintenance regime; and

(g) and any other information reasonably required by Essar to assess the works.

(3) The specified work must be executed only in accordance with the plan submitted under sub-paragraph (1) and approved by Essar, and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (4) by Essar for the alteration or otherwise for the protection of the apparatus, or for securing access to it; and Essar is entitled to watch and inspect the execution of the specified work and the undertaker must follow any reasonable instructions from Essar for the safety of the apparatus and those working nearby.

(4) Any reasonable requirements made by Essar under sub-paragraph (2) must be made within a period of 21 days (unless a shorter period is otherwise agreed in writing between the undertaker and Essar) beginning with the date on which a plan under sub-paragraph (1) is submitted to it.

(5) If Essar in accordance with sub-paragraph (2) 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, this paragraph applies as if the removal of the apparatus had been required by the undertaker under paragraph 4(2) but the undertaker is not required to serve Essar with a new notice under paragraph 4.

(6) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time but (unless otherwise agreed in writing between the undertaker and Essar) in no case less than 28 days before commencing any specified work, 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.

(7) The undertaker is not 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 Essar notice of the works it intends to carry out to remedy the emergency together with a plan as soon as is reasonably practicable and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

(8) In relation to any works which will or may be situated on, over, under or within 15 metres measured in any direction of apparatus, or (wherever situated) impose any load directly upon the apparatus or involve embankment works within 15 metres of the apparatus, the plan to be submitted to Essar under sub-paragraph (1) must include a material statement describing—

(a) the exact position of the work;

(b) the level at which the work is to be constructed or renewed;

(c) the manner of its construction or renewal;

(d) the position of the apparatus; and

(e) by way of detailed drawings, every alteration proposed to be made to the apparatus.

Cathodic protection testing

7. Where in the reasonable opinion of the undertaker—

(a) the authorised development might interfere with the existing cathodic protection forming part of any apparatus; or

(b) any apparatus might interfere with the proposed or existing cathodic protection forming part of the authorised development,

Essar and the undertaker must co-operate in undertaking the tests which the undertaker considers reasonably necessary for ascertaining the nature and extent of such interference and measures for providing or preserving cathodic protection.

Expenses

8.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to Essar the reasonable costs and expenses incurred by Essar in, or in connection with—

(a) the inspection, removal, alteration or protection of any apparatus;

(b) the execution of any works required by this Schedule including the purchase, installation and commission of alternative apparatus;

(c) the review and assessment of plans;

(d) the watching and inspecting the execution of any specified work, any associated works and any works undertaken by third parties as a result of any specified work (including the assessment of plans); or

(e) imposing reasonable requirements for the protection or alteration of apparatus affected by the authorised development or works as a consequence of the authorised development,

which may reasonably be required in consequence of the execution of any such works as are required under this Schedule or are authorised by the Order.

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

(3) Upon the submission of proper and reasonable estimates of costs and expenses to be incurred by Essar, the undertaker must pay Essar sufficiently in advance to enable Essar to undertake its obligations under this Schedule in a manner that is neutral to its cashflow provided that in the event that the costs incurred by Essar are less than the amount paid by the undertaker pursuant to this sub-paragraph (3) then Essar must promptly repay any overpayment to the undertaker.

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

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or in default of agreement settled by arbitration in accordance with article 42 (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 Essar by virtue of sub-paragraph (1) must be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type of operations, capacity, dimensions or place at the existing depth in which case full costs must be borne by the undertaker.

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

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

(b) the placing of apparatus that is to Essar's current specification and standards for diversions and protective works must not be treated as a placing of apparatus of better type, greater capacity, greater dimensions or greater depth than those of the existing apparatus; and

(c) 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 must be treated as if it also had been agreed or had been so determined.

Damage to property and other losses

9.—(1) Subject to the following provisions of this paragraph, the undertaker must make reasonable compensation to Essar—

(a) for all loss, damage, liability, costs and expenses reasonably suffered or incurred by Essar for which Essar is legally liable as a result of legally sustainable claims brought against Essar by any third party solely arising out of the carrying out of any relevant works;

(b) for the cost reasonably incurred by Essar in making good any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) arising from or caused by the carrying out of any relevant works and the authorised development; and

(c) for the cost reasonably incurred by Essar in stopping, suspending and restoring the supply through its pipe-line and make reasonable compensation to Essar for any other expenses, losses, damages, penalty or costs incurred by Essar by reason or in consequence of any

such damage or interruption provided that the same arises in consequence of the carrying out of any relevant works and the authorised development.

(2) The fact that any act or thing may have been done by Essar on behalf of the undertaker or in accordance with a plan approved by Essar or in accordance with any requirement of Essar or under its supervision does not, subject to sub-paragraph (3), excuse the undertaker from liability under the provisions of sub-paragraph (1).

(3) Irrespective of anything to the contrary elsewhere in this Schedule—

(a) the undertaker and Essar must at all times take reasonable steps to prevent and mitigate any loss, damage, liability, claim, cost or expense recoverable from the other under this Schedule; and

(b) neither the undertaker nor Essar are liable for any loss, damage, liability, claim, cost or expense suffered or incurred by the other to the extent that the same are incurred as a result of or in connection with the sole, partial or complete breach of this Schedule or negligence arising out of an act, omission, default or works of the other, its officers, servants, contractors or agents.

(4) 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 Essar, its officers, employees, contractors or agents;

(b) any authorised development and/or any other works authorised by this Schedule carried out by Essar as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the 2008 Act or article 35 (benefit of the Order) subject to the proviso that once such works become apparatus ("new apparatus"), any authorised development yet to be executed and not falling within this sub-paragraph (b) will be subject to the full terms of this Schedule including this paragraph in respect of such new apparatus; and/or

(c) any indirect or consequential loss of Essar or 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.

(5) Essar must give to the undertaker reasonable notice of any claim or demand to which this paragraph 9 applies. If Essar agrees (such agreement not to be unreasonably withheld or delayed), the undertaker may at its own expense conduct all negotiations for the settlement of the same and any litigation that may arise therefrom. Essar must not compromise or settle any claim or demand or make any admission which might be prejudicial to the claim or demand without the undertaker's consent (such consent not to be unreasonably withheld). Essar must, at the request of the undertaker, afford all reasonable assistance for the purpose of contesting any such claim or action, and is entitled to be repaid all reasonable expenses incurred in so doing.

(6) Nothing in this Schedule excludes or limits the liability of the undertaker for death or personal injury resulting from the negligence of the undertaker or any of its officers, employees or agents.

(7) In this paragraph "relevant works" means such of the authorised development as—

(a) does, will or is likely to affect any apparatus; or

(b) involves a physical connection or attachment to any apparatus.

Co-operation and reasonableness

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

(2) The undertaker and Essar must act reasonably in respect of any given term of this Schedule and, in particular, (without prejudice to generality) where any consent or expression of satisfaction is required by this Schedule it must not be unreasonably withheld or delayed.

Miscellaneous

11. Nothing in this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Essar in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made provided that the terms of the relevant enactment or agreement are not inconsistent with the provisions of this Order, including this Schedule. In the case of any inconsistency, the provisions of this Order, including this Schedule, prevail.

SCHEDULE 21

Article 43

PROTECTIVE PROVISIONS NATIONAL GRID ELECTRICITY TRANSMISSION PLC AS ELECTRICITY UNDERTAKER

Application

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

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and National Grid, where the benefit of this Order is transferred or granted to another person under article 35 (benefit of Order)—

(a) any agreement of the type mentioned in sub-paragraph (1) has effect as if it had been made between National Grid and the transferee or grantee (as the case may be); and

(b) written notice of the transfer or grant must be given to National Grid on or before the date of that transfer or grant.

(3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to National Grid (but without prejudice to paragraph 11(3)(b) of this Schedule).

Interpretation

2. In 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: (i) "A-" if the rating is assigned by Standard & Poor's Ratings Group or Fitch Ratings; and "A3" if the rating is assigned by Moody's Investors Services Inc.;

"acceptable insurance" means general third party liability insurance effected and maintained by the undertaker with a combined property damage and bodily injury limit of indemnity of not less than £50,000,000.00 (fifty million pounds) per occurrence or series of occurrences arising out of one event. Such insurance shall be maintained (a) for the duration of 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; 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 £50,000,000.00 (fifty million pounds) in annual aggregate;

"acceptable security" means either—

(a) a parent company guarantee from a parent company in favour of National Grid to cover the undertaker's liability to National Grid to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to National Grid and where required by National Grid, 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 National Grid to cover the undertaker's liability to National Grid for an amount of a total liability

of not less than £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to National Grid);

"alternative apparatus" means appropriate alternative apparatus to the satisfaction of National Grid to enable National Grid to fulfil its statutory functions in a manner no less efficient than previously;

"apparatus" means any electric lines or electrical plant as defined in the Electricity Act 1989(a), belonging to or maintained by National Grid, together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of National Grid for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

"authorised works" has the same meaning as is given to the term "authorised development" in article 2 (interpretation) of this Order and includes any associated development authorised by the Order and for the purposes 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 Schedule shall include any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment;

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

"functions" includes powers and duties;

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

"ground monitoring scheme" means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for National Grid'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 National Grid 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;

"maintain" and "maintenance" shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of National Grid: construct, use, repair, alter, inspect, renew or remove the apparatus;

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

"NESO" means as defined in the STC;

"parent company" means a parent company of the undertaker acceptable to and which shall have been approved by National Grid 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 7(2) or otherwise; and/or

(b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 7(2) or otherwise; and/or

(c) includes any of the activities that are referred to in National Grid's document "Development near overhead lines" EN43-8 and the Health and Safety Executive's (HSE) Guidance Note GS6 "Avoiding Danger from Overhead Power 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 (interpretation) of this Order.

On Street Apparatus

3. Except for paragraphs 4 (apparatus of National Grid in stopped up and temporarily restricted streets), 9 (retained apparatus: protection of electricity undertaker), 10 (expenses) and 11 (indemnity) of this Schedule, which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of National Grid, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Grid are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus of National Grid in stopped up and temporarily restricted streets

4.—(1) Where any street is stopped up under article 13 (permanent stopping up of, and creation of new public rights of way and authorising vehicular use of public rights of way), if National Grid has any apparatus in the street or accessed via that street National Grid has the same rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to National Grid, or procure the granting to National Grid of, legal easements reasonably satisfactory to National Grid 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 National Grid to require the removal of that apparatus under paragraph 7 or the power of the undertaker, subject to compliance with this sub-paragraph, to carry out works under paragraph 9.

(2) Despite the temporary closure of any highway under article 12 (temporary prohibition or restriction of use of streets and public rights of way, and authorising vehicular use on public rights of way), National Grid may at all times take all necessary access across any such highway and execute and do all such works and things in, on 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 restriction or diversion was in that highway.

Protective works to buildings

5. The undertaker, in the case of the powers conferred by article 18 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Grid.

Acquisition of land

6.—(1) Regardless of any provision in this Order or anything shown on the land and crown land plans or contained in the book of reference to the Order, the undertaker may not (a) appropriate or acquire or take temporary possession of any land or apparatus or (b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of National Grid unless agreed by National Grid.

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

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

(4) Any agreement or consent granted by National Grid under paragraph 9 (Retained apparatus: protection of electricity undertaker) or any other paragraph of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).

Removal of apparatus

7.—(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 Schedule and any right of National Grid to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Grid in accordance with sub-paragraph (2) to (5).

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), secure any necessary consents for the alternative apparatus and afford to National Grid to its satisfaction (taking into account paragraph 8(1) below) the necessary facilities and rights—

(a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and

(b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Grid 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 shall not extend to the requirement for National Grid to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Schedule must be constructed in such manner and in such line or situation as may be agreed between National Grid and the undertaker.

(5) National Grid must, after the alternative apparatus to be provided or constructed has been agreed, and subject to a written diversion agreement having been entered into between the parties and the grant to National Grid of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Schedule.

Facilities and rights for alternative apparatus

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

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject the matter may be referred to arbitration in accordance with paragraph 15 (arbitration) of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection of electricity undertaker

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

(2) In relation to specified works, the plan to be submitted to National Grid under sub-paragraph (1) must include a method statement and describe—

(a) the exact position of the works;

(b) the level at which these are proposed to be constructed or renewed;

(c) the manner of their construction or renewal including details of excavation, positioning of plant;

(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 National Grid's engineers; and

(h) evidence that trench bearing capacity is to be designed to support overhead line construction traffic of at least 26 tonnes in weight.

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

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

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (6) or (8); and,

(b) must not be unreasonably withheld.

(6) In relation to any work to which sub-paragraphs (2) or (3) apply, National Grid 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 National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (6) or (8) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid will be entitled to watch and inspect the execution of those works.

(8) Where National Grid requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to National Grid's satisfaction, prior to the commencement of any specified works (or any relevant part thereof) for which protective works are required and National Grid 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 National Grid 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) to (3) and (6) to (8) apply as if the removal of the apparatus had been required by the undertaker under paragraph 7(2).

(10) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the specified works, 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 National Grid notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances and comply with sub-paragraph (12) at all times.

(12) At all times when carrying out any works authorised under the Order, the undertaker must comply with National Grid's policies for development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".

Expenses

10.—(1) Save where otherwise agreed in writing between National Grid and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to National Grid within 30 days of receipt of an itemised invoice or claim from National Grid all charges, costs and expenses reasonably anticipated within the following three months or reasonably and properly incurred by National Grid in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new 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 National Grid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Grid as a consequence of National Grid;

(i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 7(3); or

(ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Grid;

(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 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 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 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 15 (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 National Grid by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

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

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

(b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) Any amount which apart from this sub-paragraph would be payable to National Grid in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on National Grid any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

(6) Where in accordance with sub-paragraph (1) the undertaker pays National Grid in respect of an itemised invoice or claim for charges, costs and expenses reasonably anticipated within the following three months, should there be any unspent funds after the expiry of such three month period, National Grid shall repay such unspent funds within 60 days of the total charges, costs and expenses actually reasonably and properly incurred being known by National Grid.

Indemnity

11.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by 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 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 National Grid, or there is any interruption in any service provided, or in the supply of any goods, by National Grid, or National Grid becomes liable to pay any amount to any third party, the undertaker will—

(a) bear and pay on demand accompanied by an invoice or claim from National Grid the cost reasonably and properly incurred by National Grid in making good such damage or restoring the supply; and

(b) indemnify National Grid for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Grid, by reason or in consequence of any such damage or interruption or National Grid becoming liable to any third party and including STC Claims or an Incentive Deduction other than arising from any default of National Grid.

(2) The fact that any act or thing may have been done by National Grid on behalf of the undertaker or in accordance with a plan approved by National Grid or in accordance with any requirement of National Grid or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless National Grid fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of—

(a) any damage or interruption to the extent that it is attributable to the neglect or default of National Grid, its officers, servants, contractors or agents;

(b) any authorised works and/or any other works authorised by this Schedule carried out by National Grid 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 35 (benefit of the 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-section (b) will be subject to the full terms of this Schedule including this paragraph 11; and/or

(c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable.

(4) National Grid 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) National Grid must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(6) National Grid 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 National Grid's reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of National Grid's control and if reasonably requested to do so by the undertaker National Grid must provide an explanation of how the claim has been minimised, where relevant.

(7) Not to commence construction (and not to permit the commencement of such construction) of the authorised works on any land owned by National Grid or in respect of which National Grid has an easement or wayleave for its apparatus or any other interest or to carry out any works within 15 metres of National Grid's apparatus until the following conditions are satisfied—

(a) unless and until National Grid 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 National Grid has confirmed the same to the undertaker in writing; and

(b) unless and until National Grid is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to National Grid 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 National Grid has confirmed the same in writing to the undertaker.

(8) In the event that the undertaker fails to comply with sub-paragraph 11(7) of this Schedule, nothing in this Schedule shall prevent National Grid from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

Enactments and agreements

12. Save to the extent provided for to the contrary elsewhere in this Schedule or by agreement in writing between National Grid and the undertaker, nothing in this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and National Grid in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

13.—(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or National Grid requires the removal of apparatus under paragraph 7(2) or National Grid makes requirements for the protection or alteration of apparatus under paragraph 9, 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 National Grid's undertaking and National Grid must use its best endeavours to co-operate with the undertaker for that purpose.

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

Access

14. If in consequence of the agreement reached in accordance with paragraph 6(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

15. Save for differences or disputes arising under paragraph 7(2), 7(4), 8(1) and 9 any difference or dispute arising between the undertaker and National Grid under this Schedule must, unless otherwise agreed in writing between the undertaker and National Grid, be determined by arbitration in accordance with article 42 (arbitration).

Notices

16. Notwithstanding article 45 (service of notices), any plans submitted to National Grid by the undertaker pursuant to this Schedule must be submitted using the LSBUD system (https://lsbud.co.uk/) or to such other address as National Grid may from time to time appoint instead for that purpose and notify to the undertaker in writing.

SCHEDULE 22

Article 43

PROTECTIVE PROVISIONS FOR THE PROTECTION OF UNITED UTILITIES WATER LIMITED

Application

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

Interpretation

2. In this Schedule—

"alternative apparatus" means suitable alternative apparatus to enable UU Water to fulfil its statutory functions in a manner no less efficient than previously;

"apparatus" means any treatment works, reservoirs, pumping stations, water mains, sewers, drains, sludge mains, disposal mains, pipes or any accessories (including those within the meaning of section 219 of the Water Industry Act 1991) vested in UU Water under the Water Industry Act 1991 and any preceding legislation or other apparatus belonging to or maintained by UU Water for the purposes of UU Water's undertaking together with any replacement apparatus and such other apparatus constructed pursuant to this Order that becomes operational apparatus of UU Water for the purposes of UU Water'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 (interpretation) of the Order and for the purposes of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

"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 Schedule;

"Estimate" means a reasonable estimate of the total reasonable and proper costs that UU Water expects to incur in respect of staff and orders or instructions that need to be given to UU Water's vendors in its supply chain or to third party organisations to obtain their consent in respect of the specified works;

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

"functions" includes powers and duties;

"ground mitigation scheme" means a scheme approved by UU Water (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 conditions and vibration 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 and water supplies are to be monitored (including turbidity), the timescales of any monitoring activities and the extent of ground subsidence, dewatering and / or vibration which, if exceeded, shall require the undertaker to submit for UU Water's approval a ground mitigation scheme;

"ground subsidence event" means any ground subsidence, ground dewatering or vibration identified by the monitoring activities set out in the ground monitoring scheme that has exceeded or reasonably has the potential to exceed 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" have effect as if the term maintain includes protect and use;

"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;

"protective works" means any works that are reasonably necessary to protect UU Water's services to its customers and its apparatus from damage that may be caused by the carrying out, maintenance or use of the authorised development;

"rights" includes 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 or activities (including maintenance) undertaken in association with the authorised development (including maintenance and notwithstanding the definition of "commence" in article 2 (interpretation) of this Order) including but not limited to any intrusive site preparation works, intrusive remediation works, intrusive surveys and investigations (including archaeological, utility or soil surveys), erection of temporary fencing requiring intrusive supports, intrusive marking out of site boundaries, diversion or laying of services or intrusive environmental mitigation measures and any such temporary access by HGVs or LGVs that may be required in association with these, and which—

(a) when involving a pipe up to and including 300mm in diameter, will or may be situated over, or within 3000mm measured in any direction of any apparatus, the removal of which has not been required by the undertaker under sub-paragraph 6(2) or otherwise;

(b) when involving a pipe exceeding 300mm in diameter, will or may be situated over, or within 5000mm measured in any direction of any apparatus the removal of which has not been required by the undertaker under sub-paragraph 6(2) or otherwise; or

(c) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under sub-paragraph 6(2) or otherwise;

"UU Water" means United Utilities Water Limited (company number 02366678), registered office at Haweswater House, Lingley Mere Business Park, Lingley Green Avenue, Great Sankey, Warrington, WA5 3LP and includes its successors in title or any successor as a water and sewerage undertaker within the meaning of the Water Industry Act 1991; and

"UU Water's undertaking" means the rights, duties and obligations of United Utilities Water Limited as a water and sewerage undertaker under the Water Industry Act 1991.

Apparatus of UU Water stopped up in street

3. Notwithstanding the temporary closure of any street under the powers of article 12 (temporary prohibition or restriction of use of streets and public rights of way, and authorising vehicular use on public rights of way) UU Water will be at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as it would have been entitled to do immediately before such temporary alteration, diversion or restriction in respect of any apparatus which at the time of the stopping up or diversion was in that street.

Discharge of Water, foul and surface water

4.—(1) If the undertaker proposes to connect foul water to a public sewer operated by UU Water, the undertaker shall give to UU Water notice of the proposal, and within 42 days of the receipt by them of the notice, UU Water may refuse permission for the connection but only if it

has reasonable grounds for doing so, or it may grant permission for the connection or alteration, subject to such reasonable conditions as it thinks fit acting reasonably. Any such permission may in particular specify the mode and point of connection.

(2) If the undertaker proposes to connect surface water to a public sewer operated by UU Water or divert surface water into another surface water sewer operated by UU Water, the undertaker shall give to UU Water notice of the proposal, and within 42 days of the receipt by them of the notice, UU Water may refuse permission for the connection, but only if it has reasonable grounds for doing so, or it may grant permission for the connection or alteration, subject to such reasonable conditions as it thinks fit acting reasonably. Any such permission may in particular specify the mode, the point of connection, the rate of discharge and the size of any attenuation necessary. UU Water shall be entitled to refuse any connection where the sustainable drainage system hierarchy for managing surface water has not been reasonably investigated and / or sustainable drainage has not been incorporated within the proposed surface water drainage to the satisfaction of UU Water.

(3) UU Water may prohibit the discharge of foul water into the public sewer reserved for surface water, and prohibit the discharge of surface water into the public sewer reserved for foul water.

(4) Where UU Water has not granted or refused permission under this paragraph within 42 days from the receipt of notice of a proposal the permission shall be deemed to be granted.

(5) Nothing in this section entitles the undertaker to—

(a) discharge into a public sewer (directly or indirectly), any highway drainage, culvert, watercourse, groundwater, trade effluent or any liquid or other matter, the discharge of which into a public sewer is prohibited by or under any enactment; or

(b) have drains or sewers that communicate directly or indirectly with a surface water sewer or storm water overflow.

Protective works to buildings

5. The undertaker must exercise the powers conferred by article 18 (protective work to buildings) so as not to obstruct or render less convenient the access to any apparatus without the written consent of UU Water (such consent not to be unreasonably 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 the view of its intended removal or abandonment) or property of UU Water or any interruption in the supply of water and the provision of sewerage services by UU Water, as the case may be, is caused, the undertaker must bear and pay on demand the cost reasonably incurred and documented by UU Water in making good such damage or restoring the supply; and, shall pay compensation to UU Water for any loss sustained by reason of any such damage or interruption.

Removal of apparatus

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

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to UU Water advance written notice of not less than 70 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 this Order UU Water reasonably needs to move or remove any of its apparatus) the undertaker must afford to UU Water to its reasonable satisfaction 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 UU Water 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 UU Water in respect of the apparatus); and

(c) to allow unhindered access to that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by UU Water 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, UU Water must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to assist the undertaker in obtaining the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation will not extend to the requirement for UU Water 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 Schedule must be constructed in such manner and in such position as may be agreed between UU Water and the undertaker, each acting reasonably.

(5) UU Water must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the prior grant to UU Water of such facilities and rights as are referred to in sub-paragraph (2) or (3), then proceed without unnecessary delay to construct and bring in to 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 Schedule.

Facilities and rights for alternative apparatus

7.—(1) Where, in accordance with the provisions of this Schedule, the undertaker affords to or secures for UU Water 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 UU Water, each acting reasonably, and must be no less favourable on the whole to UU Water than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed unless otherwise agreed by UU Water.

(2) If the facilities and rights to be afforded by the undertaker and agreed with UU Water 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 UU Water than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed, then the terms and conditions to which those facilities and rights are subject may be referred to arbitration in accordance with paragraph 14 of this Schedule and the arbitrator must make such provision for the payment of reasonable compensation by the undertaker to UU Water as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection of UU Water

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

(2) The plan to be submitted to UU Water 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, identified if necessary by survey or investigation works carried out with the prior agreement and to the reasonable satisfaction of UU Water;

(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 UU Water has given written approval of the plan so submitted (and the ground monitoring scheme if required).

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

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5);

(b) must not be unreasonably withheld or delayed and UU Water and any approval or refusal must be provided to the undertaker within 56 days of the date of submission of the plan under sub-paragraph (1); and

(c) must include the payment of the reasonable and proper costs and expenses incurred by UU Water in approving any application submitted in accordance with paragraph 8.

(5) UU Water may require protective works or such modifications to be made to the plan as may be reasonably necessary for the purpose of maintaining services to its customers, or 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.

(6) Specified works must only be executed in accordance with—

(a) the plan submitted under sub-paragraph (1) (and ground monitoring scheme if required), as approved or as amended from time to time by agreement between the undertaker and UU Water; and

(b) all conditions imposed under sub-paragraph (4)(a), and UU Water will be entitled to watch and inspect the execution of those works.

(7) Where UU Water reasonably requires any protective works or such modifications to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works or modifications, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to UU Water's reasonable satisfaction prior to the commencement of any specified works (or any relevant part thereof) for which such protective works or modifications are required prior to commencement.

(8) If UU Water, 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 5 to 7 apply as if the removal of the apparatus had been required by the undertaker under paragraph 6(2).

(9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the specified works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(10) As soon as is 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) UU Water retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such reasonable and documented costs in line with paragraph 9.

(11) 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 UU Water notice as soon as is reasonably practicable and a plan of those works and must comply with the conditions imposed under sub-paragraph (4)(a) insofar as is reasonably practicable in the circumstances.

(12) 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 life or property or the environment, and to any interruption of a supply of water provided to any premises and to any interruption of the provision of sewerage services to any premises.

Expenses

9.—(1) At the same time as any written notice is provided in accordance with paragraph 6(2) or paragraph 8(8), UU Water shall also submit an Estimate to the undertaker.

(2) If the undertaker elects that it will proceed with the specified works it shall make an advance payment of the Estimate to UU Water no later than 28 days prior to the planned commencement of the specified works. The undertaker shall not commence the specified works until a minimum of 28 days of receipt by UU Water of the advance payment.

(3) If at any point UU Water's Estimate is forecast to be exceeded, UU Water shall submit an early warning notification and then a change request documenting all costs already incurred and forecast to be reasonably incurred and submit an updated Estimate to the undertaker no less than 28 days prior to the Estimate being reasonably expected to be exceeded. The undertaker shall make such additional payment required by the updated Estimate as soon as reasonably possible and in any event no later than 56 days after receipt of the updated Estimate.

(4) Where the undertaker fails to make such additional payment required under sub-paragraph (3) within 56 days of receipt of the updated Estimate, UU Water will be entitled to require the undertaker to suspend works from the point at which the charges, costs and expenses reach or exceed the Estimate. In addition any reasonable abortive/demobilisation costs resulting from this would be recoverable by UU Water from the undertaker.

(5) In the event of any dispute as to the reasonableness of costs included in an updated Estimate submitted under sub-paragraph (3), UU Water must not exercise the powers of sub-paragraph (4) until the dispute has been finally determined.

(6) Subject to the following provisions of this paragraph, UU Water' will retain an account of all its direct charges, costs and expenses reasonably incurred and documented by UU Water in the design, planning, inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus required as a direct result of the execution of any authorised works including without limitation—

(a) any costs reasonably incurred by or compensation properly paid by UU Water in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including reasonable costs (including professional fees) incurred by UU Water as a consequence of UU Water—

  (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 6(3) if it elects to do so; or

  (ii) exercising any compulsory purchase powers under this Order transferred to or benefitting UU Water;

(b) in connection with the cost of the carrying out of any necessary 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;

(f) the survey of any land, apparatus or works, the inspection and monitoring of works, the provision of network contingency measures 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;

(g) any watching brief pursuant to sub-paragraph 8(6);

(h) in connection with an assessment of flood risk from UU Water apparatus (note above comment about whether this apparatus includes a reservoir);

(i) in connection with an assessment of the impact on a UU Water outfall; and

(j) any relevant charges in accordance with the charges scheme under the Water Industry Act 1991.

(7) UU Water shall give the undertaker regular actual and forecast cost updates at intervals to be agreed between UU Water and the undertaker, each acting reasonably.

(8) Within 90 days of completion of the specified works, UU Water shall reconcile its accounts with its supply chain and collate its internal costs and advise the undertaker of the final account position. Within 28 days of this final account, UU shall reimburse the undertaker of all remaining monies that were received as part of any advance payment arrangements. If the final account is above the Estimate, the undertaker will be required to pay UU Water within 28 days of submission of the final account.

(9) UU Water may in carrying out works, elect to place—

(a) alternative apparatus of a better type, or greater capacity or of greater dimensions in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions save where this has been solely due to using the nearest currently available type (or where it is more economical overall or there is no practical alternative to the relevant course of action, including where the same is mandated by UU Water's Standards); or

(b) existing or alternative apparatus at a depth greater than the depth at which the existing apparatus was situated save for where the requirement for a greater depth cannot reasonably be avoided, (a "Betterment").

(10) The twinning of assets crossing the authorised works or similar initiatives to provide resilience to UU Water's network in accordance with the prevailing business and engineering requirements may be necessary, in circumstances in which the proposed authorised works will compromise the future access or present an unacceptable operational or business risk to the relevant asset (without interference with the authorised work), and such twinning or similar arrangement is not Betterment. Where UU Water can demonstrate on a case by case basis that the particular asset is critical (for example, it is critical to the provision of water or wastewater services, or the authorised works cannot accommodate a like for like asset replacement, or there is no alternative means of maintaining services to customers by bypassing the asset under the authorised works), the twinning of assets crossing the authorised works or similar arrangement is not Betterment.

(11) Where UU Water has elected to place apparatus which is assessed and agreed by UU Water as Betterment, the undertaker shall not be required to cover any additional cost associated with that Betterment. Any such assessment and decision by UU Water on whether such apparatus is Betterment or not shall always be made by UU Water acting reasonably.

Indemnity

10.—(1) If by reason of the authorised 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 UU Water, or there is any material interruption in any service provided, or in the supply of any goods by UU Water, or UU Water has to take action to protect the services to its customers, or UU Water elects to use its statutory powers, the undertaker must—

(a) bear and pay the cost reasonably incurred by UU in making good such damage or restoring the supply or use of the UU Water's statutory powers; and

(b) make reasonable compensation to UU Water for any other expenses, loss, damages, penalty or costs suffered or incurred and documented by UU Water, by reason of any such damage or interruption or use of UU Water's statutory powers, provided always that UU Water makes all reasonable endeavours to mitigate any such expenses, losses, damages, penalties or costs.

(2) The fact that any act or thing may have been done by UU Water on behalf of the undertaker or in accordance with a plan approved by UU Water or in accordance with any requirement of UU Water or under its supervision does not, excuse the undertaker from liability under the provisions.

(3) 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 UU Water, its officers, servants, contractors or agents.

(4) Notwithstanding any paragraph or sub-paragraph of this Schedule, the undertaker shall under no circumstances be liable for any consequential loss or indirect loss suffered by UU Water.

(5) UU Water must give the undertaker reasonable notice of any 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.

Enactments and agreements

11. Except where this Schedule provides otherwise, nothing in this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and UU Water 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

12.—(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or UU Water requires the removal of apparatus under paragraph 6(2) or UU Water makes requirements for the protection or alteration of apparatus under paragraph 8, the undertaker must use all reasonable 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 UU Water's undertaking, using existing processes where requested by UU Water, provided it is appropriate to do so, and UU Water must use its reasonable endeavours to co-operate with the undertaker for that purpose.

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

(3) Where the undertaker identifies any apparatus which may belong to or be maintainable by UU Water but which does not appear on any statutory map kept for the purpose by UU Water, it shall inform UU Water of the existence and location of the apparatus as soon as is reasonably practicable.

(4) Where UU Water identifies any apparatus which may belong to others but which does not appear on any statutory map kept for the purpose by UU Water, it shall inform the undertaker of the existence and location of the apparatus as soon as is reasonably practicable.

(5) The undertaker shall notify UU Water of any hazardous material/contamination encountered in land involving UU apparatus or where sub-paragraphs 2(a), 2(b), and/or 2(c) of the definition of Specified Works applies. UU Water shall likewise notify the undertaker where it believes there is a risk that the undertaker may encounter hazardous material/contamination in such land.

Access

13. If in consequence of any agreement reached in accordance with paragraph 1 or the powers conferred by this Order the access to any apparatus is materially obstructed, the undertaker shall seek to provide such alternative rights and means of access to such apparatus, to the extent that provision of such rights and means of access is within the ability of the undertaker to grant, as will enable UU Water to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

14. Save for differences or disputes arising under paragraph 9(4) any difference or dispute arising between the undertaker and UU Water under this Schedule must, unless otherwise agreed in writing between the undertaker and UU Water, be determined by arbitration in accordance with article 42 (arbitration).

Notices

15. Notwithstanding article 45 (service of notices) any plans submitted to UU Water by the undertaker must be sent via email to UU Water s and sent to the General Counsel Department at UU Water's registered office or such other address as UU Water may from time to time appoint instead for that purpose and notify to the undertaker in writing.

SCHEDULE 23

Article 43

PROTECTIVE PROVISIONS FOR THE PROTECTION OF BRITISH PIPELINES AGENCY

Application

1. The provisions of this Schedule have effect for the protection of British Pipelines Agency unless otherwise agreed in writing between the undertaker and British Pipelines Agency.

Interpretation

2. In this Schedule—

"alternative apparatus" means alternative apparatus adequate to enable British Pipelines Agency to fulfil its functions as a pipe-line operator in a manner no less efficient than previously and having regard to British Pipelines Agency's standards for the construction and operation of a pipeline;

"alternative rights" means new rights for the construction and for access to and for the use, protection, inspection, maintenance, repair and renewal of apparatus or alternative apparatus including any restrictions on the landowner and occupiers for the protection of the apparatus or alternative apparatus and to allow British Pipelines Agency to perform its functions in a manner not less efficient than under the existing rights and having regard to British Pipelines Agency's standards for the construction and operation of a pipeline;

"apparatus" means the pipeline and storage system owned by British Pipelines Agency within or adjacent to the Order limits and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus and includes any ancillary works and apparatus all protective wrappings, valves, sleeves and slabs, cathodic protection units, together with ancillary cables and markers and such legal interest and benefit of property rights and covenants as are vested in British Pipelines Agency in respect of those items and, where the context allows, includes alternative apparatus;

"British Pipelines Agency" means British Pipelines Agency and any successor in title;

"existing rights" means the rights and benefits of covenants enjoyed by British Pipelines Agency in land 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;

"plan" includes all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary to describe the works to be executed; and

"specified work" means any works that are near to, or will or are likely to affect any apparatus or power supply to any apparatus including—

(a) all intrusive or non-intrusive works within 15 metres of any apparatus;

(b) the crossing of apparatus by other utilities;

(c) the use of explosives within 400 metres of any apparatus; and

(d) piling, undertaking of a 3D seismic survey or the sinking boreholes within 30 metres of any apparatus,

whether carried out by the undertaker or any third party in connection with the authorised development.

Acquisition of apparatus

3.—(1) Despite any provision in this Order or anything shown on the land and crown land plans or if the Order covers any interest in any land in which any apparatus is placed or over which existing rights are enjoyed by British Pipelines Agency, the undertaker must not acquire any apparatus or acquire, suspend, extinguish or affect any of the existing rights, otherwise than in accordance with this Schedule or by agreement with British Pipelines Agency.

(2) Where the undertaker acquires land which is subject to any existing rights and the provisions of paragraph 4 do not apply, the undertaker must retain any notice of the existing rights on the title to the relevant land when registering the undertaker's title to such acquired land.

Removal of apparatus and rights for alternative apparatus

4.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that any apparatus is relocated or diverted, that apparatus must not be removed by the undertaker and any right of British Pipelines Agency to maintain and use that apparatus in that land and to gain access to it must not be extinguished until alternative apparatus has been constructed and is in operation, and access to it has been provided, to the reasonable satisfaction of British Pipelines Agency.

(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, it must give British Pipelines Agency 56 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 British Pipelines Agency reasonably needs to remove any apparatus) the undertaker must, subject to sub-paragraph (3), afford to British Pipelines Agency the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently grant alternative rights for the maintenance of that apparatus in accordance with paragraph (6).

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, the undertaker must afford to and, if necessary, acquire for the benefit of British Pipelines Agency the necessary facilities and rights for the construction, maintenance and use of the alternative apparatus and access to it.

(4) 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 British Pipelines Agency and the undertaker or in default of agreement settled by arbitration in accordance with article 42 (arbitration).

(5) British Pipelines Agency must, after the alternative apparatus to be provided or constructed has been agreed or settled in accordance with article 42 (arbitration), and after the grant to British Pipelines Agency of any such facilities and rights as are referred to in sub-paragraph (2), 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 allow the undertaker to remove) any redundant apparatus required by the undertaker to be removed under the provisions of this Schedule.

(6) Irrespective of sub-paragraph (5), if the undertaker gives notice in writing to British Pipelines Agency that it desires itself to execute any work, or part of any work in connection with the construction, removal or decommissioning of apparatus in the land of the undertaker or the construction of alternative apparatus, that work, instead of being executed by British Pipelines Agency, must be executed by the undertaker without unnecessary delay under the superintendence, if required, and to the reasonable satisfaction of British Pipelines Agency.

(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 3000 millimetres of the apparatus without British Pipelines Agency's consent unless that apparatus is redundant and disconnected from British Pipelines Agency's remaining system and is more than 3000 millimetres from any live apparatus.

Facilities and rights for alternative apparatus

5.—(1) Where, in accordance with the provisions of this Schedule, the undertaker affords to British Pipelines Agency 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 British Pipelines Agency in accordance with this paragraph or in default of agreement settled by arbitration in accordance with article 42 (arbitration).

(2) Alternative rights must be granted before any alternative apparatus is brought into use or any existing rights extinguished.

(3) The undertaker must grant British Pipelines Agency alternative rights by way of a deed of grant of easement, substantially in the form of British Pipelines Agency's precedent from time to time. If any third party is required to be involved for the grant of alternative rights, the undertaker must secure their agreement at its own cost.

(4) Nothing in this Schedule or contained in the alternative rights requires British Pipelines Agency to divert or remove any alternative apparatus installed in accordance with the provisions of this Schedule and any other agreement between British Pipelines Agency and the undertaker.

(5) In settling those terms and conditions for the alternative rights in respect of alternative apparatus the arbitrator must give effect to all reasonable requirements of the undertaker and British Pipelines Agency for ensuring the safety and efficient operation of the authorised development and the apparatus respectively.

(6) 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 British Pipelines Agency 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 British Pipelines Agency as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection

6.—(1) Unless a shorter period is otherwise agreed in writing between the undertaker and British Pipelines Agency, not less than 35 days before commencing any specified work in relation to apparatus the removal of which has not been required by the undertaker under sub-paragraph 4(2) the undertaker must submit to British Pipelines Agency a plan of the works to be executed.

(2) The plan to be submitted to British Pipelines Agency under sub-paragraph (1) must include a method statement and describe—

(a) the exact position of the works;

(b) the level at which these are proposed to be constructed or renewed;

(c) the manner of their construction or renewal including details of excavation, positioning of plant etc.;

(d) the position of all apparatus;

(e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;

(f) any intended maintenance regime; and

(g) and any other information reasonably required by British Pipelines Agency to assess the works.

(3) The specified work must be executed only in accordance with the plan submitted under sub-paragraph (1) and approved by British Pipelines Agency, and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (4) by British Pipelines Agency for the alteration or otherwise for the protection of the apparatus, or for securing access to it; and British Pipelines Agency is entitled to watch and inspect the execution of the specified work and the undertaker must follow any reasonable instructions from British Pipelines Agency for the safety of the apparatus and those working nearby.

(4) Any reasonable requirements made by British Pipelines Agency under sub-paragraph (2) must be made within a period of 21 days (unless a shorter period is otherwise agreed in writing between the undertaker and British Pipelines Agency) beginning with the date on which a plan under sub-paragraph (1) is submitted to it.

(5) If British Pipelines Agency in accordance with sub-paragraph (2) 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, this paragraph applies as if the removal of the apparatus had been required by the undertaker under paragraph 4(2) but the undertaker is not required to serve British Pipelines Agency with a new notice under paragraph 4.

(6) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time but (unless otherwise agreed in writing between the undertaker and British Pipelines Agency) in no case less than 28 days before commencing any specified work, 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.

(7) The undertaker is not 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 British Pipelines Agency notice of the works it intends to carry out to remedy the emergency together with a plan as soon as is reasonably practicable and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

(8) In relation to any works which will or may be situated on, over, under or within 15 metres measured in any direction of apparatus, or (wherever situated) impose any load directly upon the apparatus or involve embankment works within 15 metres of the apparatus, the plan to be submitted to British Pipelines Agency under sub-paragraph (1) must include a material statement describing—

(a) the exact position of the work;

(b) the level at which the work is to be constructed or renewed;

(c) the manner of its construction or renewal;

(d) the position of the apparatus; and

(e) by way of detailed drawings, every alteration proposed to be made to the apparatus.

Cathodic protection testing

7. Where in the reasonable opinion of the undertaker—

(a) the authorised development might interfere with the existing cathodic protection forming part of any apparatus; or

(b) any apparatus might interfere with the proposed or existing cathodic protection forming part of the authorised development,

British Pipelines Agency and the undertaker must co-operate in undertaking the tests which the undertaker considers reasonably necessary for ascertaining the nature and extent of such interference and measures for providing or preserving cathodic protection.

Expenses

8.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to British Pipelines Agency the reasonable costs and expenses incurred by British Pipelines Agency in, or in connection with—

(a) the inspection, removal, alteration or protection of any apparatus;

(b) the execution of any works required by this Schedule including the purchase, installation and commission of alternative apparatus;

(c) the review and assessment of plans;

(d) the watching and inspecting the execution of any specified work, any associated works and any works undertaken by third parties as a result of any specified work (including the assessment of plans); or

(e) imposing reasonable requirements for the protection or alteration of apparatus affected by the authorised development or works as a consequence of the authorised development, which may reasonably be required in consequence of the execution of any such works as are required under this Schedule or are authorised by the Order.

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

(3) Upon the submission of proper and reasonable estimates of costs and expenses to be incurred by British Pipelines Agency, the undertaker must pay British Pipelines Agency sufficiently in advance to enable British Pipelines Agency to undertake its obligations under this Schedule in a manner that is neutral to its cashflow provided that in the event that the costs incurred by British Pipelines Agency are less than the amount paid by the undertaker pursuant to this sub-paragraph (3) then British Pipelines Agency must promptly repay any overpayment to the undertaker.

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

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or in default of agreement settled by arbitration in accordance with article 42 (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 British Pipelines Agency by virtue of sub-paragraph (1) must be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type of operations, capacity, dimensions or place at the existing depth in which case full costs must be borne by the undertaker.

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

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

(b) the placing of apparatus that is to British Pipelines Agency's current specification and standards for diversions and protective works must not be treated as a placing of apparatus of better type, greater capacity, greater dimensions or greater depth than those of the existing apparatus; and

(c) 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 must be treated as if it also had been agreed or had been so determined.

Damage to property and other losses

9.—(1) Subject to the following provisions of this paragraph, the undertaker must make reasonable compensation to British Pipelines Agency—

(a) for all loss, damage, liability, costs and expenses reasonably suffered or incurred by British Pipelines Agency for which British Pipelines Agency is legally liable as a result of legally sustainable claims brought against British Pipelines Agency by any third party solely arising out of the carrying out of any relevant works;

(b) for the cost reasonably incurred by British Pipelines Agency in making good any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) arising from or caused by the carrying out of any relevant works and the authorised development; and

(c) for the cost reasonably incurred by British Pipelines Agency in stopping, suspending and restoring the supply through its pipe-line and make reasonable compensation to British Pipelines Agency for any other expenses, losses, damages, penalty or costs incurred by British Pipelines Agency by reason or in consequence of any such damage or interruption provided that the same arises in consequence of the carrying out of any relevant works and the authorised development.

(2) The fact that any act or thing may have been done by British Pipelines Agency on behalf of the undertaker or in accordance with a plan approved by British Pipelines Agency or in accordance with any requirement of British Pipelines Agency or under its supervision does not, subject to sub-paragraph (3), excuse the undertaker from liability under the provisions of sub-paragraph (1).

(3) Irrespective of anything to the contrary elsewhere in this Schedule—

(a) the undertaker and British Pipelines Agency must at all times take reasonable steps to prevent and mitigate any loss, damage, liability, claim, cost or expense recoverable from the other under this Schedule; and

(b) neither the undertaker nor British Pipelines Agency are liable for any loss, damage, liability, claim, cost or expense suffered or incurred by the other to the extent that the same are incurred as a result of or in connection with the sole, partial or complete breach of this Schedule or negligence arising out of an act, omission, default or works of the other, its officers, servants, contractors or agents.

(4) 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 British Pipelines Agency, its officers, employees, contractors or agents;

(b) any authorised development and/or any other works authorised by this Schedule carried out by British Pipelines Agency as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the 2008 Act or article 35 (benefit of the Order) subject to the proviso that once such works become apparatus ("new apparatus"), any authorised development yet to be executed and not falling within this sub-paragraph (b) will be subject to the full terms of this Schedule including this paragraph in respect of such new apparatus; and/or

(c) any indirect or consequential loss of British Pipelines Agency or 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.

(5) British Pipelines Agency must give to the undertaker reasonable notice of any claim or demand to which this paragraph 9 applies. If British Pipelines Agency agrees (such agreement not to be unreasonably withheld or delayed), the undertaker may at its own expense conduct all negotiations for the settlement of the same and any litigation that may arise therefrom. British Pipelines Agency must not compromise or settle any claim or demand or make any admission which might be prejudicial to the claim or demand without the undertaker's consent (such consent not to be unreasonably withheld). British Pipelines Agency must, at the request of the undertaker, afford all reasonable assistance for the purpose of contesting any such claim or action, and is entitled to be repaid all reasonable expenses incurred in so doing.

(6) Nothing in this Schedule excludes or limits the liability of the undertaker for death or personal injury resulting from the negligence of the undertaker or any of its officers, employees or agents.

(7) In this paragraph "relevant works" means such of the authorised development as—

(a) does, will or is likely to affect any apparatus; or

(b) involves a physical connection or attachment to any apparatus.

Co-operation and reasonableness

10.—(1) Where in consequence of the proposed construction of any of the authorised development, the undertaker requires the removal of apparatus under this Schedule or British Pipelines Agency makes requirements for the protection or alteration of apparatus under this Schedule, the undertaker must use reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of British Pipelines Agency's undertaking and British Pipelines Agency must use its reasonable endeavours to co-operate with the undertaker for that purpose.

(2) The undertaker and British Pipelines Agency must act reasonably in respect of any given term of this Schedule and, in particular, (without prejudice to generality) where any consent or expression of satisfaction is required by this Schedule it must not be unreasonably withheld or delayed.

Miscellaneous

11. Nothing in this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and British Pipelines Agency in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made provided that the terms of the relevant enactment or agreement are not inconsistent with the provisions of this Order, including this Schedule. In the case of any inconsistency, the provisions of this Order, including this Schedule, prevail.

SCHEDULE 24

Article 43

PROTECTIVE PROVISIONS FOR THE PROTECTION OF THE DRAINAGE AUTHORITY

1. The provisions of this Schedule apply for the protection of the drainage authority unless otherwise agreed between the undertaker and the drainage authority.

2. In this Schedule—

"construction" includes execution, placing, altering, laying, replacing, relaying, connection, building, installing, removal and excavation and "construct" and "constructed" are to be construed accordingly;

"the drainage authority" means the lead local flood authority within the meaning of section 6 (other definitions) of the Flood and Water Management Act 2010(b);

"drainage work" means any ordinary watercourse and includes any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage or flood defence in connection with an ordinary watercourse which is the responsibility of the drainage authority;

"ordinary watercourse" has the same meaning as given in section 72 (interpretation) of the Land Drainage Act 1991(a);

"plans" includes sections, drawings, specifications and method statements; and

"specified work" means works carried out in relation to or which may alter or obstruct any ordinary watercourse including by—

(a) erecting any mill dam, weir or other similar obstruction to the flow of the watercourse, or raising or otherwise altering any such obstruction;

(b) construction or installation of a bridge or other crossing structure;

(c) installing a culvert in the watercourse; or

(d) altering a watercourse or a culvert or other form of drainage infrastructure in a manner that would be likely to affect the flow of the watercourse.

3.—(1) Before beginning to construct any specified work, the undertaker must submit to the drainage authority plans of the work, and such further particulars as the drainage authority may within 28 days of the first submission of the plans reasonably require.

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the drainage authority, or determined under paragraph 9.

(3) The drainage authority must approve or refuse approval of the plans for a specified work within 56 days of receipt of the later of—

(a) the plans under sub-paragraph (1); or

(b) such further particulars as the drainage authority may reasonably require under sub-paragraph (1).

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

(a) must not be unreasonably withheld or delayed;

(b) is to be deemed to have been given if it is neither given nor refused within the period specified in sub-paragraph (2); and

(c) may be given subject to such reasonable requirements or conditions as the drainage authority may make for the protection of any ordinary watercourse or for the prevention of flooding.

4. The requirements or conditions which the drainage authority may make under paragraph 3 include conditions requiring the undertaker at its own expense to construct such protective works (including any new works as well as alterations to existing works) as are reasonably necessary—

(a) to safeguard any ordinary watercourse against damage; or

(b) to secure that the efficiency of any ordinary watercourse for flood defence or land drainage purposes is not impaired and that the risk of flooding is not otherwise increased, by reason of the specified work in relation to the ordinary watercourse.

5.—(1) Any specified work in relation to an ordinary watercourse, and all protective works required by the drainage authority under paragraph 3, must be constructed to the reasonable satisfaction of the drainage authority and an officer of the drainage authority is entitled, on giving such notice as may be reasonable in the circumstances, to inspect and watch the construction of such works.

(2) The undertaker must give to the drainage authority not less than 28 days' notice of its intention to commence construction of any specified work and the undertaker must give to the drainage authority notice of completion of a specified work not later than 7 days after the date on which it is brought into use.

(3) If any part of a specified work in, over or under any ordinary watercourse is constructed otherwise than in accordance with the requirements of this Schedule or as agreed between the undertaker and the drainage authority, the drainage authority may by notice require the undertaker at its own expense to comply with the requirements of this Schedule or (if the undertaker so elects and the drainage authority in writing consents, such consent not to be unreasonably withheld) at the undertaker's expense to remove, alter or pull down the work and, where removal is agreed, to restore the site to its former condition to such extent and within such limits as the drainage authority reasonably requires.

(4) Subject to sub-paragraph (5), if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (3) is served, the undertaker has failed to begin taking steps to comply with the requirements of the notice and subsequently to make reasonably expeditious progress toward their implementation, the drainage authority may execute the works specified in the notice, subject to the undertaker having the right to supervise the planning and execution of such works to the extent they may affect the authorised development.

(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 drainage authority must not, except in an emergency, exercise the powers conferred by sub-paragraph (4) until the dispute has been finally determined.

6.—(1) 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 ("the maintenance period"), the undertaker must at its expense, maintain in at least as good repair and condition immediately prior to commencement of the construction of the specified work and keep free from obstruction any part of a drainage work which is situated within land held or occupied by the undertaker in respect of the specified work, whether the drainage work is constructed under this Order or is already in existence.

(2) If any such drainage work which the undertaker is liable to maintain during the maintenance period is not maintained to the reasonable satisfaction of the drainage authority, it may by notice require the undertaker to maintain the drainage work at the undertaker's expense, or any part of it, to such extent 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, subject to the undertaker having the right to supervise the planning and execution of such works to the extent they may affect the authorised development and may recover any expenditure reasonably incurred by it in doing so 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 of sub-paragraph (3) until the dispute has been finally determined.

(5) This paragraph does not apply to—

(a) drainage works which are vested in the drainage authority, or which 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 Schedule provided that any obstruction is removed as soon as reasonably practicable.

7. Subject to paragraph 6(5)(b), if by reason of the construction of any specified work or of the failure of any such work the efficiency of any ordinary watercourse for flood defence or land drainage purposes is impaired, or that watercourse is otherwise damaged, so as to require remedial action, such impairment or damage must be made good by the undertaker at its own expense to the reasonable satisfaction of the drainage authority and if the undertaker fails to do so, the drainage authority may make good the same and recover the expense reasonably incurred by it in so doing from the undertaker.

8.—(1) The undertaker must make reasonable compensation to the drainage authority for costs, charges and expenses which it may reasonably incur or which it may sustain—

(a) in the examination or approval of plans under this Schedule; and

(b) in the inspection and supervision of the construction of a specified work in respect of an ordinary watercourse or any protective works required by the drainage authority under this Schedule.

9. Any dispute arising between the undertaker and the drainage authority under this Schedule is to be determined by arbitration in accordance with article 42 (arbitration) of the Order.

SCHEDULE 25

Article 43

PROTECTIVE PROVISIONS FOR THE PROTECTION OF HIGHWAY AUTHORITIES

1. The provisions of this Schedule have effect unless otherwise agreed in writing between the undertaker and the relevant highway authority.

2. In this Schedule—

"highway" means a highway vested in or maintainable by the relevant local highway authority as highway authority under the 1980 Act and this definition shall include any bridge or structure carrying a highway;

"specified work" means the works under the Order to create permanent vehicular access to the authorised development or make improvements to existing highways.

Specified works

3.—(1) The undertaker will allow and facilitate an appropriately qualified officer of the relevant highway authority to participate in the design process for any specified work and will have reasonable regard to any views of that officer in finalising the detailed design of that Work, provided always that any such view shared by the officer will not be an instruction, requirement or authorisation under this Order.

(2) Any officer of the relevant highway authority duly appointed for the purpose may at all reasonable times, on giving to the undertaker such notice as may in the circumstances be reasonable, enter upon and inspect any part of the authorised development which—

(a) is in, on, over or under any highway; or

(b) which may affect any highway,

during the carrying out of the specified work, and the undertaker will give to such officer all reasonable facilities for such inspection (subject to any reasonable adjustments necessary for the safety of such officer) and, if the officer is of the opinion that the construction of the specified work poses danger to any highway or to any property of the relevant local highway authority or danger to persons or vehicles or other property in relation to which the relevant local highway authority might be liable on, in, over or under any highway, the undertaker will adopt such measures and precautions as may be reasonably practicable for the purpose of preventing any damage or injury to the highway or persons or vehicles or other property aforesaid required by the officer.

(3) Any officer of the relevant highway authority exercising the right to inspect works under sub-paragraph (1) must comply with all reasonable health and safety requirements and instructions of the undertaker in doing so.

Street works

4.—(1) Where, under this Order, any street works require to be undertaken to the reasonable satisfaction of the highway authority, this paragraph will apply.

(2) The relevant highway authority will, as soon as reasonably practicable following the receipt of notice from the undertaker that it considers any street works to which this paragraph applies to be complete, carry out an inspection of such street works.

(3) The relevant highway authority will confirm when any street works have been completed to their reasonable satisfaction in writing and will set out in such confirmation the date on which the works were last inspected to establish such reasonable satisfaction. For the period of 24 months from the date of last inspection as stated in the confirmation of reasonable satisfaction, the undertaker will be liable to pay to the relevant highway authority the reasonable costs of repairing

or rectifying any defect in the highway which, in the opinion of the relevant local highway authority (acting reasonably) was caused by or is attributable to the carrying out of street works by the undertaker.

(4) The reasonable costs set out in sub-paragraph (3) may include the costs of the time of the relevant highway authority's officers and employees incurred in the remediation or rectification of a defect as well as the cost of the remediation or repair, whether carried out by the relevant highway authority or on their instruction. The costs payable under sub-paragraph (3) must be paid by the undertaker in full within 30 days of receipt of an invoice for such costs provided that such invoice includes a breakdown of the charges incurred and is accompanied by copies of any invoices received by the relevant local highway authority for works undertaken to remedy or repair the defect.

Arbitration

5. Any difference arising between the undertaker and the relevant highway authority under this Schedule (other than in difference as to the meaning or construction of this Schedule) will be resolved by arbitration under article 42 (arbitration).

SCHEDULE 26

Article 43

PROTECTIVE PROVISIONS FOR THE PROTECTION OF NATIONAL HIGHWAYS LIMITED

Application etc.

1. The provisions of this Schedule apply for the protection of National Highways and have effect unless otherwise agreed in writing between the undertaker and National Highways.

(1) 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

2.—(1) Where the terms defined in article 2 (interpretation) of this Order are inconsistent with sub-paragraph (2) the latter prevail.

(2) In this Schedule—

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

"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;

"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";

"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 highways assets together with all land, apparatus and rights located in, on, over or under the highway for which National Highways is the highway authority.

"structural assessment" means the process of evaluating the structural capacity and performance of an existing highway structure to determine its ability to safely sustain the current or proposed loads and actions proposed by the undertaker pursuant to paragraph 7 of this Schedule, in accordance with the requirements of the DMRB, including but not limited to CS 451 to CS 454 and the technical approval procedures set out in CG 300. This process may include structural analysis, review of inspection and condition data, verification of material properties, and consideration of applicable load models and safety factors to determine whether the structure is adequate for the intended use or whether mitigation or protective measures are required. Where required under CG 300, the assessment methodology, assumptions and outcomes shall be subject to the relevant technical approval procedures; and

"structural review" means a formal engineering appraisal of an existing highway structure undertaken in accordance with DMRB CS 451 to determine whether a structural assessment is required and, where such assessment is required, to evaluate the adequacy of the structure for current and reasonably foreseeable future loading proposed by the undertaker pursuant to

paragraph 7 of this Schedule and to confirm whether the structure can safely remain in service for its intended use, thereby to support decisions on future maintenance interventions.

General

3. In respect of any part of the strategic road network that is managed under a DBFO contract both National Highways and the highway operations and maintenance contractor shall have the benefit of this Schedule but for the purposes of any approvals required under this Schedule the undertaker shall liaise directly with National Highways.

(1) Notwithstanding the limits of deviation permitted pursuant to article 4(2) of this Order, no works in carrying out, maintaining or diverting the authorised development may be carried out in under or over the strategic road network unless such works are agreed in writing with National Highways at the absolute discretion of National Highways.

(2) 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

4. 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.

Works

5.—(1) The undertaker must not exercise the powers conferred by—

(a) article 4 (development consent etc. authorised by this Order);

(b) article 6 (power to maintain the authorised development);

(c) article 9 (street works);

(d) article 10 (power to alter layout, etc. of streets);

(e) article 11 (construction and maintenance of altered streets);

(f) article 12 (temporary prohibition or restriction of use of streets and public rights of way, and authorising vehicular use on public rights of way);

(g) article 14 (access to works);

(h) article 16 (traffic regulation measures); and

(i) article 17 (discharge of water);

over any part of the strategic road network without the written consent of National Highways and National Highways may in connection with any such consent require the undertaker to provide details of any proposed road space bookings and submit a scheme of traffic management for National Highways' approval.

(2) The undertaker must not construct a car park pursuant to a landscape and ecology management plan approved under requirement 9 or put in place arrangements that would permit or promote emergency vehicles (including without limitation providing for such use in a battery safety management plan put forward under requirement 7) to utilise the bridge which carries Brooks Furlong over the M56 motorway unless and until—

(a) a structural review of the bridge which carries Brooks Furlong over the M56 motorway has been carried out at the undertaker's expense to ascertain whether the proposals under article 13(11), or the use by emergency vehicles of the bridge (as appropriate), can be taken forward safely and the results of the structural review have been shared with and approved by National Highways;

(b) if a structural review carried out pursuant to sub-paragraph (a) identifies that a structural assessment and/or other surveys are required, the structural assessment and/or other surveys have been carried out at the undertaker's expense and the results of the structural assessment and/or other documents shared with and approved by National Highways; and

(c) if a structural assessment and/or other surveys carried out pursuant to sub-paragraph (b) identifies that works are required to that bridge prior to the power under article 13(11) being able to be utilised, or emergency vehicles usage of the bridge can be proposed (as appropriate), and the undertaker still determines that it wishes to use the powers in article 13(11) or propose emergency vehicle usage of the bridge, those works are carried out at the undertakers expense and to the satisfaction of National Highways.

(3) The undertaker must not exercise the powers conferred by article 13(3), (4), (5) or (6) (permanent stopping up of, and creation of new public right of way and authorising vehicular use on public rights of way) or put in place arrangements that would permit or promote emergency vehicles (including without limitation providing for such use in a battery safety management plan put forward under requirement 7) to utilise the bridge that carries Weaver Lane over the M56 motorway unless and until—

(a) a structural review of the bridge which carries Weaver Lane over the M56 motorway has been carried out at the undertakers expense to ascertain whether the proposals under article 13(3), (4), (5) or (6) , or the use by emergency vehicles of the bridge, can be taken forward safely and the results of the structural review have been shared with and approved by National Highways;

(b) the structural review carried our pursuant to sub-paragraph (a) identifies that a structural assessment and/or other surveys are required, the structural assessment and/or other surveys have been carried out at the undertaker's expense and the results of the structural assessment and/or other documents shared with and approved by National Highways; and

(c) if a structural assessment and/or other surveys carried out pursuant to sub-paragraph (b) identifies that works are required to that bridge prior to the power under article 13(3), (4), (5) or (6) being able to be utilised, or emergency vehicle usage of the bridge can be proposed, and the undertaker still determines that it wishes to use the powers in article 13(3), (4), (5) and (6) or proposed emergency vehicle usage of the bridge, those works are carried out at the undertakers expense and to the satisfaction of National Highways.

(4) Any works that are determined to be required by the structural assessment and/or other surveys carried out under sub-paragraph (2)(b) or (3)(b) must not take place until the undertaker has entered into a bridge agreement with National Highways.

(5) Where a bridge agreement has been entered into, this shall be considered to constitute National Highways' consent, for the purposes of sub-paragraph (1), in respect of the use of the powers listed in that sub-paragraph in relation to the works that are the subject of the bridge agreement.

(6) In this paragraph "bridge agreement" means an agreement setting out how any works that are determined to be required by the structural assessment and/or other surveys carried out under sub-paragraph (2)(b) or sub-paragraph (3)(b) are to be carried out, maintained and paid for, such agreement to be entered into at the undertakers expense and subject to terms and conditions imposed at National Highways' absolute discretion but which must be relevant to the works to be undertaken.

Land

6.—(1) The undertaker must not exercise the powers conferred by—

(a) article 18 (protective works to buildings);

(b) article 19 (authority to survey and investigate the land);

(c) article 21 (compulsory acquisition of land);

(d) article 23 (compulsory acquisition of rights);

(e) article 26 (acquisition of subsoil or airspace only);

(f) article 29 (rights under or over streets);

(g) article 30 (temporary use of land for constructing the authorised development);

(h) article 31 (temporary use of land for maintaining the authorised development); and

(i) article 39 (felling and lopping of trees and removal of hedgerows);

over any part of the strategic road network or in respect of any other land owned by National Highways or extinguish any existing rights or interfere with apparatus of National Highways in respect of any third party property, except with the consent of National Highways by written request to legalservicesinbox@nationalhighways.co.uk.

(2) Article 24 (private rights) and article 27 (power to override easements and other rights) do not apply to the strategic road network, unless requested to and approved in writing by National Highways.

(3) Article 46(4), (5) and (6) (procedure in relation to certain approvals etc.) do not apply to any application for consent, agreement or approval required or contemplated by any of the provisions under this Schedule.

Indemnity

7. The undertaker fully indemnifies National Highways from and against all costs, claims, expenses, damages, losses, and liabilities suffered by National Highways arising from or in connection with the exercise of or failure to exercise any power under this Order and any such costs shall be paid to National Highways within 14 days of demand save for any loss arising out of or in consequence of any negligent act or default of National Highways.

Expert Determination

8.—(1) Article 42 (arbitration) of the Order does not apply to this Schedule.

(2) Any difference under 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 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 42 (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.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises Frodsham Solar Farm 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 the Order and certified in accordance with article 40 (certification of plans and documents, etc) of this Order may be inspected free of charge during working hours at Cheshire West and Chester Council, 58 Nicholas Street, Chester, CH1 2NP.