



# Dean Moor Solar Farm

## Explanatory Memorandum on behalf of FVS Dean Moor Limited

---

March 2025  
Prepared by: Broadfield  
PINS Ref: EN010155  
Document Ref: 3.2  
Revision: 1



Firma Energy

 **ib vogt**

**DEAN MOOR SOLAR FARM**  
**EXPLANATORY MEMORANDUM**  
**PLANNING INSPECTORATE REFERENCE EN010155**  
**PREPARED ON BEHALF OF FVS DEAN MOOR LIMITED**

**The Infrastructure Planning (Applications: Prescribed forms and  
Procedure) Regulations 2009, Regulation 5(2)(c)**

<b>Project Ref:</b>	<b>EN010155/Explanatory Memorandum</b>
<b>Status</b>	Final
<b>Issue/ Rev:</b>	1
<b>Date:</b>	March 2025

## Contents

<b>1</b>	<b>Summary .....</b>	<b>1</b>
<b>2</b>	<b>Purpose of the Order .....</b>	<b>2</b>
	2.1 Background .....	2
	2.2 Nationally Significant Infrastructure Project and associated development .....	2
	2.3 Ancillary matters .....	4
<b>3</b>	<b>Parameters of the Order and ‘consent envelope’ .....</b>	<b>6</b>
<b>4</b>	<b>Draft Order .....</b>	<b>9</b>
	4.2 Part 1 – Preliminary .....	10
	4.3 Part 2 – Principal Powers .....	15
	4.4 Part 3 – Streets.....	22
	4.5 Part 4 – Supplementary Powers.....	31
	4.6 Part 5 – Powers of Acquisition .....	33
	4.7 Part 6 – Miscellaneous and General .....	48
<b>5</b>	<b>Schedules.....</b>	<b>54</b>

# 1 Summary

- 1.1.1 This memorandum explains the purpose and effect of each article of, and the Schedules to, the draft Dean Moor Solar Farm Order (the Order) **[REF 3.1]**, as required by Regulation 5(2)(c) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009<sup>1</sup>. Regulation 5(2)(c) requires an explanatory memorandum to explain “*the purpose and effect of provisions in the draft Order*”.

---

<sup>1</sup> S.I. 2009/2264

## **2 Purpose of the Order**

### **2.1 Background**

- 2.1.1 FVS Dean Moor Limited (the Applicant) is applying to the Secretary of State for Energy Security and Net Zero (the Secretary of State) for an Order authorising the construction, operation and maintenance, and decommissioning of a solar photovoltaic electricity generating station located within approximately 276.5ha of land within the administrative boundary of Cumberland Council (a unitary authority) (the Proposed Development). The generating station would export electricity via an on-site connection to the local Electricity North West Limited ('ENW') (as Distribution Network Operator ('DNO')) grid network. The purpose of the Proposed Development is to generate clean renewable energy that can be used to contribute to addressing the urgent need to decarbonise the UK's energy supply.

### **2.2 Nationally Significant Infrastructure Project and associated development**

- 2.2.1 The Proposed Development is a nationally significant infrastructure project ('NSIP') within sections 14(1)(a) and 15 of the Planning Act 2008 ('PA 2008'). This is because the Proposed Development consists of a generating station with a gross electrical output capacity exceeding 50MW. The Applicant, therefore, requires development consent under the PA 2008 to construct, operate, maintain and decommission the Proposed Development. Development consent may only be granted by order, following an application to the Secretary of State (section 37 of the PA 2008).
- 2.2.2 Schedule 1 to the Order contains a list of numbered works comprising the Proposed Development. The description of the Proposed Development does not refer to an upper limit on the capacity of the generating station that development consent is being sought for. It is not considered that imposing an upper limit is desirable or necessary. The Order includes reference to the means by which the parameters of the Proposed Development will be constrained, and it is on this basis that the

Environmental Impact Assessment has been undertaken, as set out in the Environmental Statement [REF 6.1] and explained further in relation to the ‘consent envelope’ in section 3 of this Explanatory Memorandum. The Applicant is confident that those parameters are adequately secured in the Order.

- 2.2.3 An upper limit on capacity has not been included so that there is adequate flexibility for the Applicant. For example, the Applicant may take advantage of technological improvements and innovation that may emerge before construction, which would enable it to still construct the Proposed Development within the assessed parameters but increase capacity beyond that which is currently anticipated. It is in the public interest and accords with national policy to facilitate efficient and maximum generation from renewable sources, which is explained further in the Statement of Need appended to the Planning Statement [REF 5.5]. The approach taken has precedent in the Heckington Fen Solar Park Order 2025, The West Burton Solar Project 2025, Cottam Solar Project Order 2024, the Gate Burton Energy Park Order 2024 and The Mallard Pass Solar Farm Order 2024. It is also reflected in NPS EN-3<sup>2</sup> guidance: *“AC installed export capacity should not be seen as an appropriate tool to constrain the impacts of a solar farm. Applicants should use other measurements, such as panel size, total area and percentage of ground cover to set the maximum extent of development when determining the planning impacts of an application.”*
- 2.2.4 As well as the NSIP itself, the Proposed Development also includes associated development, as defined in section 115(2) of the PA 2008.
- 2.2.5 Recent guidance<sup>3</sup> sets out that ‘associated development’ and works proposed to be included in a DCO must be demonstrably linked and subordinate to the NSIP, and required to ensure it can be built or operated. It is not acceptable to propose associated development in a DCO which is self-contained or effectively a separate NSIP development

---

<sup>2</sup> Department for Energy Security & Net Zero (2023). National Policy Statement for Renewable Energy Infrastructure (EN-3).

<sup>3</sup> Department for Levelling Up, Housing and Communities (2024). Planning Act 2008: Content of a Development Consent Order required for Nationally Significant Infrastructure Projects

in its own right." This guidance cross refers previous guidance which considers associated development in more detail.

2.2.6 This guidance<sup>4</sup> on associated development has been issued by the Secretary of State for Communities and Local Government. In this guidance, associated development is described as being *"typical of development brought forward alongside the relevant type of principal development or of a kind that is usually necessary to support a particular type of project, for example (where consistent with the core principles above) a grid connection for a commercial power station)"* (paragraph 6) and *"requires a direct relationship between associated development and the principal development. Associated development should therefore either support the construction or operation of the principal development, or help address its impacts. Associated development should not be an aim in itself but should be subordinate to the principal development"* (paragraph 5).

2.2.7 In order to ensure that the numbered works comprising the authorised development in Schedule 1 may be constructed efficiently and without impediment, the Order includes further 'associated development' listed (a) to (w) in Schedule 1. This is a widely precedented approach and has been approved by the Secretary of State in other made DCOs, such as The Heckington Fen Solar Park Order 2025, The Gate Burton Energy Park Order 2024, The Mallard Pass Solar Park Order 2024 and The Cottam Solar Project Order 2024.

## **2.3 Ancillary matters**

2.3.1 The Order also contains several ancillary matters, i.e. provisions not consisting of development.

2.3.2 An important ancillary matter is a power to acquire land or rights over land compulsorily or by agreement, in accordance with section 120(3) of the PA 2008, required for the authorised development, or to facilitate, or that are

---

<sup>4</sup> Department for Communities and Local Government (2013). Planning Act 2008: Guidance on associated development applications for major infrastructure projects.

incidental to the authorised development under section 122 of the Act. A justification for these powers is set out in the Statement of Reasons [REF 4.1] that accompanies the application.

- 2.3.3 Further to providing these powers, the Order seeks to apply and modify statutory provisions that relate to the compulsory acquisition of land. Under sections 117 and 120(5) of the PA 2008, an order containing provisions of this nature must be made by Statutory Instrument. The Order is therefore presented in that form.
- 2.3.4 Other ancillary matters include the temporary closing of streets, traffic regulation measures, the use of private roads and the application and disapplication of legislation relating to the Proposed Development.



### 3 Parameters of the Order and ‘consent envelope’

- 3.1.1 The detailed design of the Proposed Development must be in accordance with the Design Parameters Document **[REF 5.7]**, as secured in Requirement 3 of Schedule 2 of the Order. This approach is taken to ensure suitable flexibility in the design of the Proposed Development, for example new technology can be used within that envelope, while ensuring that the development will not fall outside of the scope of the Environmental Statement **[REF 6.1]**. The principle of using a design envelope is recognised as appropriate for a wide range of NSIPs and is described in the Planning Inspectorate’s guidance ‘Content of a Development Consent Order required for Nationally Significant Infrastructure Projects’, specifically paragraph 008.
- 3.1.2 In addition to the Design Parameters Document, other DCO requirements, certified documents and plans will operate to control and manage the detailed design of the Proposed Development, as well as its construction, operation (including maintenance) and decommissioning. The way in which those mechanisms work together as an envelope within which the authorised development is to be undertaken, is explained in more detail below.
- 3.1.3 Article 3 (Development consent etc. granted by this Order) and Schedule 2 (Requirements) operate to create a ‘consent envelope’ within which the Proposed Development would be brought forward. The Proposed Development is described in Schedule 1 of the Order, where it is referred to as the ‘authorised development’. The authorised development is granted consent pursuant to article 3(1).
- 3.1.4 In Schedule 1 (the authorised development) the Proposed Development is divided into a series of component parts, referred to as ‘numbered works’.
- 3.1.5 Article 7 (Limits of deviation) requires that the numbered works authorised by the Order are situated in the areas shown on the Works Plans **[REF 2.3]**.

- 3.1.6 The design of the Proposed Development is controlled via Requirement 3 (detailed design approval) of Schedule 2 of the Order which requires approval of details of the Proposed Development's design and requires that the details submitted accord with the Design Parameters document. The Design Parameters Document secures the parameters that are necessary to ensure that the Proposed Development is constructed, operated and decommissioned in such a way that the impacts and effects would not exceed the scenario assessed in the Environmental Statement.
- 3.1.7 In addition to the Design Parameters Document and Works Plans, the design of the Proposed Development is also controlled by approval and implementation of the landscape and ecology plan (Requirement 6).
- 3.1.8 Where the Design Parameters Document does not include guidance or controls for an aspect of a numbered work, this is justified on the basis of the environmental impact assessment and having regard to the other controls in place via the measures listed above.
- 3.1.9 The construction phase of the Proposed Development is also controlled by:
- approval and implementation of the construction environmental management plan (Requirement 4);
  - approval and implementation of the construction traffic management plan (Requirement 5); and
  - approval and implementation of a soil management plan (Requirement 10).
- 3.1.10 The ongoing operation and maintenance of the Proposed Development is controlled by:
- approval and implementation of the landscape and ecological management plan (Requirement 7);
  - approval and implementation of a soil management plan (Requirement 10); and
  - approval and implementation of the operational management plan (Requirement 11).
- 3.1.11 The decommissioning of the Proposed Development is controlled by the approval and implementation of a decommissioning management plan (Requirement 13).

- 3.1.12 The Application seeks flexibility to undertake the Proposed Development within the above envelope, in particular within the maximum areas and parameters secured via the Works Plans and Design Parameters Document. As set out in Chapter 3, Site and Proposed Development Description, of the Environmental Statement **[REF 6.1]** and the individual technical chapters, the environmental impact assessment has assessed a worst case and has considered and confirmed that any scheme built within the maximum areas and parameters would have effects no worse than those assessed.
- 3.1.13 Any indicative development layouts that have been submitted to provide illustrative examples of the different design layouts have been considered for the Proposed Development that could be built out within the 'consent envelope' (the design aspect of which is controlled primarily through the Works Plans and Design Parameters Document). These are provided for illustration only within the Environmental Statement figures **[REF 6.2]** and are not sought to be secured.

## 4 Draft Order

- 4.1.1 The purpose and effect of the provisions of the draft Order are now explained in sequence. While the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009<sup>5</sup> (the Model Provisions) has formally lapsed, the draft Order draws on the Model Provisions, as well as precedent set by DCOs that have been made to date.
- 4.1.2 Several made DCOs contain articles which incorporate a provision by which the Applicant must obtain consent, agreement or approval from a third party before it may do something and that such consent, agreement or approval shall not be unreasonably withheld, as well as a longstop default provision to the effect that, if the relevant third party fails to respond, the consent, agreement or approval shall be deemed to have been given.
- 4.1.3 The Applicant considers this approach to be necessary to remove the possibility for undue delay and to provide certainty that the authorised development can be delivered in a timely fashion. This approach is also considered to be proportionate in that, having undertaken extensive pre-application consultation and the order having been rigorously examined, the delivery of the authorised development should not be held up unreasonably, if it has been approved by the Secretary of State.
- 4.1.4 The draft Order includes, therefore, at articles 14 (Power to alter layout, etc., of streets), 16 (Temporary closure or restriction of streets), 17 (Access to works), 19 (Traffic regulation measures), 20 (Discharge of water) and 22 (Authority to survey and investigate the land) a deemed consenting regime to apply whereby if a consent etc, is required and no such consent etc is provided within 28 days of receiving an application for consent or approval, the consenting authority is deemed to have granted consent. It is considered necessary to remove the possibility for delay and provide certainty that the Proposed Development can be delivered by the undertaker in a timely fashion. As an NSIP, the authorised development

---

<sup>5</sup> S.I. 2009/2265

should not be at risk of being held up due to a failure to respond to an application for consent.

4.1.5 For completeness, references to 'the Applicant' below should be read as references to its agents or contractors, and to any other persons who have the benefit of the Order or any statutory rights transferred to them under article 9 (Consent to transfer benefit of Order).

4.1.6 The provisions of the Order are now explained in sequence.

## **4.2 Part 1 – Preliminary**

### **Article 1 – Citation and commencement**

4.2.1 Article 1 sets out the name of the Order, establishing how it may be cited in subsequent legislation. It also gives the date on which the Order comes into force. This article did not appear in the Model Provisions. However, it is a standard article that is included in all DCOs.

### **Article 2 - Interpretation**

4.2.2 The purpose of article 2(1) is to define terms used in the remainder of the Order.

4.2.3 Article 2 makes alterations to the Model Provisions to accommodate the departures from the Model Provisions elsewhere in the Order, and to add required definitions that are relevant in the context of the authorised development.

4.2.4 Definitions of note include:

- a. the definition of 'commence' is defined to exclude 'permitted preliminary works'. This exclusion is required to enable the undertaker to carry out certain preparatory works prior to the submission of relevant details for approval under the requirements contained in Schedule 2 to the Order so that certain works can be carried out without 'commencing' the authorised development, to build the required flexibility into how the authorised development can be constructed. The works identified in the 'permitted preliminary works' definition include pre-commencement activities such as surveys, monitoring and site investigations which are considered appropriate as

the nature of these works means they are not expected to give rise to environmental effects requiring mitigation.

- b. The definition of 'commence' used is tailored to the requirements of the authorised development, but these provisions are widely precedented (see for example, The Heckington Fen Solar Park Order 2025, The Gate Burton Energy Park Order 2024, The Mallard Pass Solar Farm Order 2024 and The Cottam Solar Project Order 2024).
- c. A definition of 'maintain' has been added to make clear what activities are authorised under article 5 (maintenance of the authorised development) during the operation of the authorised development. The definition has been drafted to directly reflect the nature and context of the authorised development, which will need to be properly maintained, managed and protected throughout its operational lifetime. The drafting, therefore, reflects this operational period and the likely framework of maintenance that will be required while enabling technological and practice advancement and improvements within identified environmental performance standards. Therefore, some flexibility must be built-in to what maintenance of the authorised development will involve, particularly to keep up with changing standards and controls and advances in technology. The approach taken has precedent in the Heckington Fen Solar Park Order 2025, The Gate Burton Energy Park Order 2024, The Mallard Pass Solar Farm Order 2024 and The Cottam Solar Project Order 2024.

4.2.5 For the purposes of the authorised development, examples of the activities anticipated to be covered are listed below:

- a. Maintenance and inspection: Throughout the life of the authorised development there will be a planned maintenance regime and, on occasion, the need for unplanned maintenance due to plant failures. It is anticipated that staff will attend when required for maintenance and cleaning activities;
- b. Repair / Refurbish / Replace: Through the planned maintenance regime and indeed through any unplanned maintenance required due to plant failures, it is likely that some plant and equipment, particularly those with moving parts, will need to be repaired or refurbished or indeed replaced;
- c. Adjust and alter: Through the planned maintenance regime, and indeed outside the planned maintenance regime, there may be a need to adjust or alter elements comprising the authorised development to respond to changing conditions;
- d. Remove: Adjustment and replacement activities will require plant, equipment and material to be removed;
- e. Reconstruct: If, for example, a part has to be dismantled in order to be repaired or refurbished, then that part will need to be reconstructed;

- f. Improve: Technology will improve over the life of the authorised development and therefore there may be opportunities to 'improve' the workings of the plant and equipment by, for example, the removal of an old part and replacing it with a new, more efficient part;

4.2.6 'Order land' is defined as the land shown on the land plans which is within the limits of land to be acquired or used and described in the book of reference.

4.2.7 'Order limits' references the limits as shown on the works plans.

4.2.8 Article 2(2) provides that a broad definition of 'rights over land' applies to the Order.

4.2.9 Article 2(3) provides that measurements are approximate. The purpose of this is to ensure that if, upon construction of the works, it transpires that the distances are marginally different to those listed in the Order, there is no issue over whether the works are permitted by the Order. Thus, this provision allows for a small tolerance with respect to any distances and points, although works will take place within the limits of deviation. It is commonplace to include such provision in an Act or instrument authorising nationally significant infrastructure (see, for example, article 2(3) of The Gate Burton Energy Park Order 2024, article 2(4) of The Mallard Pass Solar Farm Order 2024 and article 2(3) of The Cottam Solar Project Order 2024).

4.2.10 Article 2(4) provides that areas given in the Book of Reference are approximate as these are not covered by article 2(3). This is intended to clarify the status of the area measurements in the Book of Reference, and the purpose and effect of the term 'approximately' in this context is the same as set out in paragraph 3.1.12. The term 'approximately' is required to be read into all plot area measurements in the Book of Reference, as these measurements are given in square metres, and each measurement is rounded up to the nearest whole square metre. This is widely precedented, for example article 2(7) of The Gate Burton Energy Park Order DCO 2024, article 2(8) of The Mallard Pass Solar Farm Order 2024 and article 2(7) of the Cottam Solar Project Order 2024.



- 4.2.11 Articles 2(5) and 2(6) tie references to lettered/numbered points and numbered works in the Order to the relevant plans referenced and Schedule 1 of the Order, respectively.
- 4.2.12 Article 2(7) clarifies that references to ‘Schedule’, are unless otherwise stated, references to the Schedules of the Order.
- 4.2.13 Article 2(8) confirms that the expression ‘includes’, when used in the Order, is to be construed without limitation.
- 4.2.14 Article 2(9) clarifies that references to any statutory body includes that body’s successors from time to time.
- 4.2.15 Article 2(10) clarifies that references to ‘part of the authorised development’ are to be construed as references to stages, phases or elements of the authorised development.
- 4.2.16 Article 2(11) clarifies that any references to materially new or materially different environmental effects in comparison with those reported in the Environmental Statement must not be construed so as to include the avoidance, removal or reduction of an adverse environmental effect that was reported in the Environmental Statement as a result of the authorised development. There are a number of provisions in the Order where activities are constrained to those which do not give rise to materially new or materially different environmental effects or where variations are permissible provided, they do not give rise to such effects (e.g. the definition of maintain, article 5). The explanation and justification for the ability to make these variations is set out in the commentary on the relevant provision.
- 4.2.17 The Applicant notes that the A57 TransPennine Upgrade Development Consent Order 2022, uses the phrase “*materially new or materially worse*” environmental effects. Whilst the Applicant has not sought to replicate the drafting in that Order, following a review of that decision, article 2(11) has been added to the draft Order to make clear what the scope of “*materially new and materially different*” environmental effects includes. The Applicant is mindful that the precededented “*materially new or materially different*”



drafting reflects “wording preferred by the Secretary of State” as confirmed in the decision letter on Great Yarmouth Third River Crossing.

Accordingly, the Applicant does not wish to modify this preferred drafting (notwithstanding the A57 decision) but instead wishes to provide the interpretive and clarificatory provision for the following reasons:

- The drafting confirms that where a proposed change or activity avoids, removes or reduces adverse environmental effects that were reported in the Environmental Statement, a material or non-material amendment to the Order is not required. Requiring a material or non-material amendment to the Order would introduce significant delay and therefore disincentivises appointed contractors from delivering the Proposed Development in a manner with environmentally better outcomes. The Applicant does not consider it is the Secretary of State's intention to place barriers to delivering improved environmental outcomes. It is to be noted that the Secretary of State confirmed that it was not the intention to avoid environmentally better outcomes in the correction notice issued in connection with the A19/A184 Testo's Junction Alternation Development Consent Order. In particular, the Secretary of State confirmed that:

*“It is the Secretary of State's view that the recommended wording would allow the necessary scope for changes that are better for the environment providing such changes do not result in significant effects that have not already been previously identified and assessed in the Environmental Statement.”*

- As set out in section 3 of this document, the Applicant has necessarily undertaken an environmental assessment which conforms to the ‘Rochdale envelope’ approach (as explained in the Planning Inspectorate's Advice Note 9 and R. v Rochdale MBC ex parte Milne (No. 1) and R. v Rochdale MBC ex parte Tew [1999] and R. v Rochdale MBC ex parte Milne (No. 2) [2000]). The purpose of such an assessment is to ensure that a reasonable worst-case scenario is adopted so that mitigation measures which protect the environment on that basis are incorporated. The proposed provision (article 2(11)) in the draft Order is consistent with that approach; and the requirement to ensure an appropriately precautionary assessment should not be read as requiring the delivery of that worst case scenario. Instead, that requirement is properly understood as setting an envelope in which activity and works can be carried out.

4.2.18 Article 2(12) provides that references to the acquisition and creation of rights are to include a reference to acquiring rights in favour of third parties directly, and to any statutory undertaker for the purpose of their undertaking. This ensures that those who are intended to benefit from any compulsory acquisition of rights over land (such as statutory undertakers in respect of their apparatus, or landowners who are intended to have the

benefit of replacement land or new accesses) can benefit from such acquisition directly. This provision is preceded in the M42 Junction 6 Development Consent Order 2020 (article 2(3)) and the Great Yarmouth Third River Crossing Development Consent Order 2020 (article 2(3)).

## **4.3 Part 2 – Principal Powers**

### **Article 3 – Development consent etc. granted by this Order**

4.3.1 Article 3(1) grants the development consent by giving the Applicant the power to carry out the authorised development, which is described in Schedule 1. This article makes the consent subject to the requirements that are listed in Schedule 2. This provision differs from some made Orders since it does not refer to development consent being granted 'within the Order limits'. This is because the Order provides for certain activities to be carried out beyond the Order limits, for example, articles 21 (Protective works to buildings) and 22 (Authority to survey and investigate land). These articles are routinely included in DCOs, are necessary to support the delivery of the authorised development and serve to reduce in scope the amount of land required for temporary powers of possession and/or compulsory acquisition, since the land would otherwise need to be included within the Order limits. The approach therefore reflects the clear intention that such activities should benefit from development consent and should not be subject to a requirement for further planning approval outside the DCO process. The Applicant notes that the Secretary of State has explicitly endorsed the removal of the phrase "within the Order limits" in the A303 Amesbury to Berwick Down Correction Order "in recognition that the Order provides powers to carry out limited activities beyond the Order limits". This drafting approach does not affect the limits of deviation for the works which are controlled under article 7.

4.3.2 Article 3(2) states that any enactment applying to land within the Order limits has effect subject to the provisions of the Order. Article 3(2) has been included and is necessary to ensure that there are no acts of a local or other nature that would hinder the construction and operation of this NSIP. The Applicant has carried out a proportionate search of local

legislation that applies within reasonably close proximity to land within the Order limits, but no search can be completely exhaustive and there remains the possibility that a local act or provision may have been overlooked. Including this article ensures that the construction and operation of the authorised development are not jeopardised by any incompatible statutory provisions which might exist, i.e. a provision which would be an absolute restriction that could not be dealt with unless by statutory amendment. The provision would prevent delay in this situation by ensuring that the authorised development could be constructed without impediment. Specific local enactments identified through the Applicant's proportionate search of local legislation are disapplied under article 10 (Disapplication and modification of legislative provisions) via schedule 3. This is a widely precedented article (see most recently article 3(2) of the M42 Junction 6 Development Consent Order 2020 and article 3(2) of the Boston Alternative Energy Facility Order 2023).

#### **Article 4 – Operation of generating station**

4.3.3 This permits the operation and use of the generating station comprised in the authorised development and is included pursuant to section 140 of the PA 2008. Article 4(2) specifically preserves the need for the undertaker to obtain any other operational consent that may be needed for the generating station, in addition to the Order. It is included so that the undertaker has powers to operate the generating station.

4.3.4 The drafting of article 4 adopted by the Applicant is in keeping with recently made energy DCOs. For example, article 4 of The Gate Burton Energy Park Order 2024, article 4 of The Heckington Fen Solar Park Order 2025, article 4 of The Mallard Pass Solar Farm Order 2024, article 4 of The Cottam Solar Project Order 2024 and article 4 of the Longfield Solar Farm Order 2023.

#### **Article 5 – Maintenance of the authorised development**

4.3.5 This article empowers the Applicant to maintain the development. 'Maintain' is defined in article 2(1), see paragraph 4.2.4(c) above. Maintenance of the authorised development, within the meaning that

would be authorised by this article, has been assessed in the Environmental Statement, and the power is constrained, through the definition of 'maintain', by the proviso that maintenance works must not give rise to any materially new or materially different environmental effects in comparison with those reported in the Environmental Statement.

## **Article 6 – Maintenance of drainage works**

- 4.3.6 The purpose of this article is to make it clear that any realignment of drainage or other works to them that are carried out as part of the authorised development do not affect the existing allocation of responsibility for maintenance of those drains, unless this is agreed between the Applicant and the responsible party. Responsibility for maintenance of drainage works may sit with the Environment Agency, an internal drainage board, a Lead Local Flood Authority or a landowner. This is to avoid any confusion as to future maintenance.
- 4.3.7 This provision is well precedented (see article 5 of the Southampton to London Pipeline Development Consent Order 2020, article 6 of the M25 Junction 10/A3 Wisley Interchange Development Consent Order 2022, article 5 of the M25 Junction 28 Development Consent Order 2022 and article 5 of the Boston Alternative Energy Facility Order 2023).

## **Article 7 – Limits of Deviation**

- 4.3.8 This article is included to allow for flexibility for the works to be carried out and maintained within the limits identified on the works plans and that these may only be amended where it is demonstrated to the Secretary of State's satisfaction (and the Secretary of State has certified accordingly following consultation with the local planning authority, to the extent that it relates to matters relevant to their functions) that such deviation would not give rise to any materially new or materially different environmental effects in comparison with those reported in the Environmental Statement.
- 4.3.9 The purpose of this provision is to provide the Applicant with a proportionate degree of flexibility when constructing the Proposed Development, reducing the risk that the Proposed Development as

approved cannot later be implemented for unforeseen reasons but at the same time ensuring that the Applicant is only permitted to exceed the limits of deviation if it can demonstrate to the Secretary of State's satisfaction that no materially new or materially different environmental effects would arise. The wording of the exception in paragraph (1) of article (7) is precedented, see article 6(2) of the M42 Junction 6 Development Consent Order 2020 and article 7(1) of the Boston Alternative Energy Facility Order 2023.

- 4.3.10 Paragraph (2) clarifies that the process set out in Part 2 of Schedule 2 to the Order, which applies in relation to applications to discharge any of the requirements in Part 1 of Schedule 2, will also apply to any application to the Secretary of State for certification under paragraph (1), as though it were an application for approval under the requirements. This ensures there is a clear, defined process in place for applications to the Secretary of State under this article. Paragraph (2) is identical to article 6(2) of the A19 Downhill Lane Junction Development Consent Order 2020 and article 7(2) of the Boston Alternative Energy Facility Order 2023.

## **Article 8 – Benefit of the Order**

- 4.3.11 Article 8 overrides section 156(1) of the PA 2008 (as permitted by section 156(2)) to give the benefit of the Order to the Applicant rather than anyone with an interest in the land. It would be impracticable for a variety of landowners to implement parts of the Order in an uncoordinated manner, which might be the case if the provisions of section 156(1) of the PA 2008 were to remain unmodified.
- 4.3.12 The same drafting was accepted and approved by the Secretary of State in The A63 (Castle Street Improvement, Hull) Development Consent Order 2020 (see article 7(1)), The M25 Junction 28 Development Consent Order 2022 (see article 8(1)) and The Sizewell C (Nuclear Generating Station) Order 2022 (see article 8(1)). The drafting by the Applicant is also in keeping with recently made energy DCOs, for example, article 31 of The Heckington Fen Solar Park Order 2025, article 34(1) of The West Burton Solar Project Order 2025, article 31 of Sunnica Energy Farm DCO 2024,

article 32(1) of The Gate Burton Energy Park Order 2024, article 34 of The Mallard Pass Solar Farm Order 2024 and article 34(1) of The Cottam Solar Project Order 2024.

## **Article 9 – Consent to transfer benefit of Order**

- 4.3.13 This article makes detailed provision for the transfer of the benefit of the Order and supplements article 8. Under article 9, written consent of the Secretary of State is needed before the undertaker can transfer the benefit of the Order, but such consent is not required where:
- the transferee or lessee is the holder of a licence under section 6 of the Electricity Act 1989; or
  - where the compensation provisions for the acquisition of rights or interests in land or for effects on land have been discharged or are no longer relevant; or
  - the transfer or grant is made to ENW for the purposes of Work Nos 2 and 2A.
- 4.3.14 The drafting of article 9 is in keeping with recently made energy DCOs. For example, article 32 of The Heckington Fen Solar Park Order 2025, article 35 of The West Burton Solar Project Order 2025, article 33 of The Gate Burton Energy Park Order 2024, article 35 of The Mallard Pass Solar Farm Order 2024 and article 35 of The Cottam Solar Project Order 2024.
- 4.3.15 The justification for the provisions in article 9 is that in such cases, the transferee or lessee will either be of a similar financial and regulatory standing to the undertaker so as to protect the provision for compensation for rights or interests in land that are compulsorily acquired pursuant to the Order, or there are no outstanding actual or potential compulsory acquisition claims. Article 9(4) provides that where the consent of the Secretary of State is not needed, the undertaker must still notify the Secretary of State in writing prior to the transfer or grant of the benefit of the provisions of the Order.

## **Article 10 – Disapplication and modification of legislative provisions**

- 4.3.16 This article provides (pursuant to section 120(5)(a) of the PA 2008) for the disapplication in relation to the authorised development of certain



requirements which would otherwise apply under general legislation.

Section 120(5)(a) provides that an order granting development consent may apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the order. This article is substantially the same as article 6 of The West Burton Solar Project Order 2025, article 6 of the Cottam Solar Project Order 2024, the Gate Burton Energy Park Order 2024 and the Mallard Pass Solar Farm DCO 2024.

4.3.17 More specifically, this article provides for the disapplication of various consents which would otherwise be required from the statutory nature conservation body, the Environment Agency, internal drainage boards or a Lead Local Flood Authority, or under the Environmental Permitting (England and Wales) Regulations 2016, the Water Resources Act 1991 or the Land Drainage Act 1991. The following provisions are disapplied or modified under this article:

- section 32 of the Land Drainage Act 1991 which would inappropriately allow the provisions of the Order relating to drainage to be revisited and is disapplied under paragraph (1)(a);
- under paragraph (1)(b), byelaws made by drainage bodies under section 66 of the Land Drainage Act 1991;
- paragraph (1)(c) provides for a disapplication in respect of the temporary possession provisions of the Neighbourhood Planning Act 2017. This is required as the relevant sections of the Neighbourhood Planning Act 2017 have not been brought into force, subsidiary regulations to that Act have not yet been made, and there is therefore no certainty as to the requirements of the new temporary possession regime. As such, this enables the temporary possession regime created by this Order to be applied. This disapplication is in common with other recent DCOs and has precedent in article 6(1)(h) of The West Burton Solar Project Order 2025, article 6(1)(g) of the Heckington Fen Solar Park Order 2025 and article 6(1)(h) of The Longfield Solar Farm Order 2023;
- the Applicant has conducted a review of any local legislation that might conflict with the powers and rights sought in the Order. The Applicant has included a list of the historic legislation that it seeks to disapply in Schedule 3, which relates to matters in the vicinity of the Order limits. This list has been prepared taking a precautionary approach, because in some cases it was difficult to conclusively determine whether the provisions of the legislation were relevant to the Order, particularly in cases where plans were not available in respect of the historic legislation. Article 10(2) disapplies the legislation listed in Schedule 3 in so far as the provisions still in force are inconsistent with how the powers in the Order can be exercised. The Applicant considers that,

due to the importance of NSIPs, it is expedient to disapply these provisions in order to ensure that the Proposed Development can be implemented as intended in the Order;

- paragraph (4) applies section 9 of the Forestry Act 1967 to any felling required as a result of the authorised development. Section 9(1) of the 1967 Act provides that a Forestry Commission licence is required for felling growing trees. Section 9(4)(d) disapplies the requirement from felling required to implement development authorised by a planning permission but not to development authorised by a DCO. Paragraph (4) of article 10 extends the exception to any trees felled as a result of the authorised development; and
- paragraph (5) in effect disapplies the Community Infrastructure Levy Regulations 2010, by making clear that any building comprised in the authorised development is to be deemed to be of a type that does not trigger liability for payment of the Community Infrastructure Levy.

4.3.18 The Applicant has also produced a list of other consents and licences in the Consents and Agreements Position Statement **[REF 5.4]** as part of this application. This sets out in greater detail the proposed approach to obtaining the other consents that are, or maybe required for the Proposed Development.

### **Article 11 – Defence to proceedings in respect of statutory nuisance**

4.3.19 Section 158 of the Act confers statutory authority for the purposes of a defence in statutory nuisance generally, subject to any contrary provision made by a particular DCO. This article is such a contrary provision, amending the terms of the defence in the case of noise nuisances created in the course of carrying out construction or maintenance of the authorised development or which is an unavoidable consequence of the authorised development.

4.3.20 The defence is available if the nuisance relates to:

- the construction, maintenance or decommissioning of the Proposed Development, and is in accordance with any controls imposed by the local authority under the Control of Pollution Act 1974, or cannot reasonably be avoided; or
- the construction, maintenance and decommissioning of the authorised development and cannot reasonably be avoided.

4.3.21 This article, excluding paragraph (2) has precedent in recent DCOs, for example article 7 of The Heckington Fen Solar Park Order 2025, article 7



of the Cottam Solar Project Order 2024, the Gate Burton Energy Park Order 2024 and the Mallard Pass Solar Farm DCO 2024.

4.3.22 Paragraph (2) confirms that compliance with the controls and measures described in the management plans approved under Schedule 2 will be sufficient, but not necessary, to show that an alleged nuisance could not reasonably be avoided. This provision is necessary to clarify the scope of the defence of statutory authority arising from the grant of the Order. The Construction Environment Management Plan will reflect the set of appropriate measures and controls contained in the Outline Construction Environment Management Plan [REF 6.3] as endorsed by the Secretary of State (if consent is granted) likewise for the Operational Management Plan and Decommissioning Management Plan. It is not reasonable or appropriate for there to be a claim of statutory nuisance circumstances where there is compliance with plans which have been approved and are intended to manage matters related to statutory nuisances.

4.3.23 Paragraph (2) is preceded in article 44(2) of the Boston Alternative Energy Facility Order 2023 and article 41(2) of the Southampton to London Development Consent Order 2020 and is necessary to clarify the scope of the defence of statutory authority arising from the grant of the Order.

## **4.4 Part 3 – Streets**

### **Article 12 – Street Works**

4.4.1 This allows the undertaker to carry out certain works to a street for the purposes of the authorised development. It is necessary because implementation of the authorised development will require works to be undertaken to streets. Schedule 4 sets out the streets that are subject to street works thereby clarifying the extent of the powers. The authority given by this article is a statutory right for the purposes of sections 48(3) and 51(1) of 1991 Act. Certain provisions of the 1991 Act apply to works carried out under this article, subject to the provisions of article 13 (application of the 1991 Act). This article is based on article 8 of the Model Provisions.

- 4.4.2 Article 12 is as substantially found in article 8 of The West Burton Solar Project Order 2025, article 8 of the Cottam Solar Project Order 2024, the Gate Burton Energy Park Order 2024 and the Mallard Pass Solar Farm DCO 2024.

### **Article 13 - Application of the 1991 Act**

- 4.4.3 This provides for the application of the 1991 Act. Although not included in the model provisions, it is as substantially found at article 10 of the Awel y Môr Offshore Wind Farm Order 2023, Article 9 of the Hornsea Four Offshore Wind Farm Order 2023 and article 15 of The Sizewell C (Nuclear Generating Station) Order 2022 and article 11 of The Boston Alternative Energy Facility Order 2023.
- 4.4.4 Article 13 modifies the application of the New Roads and Street Works Act 1991 (the 1991 Act) to works carried out under the powers of the Order. This is required because street works will be carried out under Order powers subject to the provisions and requirements of the Order and not, for instance, under Highways Act 1980 powers.
- 4.4.5 Paragraph (1) provides that works carried out under the powers of the Order which match the description of 'major highway works' in the 1991 Act will be treated as major highways works for the purposes of the 1991 Act. The effect of this is to clarify that the provisions for sharing the burden of dealing with apparatus in the street (under sections 84 and 85 of the 1991 Act), which would normally apply only to major works carried out by the highway authority, will apply in respect of the works authorised by the Order irrespective of who in fact carries them out.
- 4.4.6 'Major Highways Works' are defined at section 86 of the 1991 Act. The definition includes, at sub-sections 86(3)(b) and (f), works undertaken under powers conferred by sections 64 and 184 the Highways Act 1980. As that would not be relevant in this context (where the works will be undertaken under the powers of the Order), these sub-sections are omitted from paragraph (1)(a). Works equivalent to works undertaken under those sections of the Highways Act 1980, but carried out under powers conferred by the Order, are included through paragraph (1)(b).

The effect is that any works which would be 'major highway works' under the 1991 Act if carried out by a highway authority in relation to one of its streets are also 'major highway works' if carried out under the powers of the Order regardless of who carries them out.

- 4.4.7 Paragraph (3) provides that certain provisions of the 1991 Act listed in that paragraph will not apply. The disapplication of these provisions (which are designed primarily to regulate the carrying out of street works by utility companies in respect of their apparatus) is appropriate given the scale of works proposed under the Order, the specific authorisation given for those works by the Order and the specific provisions in the Order which regulate the carrying out of the Order works.
- 4.4.8 Paragraphs (4) to (6) apply certain provisions of the 1991 Act (listed in paragraph (5)) to any streets which are temporarily stopped up under the Order. This is for two reasons: first, it prevents any confusion as to whether works in respect of a temporarily stopped-up street are 'street works' for the purposes of the 1991 Act and, secondly, it simplifies the implementation of the works by providing for a single process in respect of streets which are closed and those which are not.
- 4.4.9 Paragraph (7)(a) provides that nothing in article 13 shall affect the ability of the local highway authority (under section 87 of the 1991 Act) to declare a street in its area a maintainable highway, which would make maintenance of the street (once completed) the responsibility of the local highway authority, and would mean that the 1991 Act would apply to street works carried out in that street.
- 4.4.10 Paragraph (7)(b) confirms that the Applicant is not to be taken to be the street authority for a street for the purposes of Part 3 of the 1991 Act merely by being under a duty to maintain it under article 15.
- 4.4.11 Paragraph (7)(c) clarifies that the provisions relating to responsibility for maintenance of streets in article 10 do not affect the application of Part 3 of the 1991 Act in respect of maintenance works which are street works for the purposes of the 1991 Act. After the implementation of the Order, it is

appropriate that the 1991 Act should govern such works as it is specifically designed to ensure a fair and efficient procedure for the various parties affected by such works.

- 4.4.12 These modifications reflect those made in other DCOs, for example article 9 of the M4 Motorway (Junctions 3 to 12) (Smart Motorway) Development Consent Order 2016, article 9 of the A19/A184 Testo's Junction Alteration Development Consent Order 2018 and article 7 of the Lake Lothing (Lowestoft) Third Crossing Order 2020.
- 4.4.13 Paragraph (8) confirms that any permit schemes will apply in connection with the construction of the authorised development, subject to the same disapplications of the 1991 Act in paragraph (3) and the qualifications in (9) to (10). The provisions have sought to balance the use of the permit schemes without delaying the delivery of the authorised development. To that end, whilst the Applicant would apply the permit schemes in carrying out the authorised development, the provisions make clear that conditions cannot be imposed on the grant of a permit under a scheme which would cause a breach of the Order. In addition, the disapplication of the provisions of the 1991 Act (in paragraph (3) explained above) would be carried over. It is not appropriate for these provisions to apply simply because a permit scheme has been made. These provisions are appropriate here given the interface with the local road network. These provisions find precedent in some made DCOs (e.g paragraphs (8) to (10) are based on article 10 of the M25 Junction 28 Development Consent Order 2022) except that paragraph (9) confirms that the principle of the development cannot be a ground for refusing a permit and paragraph (10) permits the use of an appeals process in the case of a refusal of a permit or the grant of a permit subject to conditions.

## **Article 14 – Power to alter layout, etc., of streets**

- 4.4.14 This allows the undertaker to alter the layout of or carry out any works in a street. This article is necessary because, to construct, operate, maintain and decommission the authorised development, the undertaker will need to alter street layouts and establish suitable accesses to ensure that the

authorised development can be accessed effectively while ensuring there is minimal disruption to the local highway network. Schedule 5 then sets out the alterations of specific streets.

- 4.4.15 Article 14 is as substantially found in article 9 of the Longfield Solar Farm Order 2023, The Gate Burton Energy Park Order 2024, The Mallard Pass Solar Farm Order 2024, The Cottam Solar Project Order 2024, and The Sunnica Energy Farm Order 2024.

### **Article 15 - Construction and maintenance of altered streets**

- 4.4.16 The standard position in respect of maintenance of streets is that highways are to be maintained by the street authority in respect of highways maintainable at the public expense, or whichever body is responsible for the maintenance of the street in respect of streets which are not maintainable at the public expense. The definition of 'street authority' is set out at section 49 of the New Roads and Street Works Act 1991 and sets out that the street authority for highways is the highway authority, and for streets that are not highways, the street authority is the body or person liable to maintain or repair the street.
- 4.4.17 This article reflects that position and provides that any street constructed, altered or diverted under the Order, including those set out in Schedule 5, must be completed to the reasonable satisfaction of the street authority and, unless otherwise agreed, will be the responsibility of the street authority (paragraph (1)). The purpose of this article is to define who will be responsible for the maintenance of altered streets following the carrying out of works and it is required to provide certainty as to who will be responsible for such maintenance.
- 4.4.18 Paragraphs (3) and (4) mirror the defence in section 58 of the Highways Act 1980 where the undertaker is subject to an action for damages and has taken such care as was reasonably required in the circumstances to secure that the street was not dangerous to traffic.

- 4.4.19 Article 15 is as substantially found in article 10 of the following made solar DCOs: The West Burton Solar Project Order 2025, The Gate Burton Energy Park Order 2024, The Cottam Solar Project Order 2024, The Sunnica Energy Farm Order 2024 and The Mallard Pass Solar Farm Order 2024.

### **Article 16 – Temporary closure or restriction of streets**

- 4.4.20 This article allows for the temporary closure, alteration, diversion or restriction of the use of streets for the purposes of the authorised development. It is required because the use of certain streets will become incompatible with the carrying out of the authorised development at certain stages. Schedule 6 sets out the streets that are subject to temporary closures or restrictions works thereby clarifying the extent of the powers.
- 4.4.21 Access for pedestrians must be provided, and consent to any such closing or restriction must be sought from the street authority.
- 4.4.22 Paragraph (3) confers a power on the Applicant where the use of a street, within the Order limits, has been temporarily closed, altered, diverted or restricted under this article to use it as a temporary working site. This provision is in keeping with several made DCOs including article 11(6) of The Sunnica Energy Farm Order 2024 and article 11(6) of The Mallard Pass Solar Farm Order 2024.
- 4.4.23 Paragraph (4) states that reasonable access for pedestrians going to or from properties abutting a temporarily closed, altered, diverted or restricted street must be provided. This provision has precedent in several made DCOs including article 11(2) of The West Burton Solar Project Order 2025, article 11(2) of The Gate Burton Energy Park Order 2024, article 11(2) of The Mallard Pass Solar Farm Order 2024 and article 11(2) of The Cottam Solar Project Order 2024.
- 4.4.24 Paragraph (5) confirms that the Applicant must not temporarily close, alter, divert or restrict any streets listed in Schedule 6 without first consulting the street authority and, in respect of any other street, without the consent of the street authority (such consent not to be unreasonably withheld or

delayed). This provision has precedent in several made DCOs including article 11(4) of The Gate Burton Energy Park Order 2024, article 11(4) of The Mallard Pass Solar Farm Order 2024 and article 11(4) of The Cottam Solar Project Order 2024.

- 4.4.25 Paragraph (6) provides a right to compensation for any person suffering loss due to the suspension of a private right of way under this article. There is precedent for this in article 11(5) of The West Burton Solar Project Order 2025, article 11 of The Gate Burton Energy Park Order 2024, The Mallard Pass Solar Farm Order 2024, The Cottam Solar Project Order 2024
- 4.4.26 Paragraph (7) enables the temporary closing, prohibition of the use, restriction of use, alteration or diversion, of any public rights of way added to the definitive map and statement (within the meaning of the Wildlife and Countryside Act 1981) on or after the date of the close of the examination into the application for the Order. This is to ensure that the delivery of the scheme is not impeded by any new public rights of way being designated after the conclusion of the Examination. The power is appropriately limited because it only applies to public rights of way that are within the Order limits and to new public rights of way that were not recognised in the definitive map and statement throughout the application or Examination process. The wording aligns with made DCO precedent. For example, it is used to protect against the risk of new Tree Preservation Orders in The Gate Burton Energy Park Order 2024 (article 11).
- 4.4.27 Paragraph (8) imposes a time limit of 28 days after which a street authority which fails to respond to an application for consent is deemed to have granted consent, so as not to delay the Proposed Development unnecessarily. This provision has been used in other DCOs (see National Grid (North London Reinforcement Project) Order 2014, article 12 of the A19/A184 Testo's Junction Alteration Development Consent Order 2018, article 16 of The A47 Wansford to Sutton Development Consent Order 2023 and article 10 of the Cleve Hill Solar Park Order 2020). This approach is considered justified as the works proposed under paragraph



(5)(b) are temporary in nature and, this provision will provide greater flexibility and certainty in delivering the authorised development.

## **Article 17 – Access to works**

- 4.4.28 This article is a Model Provision which gives the undertaker powers to improve existing means of access for the purposes of the authorised development, as set out in Schedule 7 to the Order. This article is necessary because the undertaker will need to improve existing means of access for the purposes of the authorised development. The article also provides that other means of access or works can also be provided in other locations reasonably required for the authorised development with the approval of the local planning authority. This approach is broadly preceded by article 12(1) and (2) of The Heckington Fen Solar Park Order 2025, article 12 of The Gate Burton Energy Park Order 2024, article 13 of The Mallard Pass Solar Farm Order 2024 and article 13 of The Cottam Solar Project Order 2024.

## **Article 18 – Use of private roads**

- 4.4.29 This article authorises the temporary passage by the Applicant (or other persons who are transferred this statutory right pursuant to article 9) – in common with other permitted users – of private roads within the Order limits by persons or vehicles, for the purposes of, or in connection with, the construction and maintenance of the authorised development, without the need for the Applicant to take temporary possession of the land under article 34 (temporary use of land for carrying out the authorised development) of the draft Order.
- 4.4.30 This article therefore creates a power to ‘use’ a private road for a temporary period that is proportionate to the limited nature of the use, rather than extinguishing, suspending or permanently interfering with the private rights of a landowner (through the acquisition of a permanent right). This is akin to the powers for temporary use under article 34 (temporary use of land for carrying out the authorised development) of the Order; however, it is distinguished because the Applicant does not require the exclusive use and possession of the private roads while exercising this



power. The article is necessary because the Applicant will need to use private roads inside the Order limits.

- 4.4.31 Paragraph (2) provides that the Applicant will be liable to compensate any person who has suffered loss or damage because of the exercise of this power. Paragraph (3) is included to clarify that any dispute as to a person's entitlement to compensation, or as to the amount of such compensation, is to be determined under Part 1 of the Land Compensation Act 1961.
- 4.4.32 There is precedent for this article, for example in the Port of Tilbury (Expansion) Order 2019 (article 16) and the Lake Lothing (Lowestoft) Third Crossing Order 2020 (article 14).

### **Article 19 - Traffic regulation measures**

- 4.4.33 This article provides the undertaker with powers to place temporarily traffic signs and signals and other temporary traffic regulation measures for the purposes of the authorised development. The inclusion of this power is justified as it allows a degree of flexibility to respond to changing conditions on the road network over the lifetime of the authorised development. As introduced in paragraph (1), Schedule 8 (traffic regulation measures) sets out specific traffic regulation measures that the Applicant may make. The general power in paragraph (2) is appropriately regulated, via paragraph (4), as it may only be exercised with the consent of the traffic authority concerned, following consultation with the relevant chief officer of police. The article is not in the general Model Provisions but is common in orders granting permission for infrastructure projects where it is necessary in the interests of public safety during construction of the authorised development for the undertaker to put in place some temporary restrictions on road usage. The powers under this article are provided for in section 120(5)(a) of the PA 2008. Similar provision is contained within article 15 of The West Burton Solar Project Order 2025, article 14 of The Gate Burton Energy Park Order 2024, article 15 of The Mallard Pass Solar Farm Order 2024 and article 15 of The Cottam Solar Project Order 2024.

## **4.5 Part 4 – Supplementary Powers**

### **Article 20 – Discharge of water**

- 4.5.1 This article is standard across DCOs and reflects the approach adopted in article 14 of the Model Provisions. It establishes statutory authority for the Applicant to discharge water and trade effluent into a sewer, watercourse or drain in connection with the carrying out or maintenance of the Proposed Development.
- 4.5.2 This statutory authority is subject to the Applicant obtaining the consent of the owner of the sewer, watercourse or drain, but that consent cannot be withheld unreasonably.
- 4.5.3 Paragraph (7) clarifies that this article does not authorise a groundwater activity or water discharge activity which would require an environmental permit from the Environment Agency.
- 4.5.4 Paragraph (9) states that a person who fails to notify the undertaker of their decision in respect of an application for consent within 28 days of the application being made is deemed to have given consent. This time limit is considered necessary to remove the possibility for delay and provide certainty that the authorised development can be delivered by the undertaker in a timely fashion. As an NSIP, the authorised development should not be at risk of being held up due to a failure to respond to an application for consent.
- 4.5.5 This article is preceded in made energy DCOs including article 15 of The Gate Burton Energy Park Order 2024, article 6 of the Mallard Pass Solar Farm Order 2024 and article 16 of the Cottam Solar Project Order 2024.

### **Article 21 - Protective work to buildings**

- 4.5.6 The purpose of this article is to allow the Applicant to undertake protective works (as defined in paragraph (11)) to buildings affected by the Proposed Development. This power applies both inside and outside the Order limits. The article is included for the benefit of landowners and ensures that, in

the unlikely event that any works to buildings are required to rectify the impact of the Proposed Development, these can be carried out under Order powers and that such works are not limited to those buildings with the Order limits. The article provides for notice to be given to owners and occupiers prior to exercising the rights under the article and provides for compensation for loss or damage arising by reason of the exercise of those rights.

- 4.5.7 Article 21(12) applies section 13 of the Compulsory Purchase Act 1965, thereby providing an enforcement mechanism (by way of a warrant) where entry onto, or possession of, land under the article is refused.
- 4.5.8 This is another standard provision with broad precedent and is similar to article 17 of The West Burton Solar Project Order 2025, article 16 of The Gate Burton Energy Park Order 2024, article 17 of The Mallard Pass Solar Farm Order 2024 and article 18 of The Cottam Solar Project Order 2024.

## **Article 22 - Authority to survey and investigate the land**

- 4.5.9 This article gives the Applicant the power to enter certain land for the purpose of surveying and investigating. This enables the Applicant to assess the effects of the authorised development on land outside the Order Limits and assess the effects of land outside the Order Limits on the authorised development. The effect of providing such a power over land outside of the Order is to remove the necessity to compulsorily acquire that land or rights over that land and thus reduce the land brought within the Order limits.
- 4.5.10 Protection is given in the article to rights of landowners. The article provides that the Applicant must give no less than 14 days' notice before exercising the powers of entry, and that compensation is payable for any loss or damage. Paragraph (7) clarifies that the provisions of the Compulsory Purchase Act 1965 will apply to the refusal by the owner of the land to grant the Applicant access to enter land for the purpose of surveying and investigating it.

- 4.5.11 This is another standard provision with broad precedent such as article 16 of The Heckington Fen Solar Park Order 2025, article 17 of The Gate Burton Energy Park Order 2024, article 18 of The Mallard Pass Solar Farm Order 2024 and article 19 of The Cottam Solar Project Order 2024.

## **4.6 Part 5 – Powers of Acquisition**

### **Article 23 – Compulsory acquisition of land**

- 4.6.1 This article authorises the acquisition of land by compulsory acquisition. It grants the power to acquire such of that land as is required for the Proposed Development. The power of acquisition over the Order land is qualified and restricted by paragraph (1), in the case of parcels of land specified in the Order where only rights are required (article 26), acquisition of sub-soil (article 30), rights under or over streets (article 33), or where possession of land parcels as specified in the Order may be taken temporarily only (article 34). It is also qualified and restricted by reference to article 25 (time limit for exercise of authority to acquire land compulsorily).

- 4.6.2 The provision is necessary to secure the delivery of the Proposed Development as set out in more detail in the Statement of Reasons accompanying the application.

- 4.6.3 This is another standard provision with broad precedent such as article 19 of The West Burton Solar Project Order 2025, article 17 of The Sunnica Energy Farm Order 2024 and article 19 of The Mallard Pass Solar Farm Order 2024.

### **Article 24 – Compulsory acquisition of land – incorporation of the mineral code**

- 4.6.4 This article incorporates Parts 2 and 3 of Schedule 2 of the Acquisition of Land Act 1981. This means that where the Applicant acquires land under the powers of the Order, it will not acquire any mineral deposits present in the land (other than those necessarily extracted or used in constructing the authorised development) unless they are expressly included in the conveyance. Such an article is included in the Model Provisions (article

19) and is necessary to exempt mines and mineral interests from compulsory acquisition under the Order.

- 4.6.5 This is another standard provision with broad precedent such as article 21 of The West Burton Solar Project Order 2025, article 21 of The Mallard Pass Solar Farm Order 2024 and article 47 of The Cottam Solar Project Order 2024.

### **Article 25 - Time limit for exercise of authority to acquire land compulsorily**

- 4.6.6 This article gives the Applicant five years to issue 'notices to treat' or to execute a 'general vesting declaration' to acquire the land that is subject to the power of compulsory acquisition. These are the two main procedural methods by which the process of acquiring land is undertaken should this Order be made.
- 4.6.7 The article also sets a 5-year time limit on the power of the Applicant to take temporary possession of land under article 34, although it does not prevent them remaining in possession of land after that time if it took possession within the 5-year limit. This has consistently been approved by the Secretary of State, see for example article 24 of The National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024, article 19 of The Gate Burton Energy Park Order 2024, article 20 of The Mallard Pass Solar Farm Order 2024, article 20 of the West Burton Solar Project Order 2025 and article 21 of The Cottam Solar Project Order 2024. This article was also included in the Model Provisions as article 20.

- 4.6.8 This article was also included in the Model Provisions as article 20.

### **Article 26 - Compulsory acquisition of rights and imposition of restrictive covenants**

- 4.6.9 This article provides for the undertaker to acquire such rights over the Order land, or impose restrictive covenants affecting the Order land, including rights and restrictive covenants for the benefit of a statutory undertaker or any other person, as may be required for any purpose for

which that land may be acquired under article 23 by creating them as well as acquiring rights already in existence. This would allow the Applicant, where appropriate, to reduce the area of outright acquisition and rely on the creation and acquisition of rights/restrictive covenants instead. A provision of this kind is usual in Transport and Works Act orders and Hybrid Bills and has been followed in a number of DCOs for example article 20 of The Gate Burton Energy Park Order 2024, article 22 of The Mallard Pass Solar Farm Order 2024 and article 22 of The Cottam Solar Project Order 2024.

- 4.6.10 Paragraph (1) allows the Applicant to acquire existing rights and create new rights over any of the Order land. Although the Applicant has sought to identify all of the plots which are to be subject to the acquisition or creation of rights and has set these out in the Book of Reference **[REF 4.3]**, Land Plans **[REF 2.2]** and Schedule 9 of the Order, this provision ensures that the Applicant retains the flexibility to acquire or create rights/restrictive covenants over land where that land might otherwise have to be acquired outright. Without the inclusion of this article, the Applicant would have no alternative but to acquire the land outright if an alternative agreement could not be reached by private agreement.
- 4.6.11 Paragraph (1) also addresses where the power to acquire rights may arise before the acquisition of the land. For example, if the Applicant has taken temporary possession of land under article 34, there may be a need to acquire a right (e.g. for a statutory undertaker) prior to the acquisition of the land.
- 4.6.12 Paragraph (2) provides that for the land described in column 1 of Schedule 9, the Applicant's powers of compulsory acquisition are limited to the acquisition of such rights, and the imposition of such restrictive covenants, as may be required for or in connection with the authorised development for the purposes set out in column 2 of Schedule 9.
- 4.6.13 Paragraph (3) also refers to Schedule 9 and provides that powers under paragraph (1) to acquire the rights and to impose the restrictive covenants for the benefit of statutory undertakers or for the benefit of any other

person do not preclude the acquisition of such other rights and the imposition of such other restrictive covenants in respect of the same land. This particular provision is based on article 26(3) of the Lake Lothing (Lowestoft) Third Crossing Order 2020.

- 4.6.14 Paragraph (4) refers to Schedule 10, which modifies the compulsory purchase and compensation provisions under general legislation. The modifications do not affect the entitlement to compensation, but generally ensure that the compensation code applies equally to the additional categories of acquisition covered by the Order – the creation of new rights and the imposition of restrictive covenants, in particular. This is a consequence of the extension of land acquisition powers to these categories and is commonplace in Transport and Works Act orders and DCOs, such as article 20(3) of The Gate Burton Energy Park Order 2024, article 22(3) of The Mallard Pass Solar Farm Order 2024 and article 22(3) of The Cottam Solar Project Order 2024.
- 4.6.15 For the purpose of section 126(2) of the PA 2008, the relevant compensation provisions are modified only to the extent necessary to ensure that they apply properly to the acquisition of rights, and not to affect the amount of compensation to which landowners would be entitled. The schedule is heavily precededented and reflects the drafting in Schedule 10 of The Gate Burton Energy Park Order 2024, The Mallard Pass Solar Farm Order 2024 and The Cottam Solar Project Order 2024 except for the final paragraph which amends the Compulsory Purchase of Land (Vesting Declarations) (England) Regulations 2017 (the 2017 Regulations) (see further article 27 below).
- 4.6.16 Paragraph (4) also provides that, where the Applicant needs only to acquire rights over land, it shall not be obliged to acquire any greater interest in that land.

## **Article 27 – Private rights over land**

- 4.6.17 For it to be possible to implement the Proposed Development, provision is needed for the extinguishment of private rights and restrictions in the Order land that would be incompatible with that implementation. Article 27



supplies that provision and is preceded by article 23 of The West Burton Solar Project Order 2025, article 21 of The Gate Burton Energy Park Order 2024, article 23 of The Mallard Pass Solar Farm Order 2024 and article 23 of The Cottam Solar Project Order 2024,

- 4.6.18 Paragraph (1) provides for the extinguishment of private rights and restrictions over Order land subject to compulsory acquisition under the Order, from the moment of acquisition or occupation of that land.
- 4.6.19 Paragraph (2) provides for the extinguishment of existing private rights over land that is subject to the compulsory acquisition of new rights (but where the underlying land is not subject to powers of compulsory acquisition), if the exercise of those existing rights is inconsistent with the implementation of the Proposed Development, from the date of acquisition of the right or occupation of the underlying land.
- 4.6.20 Paragraph (3) provides that rights and restrictions over Order land that is already owned by the Applicant are also extinguished, at the point that any activity authorised by the Order interferes with or breaches those rights.
- 4.6.21 Paragraph (4) provides for the temporary suspension of private rights and restrictions over Order land that is not acquired but is occupied temporarily by the Applicant to construct the Proposed Development, in so far as their continuance would be inconsistent with the purpose for which temporary possession was taken. The suspension is for the duration of the occupation.
- 4.6.22 Paragraphs (5) and (6) of this article makes provision for compensation and for circumstances where rights are preserved.
- 4.6.23 Paragraph (9) sets out a list of matters deemed to be private rights to provide certainty as to the scope of the article. The list of deemed private rights is broad to ensure that any right which could potentially interfere with the implementation of the Proposed Development can be extinguished. This list appears in article 23(8) of The West Burton Solar Project Order 2025, article 21(8) of The Gate Burton Energy Park Order



2024, article 23(8) of The Mallard Pass Solar Farm Order 2024 and article 23(8) of The Cottam Solar Project Order 2024.

## **Article 28 - Power to override easements and other rights**

- 4.6.24 This article provides a power to override easements and other rights and reflects the terms of section 120(3) and (4), and paragraphs (2) and (3) of Part 1 of Schedule 5 to the PA 2008. It provides that land vested in the undertaker is discharged from all rights, trusts and incidents to which it was previously subject at the point of vesting, together with the benefit of restrictive covenants and instances where land subject to third-party rights is acquired by agreement rather than through compulsory acquisition. It also provides for the situation where access to the land for the purposes of the authorised development occurs before vesting.
- 4.6.25 Sections 203 to 205 of the Housing and Planning Act 2016 relate to the power (in section 203) to override easements and other rights, and to the provision of compensation for such interference (section 204). The implications of this power are wide-ranging – for instance, the power applies in respect of all types of interests and rights, in cases where there is planning consent (the definition of which includes development consent under the PA 2008, as per section 205) for the works causing the interference, and the land has been appropriated or acquired, or could be acquired compulsorily, in connection with those consented works. Notwithstanding the above, the inclusion in the Order is necessary because this article authorises interference with easements and other rights not only where necessary in connection with the carrying out of building or maintenance work (as is the case where section 203 of the Housing and Planning Act 2016 applies) but also in connection with the exercise of any power authorised by the Order.
- 4.6.26 The power in this article is necessary and proportionate to enable the delivery of the authorised development while ensuring that provision is made for compensation to be paid to affected persons whose interests in or rights over land may be subject to interference arising therefrom. The drafting is precededented (see, for example, article 29 of the Lake Lothing

(Lowestoft) Third Crossing Order 2020 and article 27 of the Riverside Energy Park Order 2020 and is substantially the same as article 26 of The West Burton Solar Project Order 2025, article 24 of The Gate Burton Energy Park Order 2024, article 26 of The Mallard Pass Solar Farm Order 2024 and article 26 of The Cottam Solar Project Order 2024).

## **Article 29 – Application of the 1981 Act**

- 4.6.27 This article applies (with minor modifications to make the provisions appropriate to the context of acquisition under powers in a DCO) the provisions of the Compulsory Purchase (Vesting Declarations) Act 1981 (the 1981 Act) to compulsory acquisition under the Order so that the Applicant has the option of acquiring Order land that is subject to the powers of compulsory acquisition by vesting declaration.
- 4.6.28 Vesting declarations are one of two ways of acquiring land that is subject to compulsory purchase. The other method involves serving a notice to treat on the landowner to commence the process of establishing the acquisition price, after which title in the land is transferred. The date on which title will transfer is uncertain under the notice to treat method.
- 4.6.29 A vesting declaration, in contrast, sets the date on which title in the land is transferred to the acquiring authority. Compensation is negotiated or determined and paid later. Vesting declarations, therefore, allow title in the land to pass to the acquirer more quickly than using the notice to treat method, and also allow several parcels to be acquired at once. Their use is subject to serving notices and observing time limits as required by the 1981 Act (as amended by the Housing and Planning Act 2016).
- 4.6.30 The modifications ensure consistency with the 5-year period sought under the Order for acquisition of rights. It further ensures that the appropriate references are made to the Act. The modifications are based in large part on previous DCOs and following amendments to the 1981 Act in the Housing and Planning Act 2016, the High Speed Rail (London - West Midlands) Act 2017. This approach is preceded in numerous DCOs including the Drax Power (Generating Stations) Order 2019 (article 24),

the Cleve Hill Solar Park Order 2020 (article 20) and the Cottam Solar Project Order 2024 (article 24).

- 4.6.31 Paragraphs (3), (5), (11), (12) and (13) are intended to facilitate the compulsory acquisition of rights for the benefit of a third party such as a statutory undertaker. These provisions are not contained in the Model Provisions but are simply consequential amendments intended to provide confirmation that the 1981 Act can be used to acquire rights and land on behalf of third parties, without the need to acquire the land or rights in favour of the Applicant and then transfer such land or rights to a third party, thereby causing a delay to any transfers of land or rights to those who are intended to benefit from such acquisition.

### **Article 30 - Acquisition of subsoil only**

- 4.6.32 This article allows the Applicant to acquire land below the surface, rather than having to acquire all of the land.
- 4.6.33 The purpose of this article is to give the Applicant the flexibility to minimise so far as is possible the extent of interests to be acquired, with consequently less impact on affected landowners, and lower payments of compensation. This too is a standard provision used in many DCOs, see for example article 23 of The Longfield Solar Farm Order 2023, article 23 of The Gate Burton Energy Park Order 2024, article 25 of The Mallard Pass Solar Farm Order 2024, article 25 of The Cottam Solar Project Order 2024 and article 25 of The West Burton Solar Project Order 2025.

### **Article 31 - Modification of Part 1 of the Compulsory Purchase Act 1965**

- 4.6.34 This article modifies the provisions of Part 1 of the Compulsory Purchase Act 1965 (the 1965 Act) as applied to the Order by section 125 of the PA 2008. In accordance with section 126(2) of the PA 2008, these provisions are modified only to the extent necessary to ensure that they apply properly to the compulsory acquisition powers authorised by the Order. These modifications have broad precedent in article 26 of the Southampton to London Pipeline Development Consent Order 2020, article 29 of the Riverside Energy Park Order 2020, article 22 of the Cleve

Hill Solar Park Order 2020, article 25 of The Gate Burton Energy Park Order 2024, article 27 of The Mallard Pass Solar Farm Order 2024 and article 27 of The Cottam Solar Project Order 2024.

## **Article 32 – Modification of the 2017 Regulations**

- 4.6.35 This article modifies the Compulsory Purchase of Land (Vesting Declaration) (England) Regulations 2017 to ensure that the interests and rights in land which are intended to benefit a third party, such as a statutory undertaker whose apparatus may be re-located in order to construct the Proposed Development, will vest in that third party instead of the Applicant, which would otherwise be the acquiring authority in respect of those interests and rights. The modifications are based in large part on previous DCOs and following amendments to the 1981 Act in the Housing and Planning Act 2016, the High Speed Rail (London – West Midlands) Act 2017.

## **Article 33 – Rights under or over streets**

- 4.6.36 The purpose of this article is to allow the Applicant to appropriate and use land above or below streets within the Order land, without having to acquire the street or any right or easement in it. The exercise of this power, without full acquisition, is prohibited in the circumstances set out in paragraph (3). Compensation is payable for any loss or damage caused to an owner or occupier of land affected by the power of appropriation where no acquisition has taken place.
- 4.6.37 This article was included in the Model Provisions and the majority of DCOs made to date. It is considered that the article remains necessary for the authorised development, notwithstanding the effect of the Housing and Planning Act 2016, and it was retained in recent DCOs (see, for example, article 32 of the M42 Junction 6 Development Consent Order 2020, article 30 of the Riverside Energy Park Order 2020, article 26 of The Longfield Solar Farm Order 2023, article 26 of The Gate Burton Energy Park Order 2024, article 28 of The Mallard Pass Solar Farm Order 2024, article 28 of The Cottam Solar Project Order 2024 and article 28 of The West Burton Solar Project Order 2025).

## **Article 34 - Temporary use of land for carrying out the authorised development**

- 4.6.38 The purpose of this article is, inter alia, to allow the land set out in Schedule 11 to be occupied temporarily while the works are carried out. This is land which is required during construction of the Proposed Development, but land acquisition is not required permanently. The authorisation of temporary possession prevents the Applicant having to permanently acquire land which is required to construct the authorised development, but which is not needed permanently and therefore assists in minimising the interference with landowners' rights.
- 4.6.39 The inclusion of this article is important to ensure that the authorised development can be carried out efficiently and expeditiously following the making of the Order. The Applicant is entitled either to occupy and use land pending its permanent acquisition, or to temporarily occupy and use land in Schedule 11, with provision made for the restoration of the land (subject to exceptions listed in paragraph (5)) and the payment of compensation to the affected landowners and occupiers for any loss or damage arising. These powers are considered reasonable given the status of the authorised development as an NSIP. Similar temporary possession provisions have been included in a large number of made DCOs, including (most recently) The Longfield Solar Farm Order 2023 (article 27), the Boston Alternative Energy Facility Order 2023 (article 33), The Sunnica Energy Farm Order 2024 (article 26), The Gate Burton Order 2024 (article 27) and The Mallard Pass Solar Farm Order 2024 (article 29) and The Cottam Solar Project Order 2024 (article 29).
- 4.6.40 More particularly, paragraph (1)(a)(i) allows the land set out in Schedule 11 to be occupied temporarily while the works are carried out. This is land which is required during construction of the Proposed Development but for which full title is not required outright permanently. The land which falls within this subparagraph includes land which will be occupied temporarily and then subject to permanent rights (e.g. diversion of utilities apparatus) and/or land in respect which permanent structures will be erected during temporary possession. In line with this, paragraph (1)(e) confirms that the

authorised development as listed in Schedule 1 can be undertaken on land that has been temporarily occupied.

- 4.6.41 Paragraph (1)(a)(ii) allows for the temporary occupation of any of the Order land that is subject to the powers of permanent acquisition, but in respect of which no process for acquisition has yet been commenced. The rationale for this is that it reduces the amount of land that is required to be subject to outright acquisition. Thus, article 23 with paragraph (1)(a)(ii) of this article make it possible for the Applicant to occupy land temporarily initially and only proceed to acquire permanently that part which is necessary for the Development as constructed. The benefits of this are lesser impacts on landowners and lower costs to the Applicant, which is in the public interest. In line with this, paragraph (1)(e) confirms that the authorised development as listed in Schedule 1 can be undertaken on land that has been temporarily occupied.
- 4.6.42 Paragraph (2) requires the Applicant to provide a notice 14 days before taking temporary possession of land. This 14-day period is proportionate and ensures that the Proposed Development can be delivered expeditiously, reducing impacts on local communities whilst balancing the need to provide appropriate notice to persons with interest in land. The provision also allows for this period to be reduced with the agreement of the landowners. This is considered reasonable because where a shorter period is agreed, there can be no question of the landowner being prejudiced.
- 4.6.43 Paragraph (3) is provided to ensure that the Applicant is not inhibited from taking temporary possession of land in circumstances where there is a danger to the authorised development, the public or the surrounding environment. This provision has been included in made temporary possession articles (see, for example, article 31(4) of The Southampton to London Pipeline Development Consent Order 2020 and article 33(3) of The Boston Alternative Energy Facility Order 2023).
- 4.6.44 As noted above, paragraph (5) sets out that the Applicant must before giving up temporary possession remove all temporary works and restore



the land subject to temporary possession to the reasonable satisfaction of the owners except that it is not required to carry out any of the activities listed in paragraphs (5)(a) to (f). Paragraph (5) is preceded (see, for example substantially similar wording at article 24(4) of the Cleve Hill Solar Park Order 2020 and article 27(5) of the Longfield Solar Farm Order 2023).

- 4.6.45 Under paragraph (8), any dispute as to the satisfactory removal of temporary works and restoration of land under paragraph (5) does not prevent the Applicant from giving up possession of the land. This provision is considered reasonable as it clarifies that the Applicant is able to give up possession of land and bring to an end any obligations associated with that possession, without affecting any duty on the Applicant to undertake restorative work on land in the event that a dispute under paragraph (5) is resolved in a landowner's favour.
- 4.6.46 Paragraph (10) clarifies that the Applicant is precluded from exercising its powers under article 23 to acquire the land specified in Schedule 11.
- 4.6.47 Paragraph (11) clarifies that the Applicant is not required to acquire any land, or interest in land, that it takes temporary possession of under this article.
- 4.6.48 Paragraph (13) makes clear that the power in this article can be exercised on more than one occasion. This change is intended to clarify the intention behind the model provision rather than to expand its scope.

### **Article 35 - Temporary use of land for maintaining the authorised development**

- 4.6.49 This article provides that the Applicant may take temporary possession of land within the Order limits required for the purpose of maintaining the authorised development and to construct such temporary works as may be reasonably necessary for that purpose for a period of five years from the date of final commissioning other than for landscaping and ecological works where the maintenance period is the period approved under the landscape and ecological plan in the requirements under Schedule 2 of



the DCO. Provision is made for service of notices and compensation. This power does not apply with respect to houses, gardens or any other buildings for the time being occupied. Under paragraph (6), all temporary works must be removed before the Applicant gives up possession under this article and the land must be restored to the reasonable satisfaction of the owners. The drafting of the article (except paragraph (4)) is preceded in article 30 of The West Burton Solar Project Order 2025.

- 4.6.50 Provision is made for giving notice and compensation (paragraphs (3), (4), (7), (8) and (9)).
- 4.6.51 This article is required to enable the Applicant to carry out maintenance during the maintenance period and is appropriate as it would impose a lesser burden than permanently acquiring interests and rights in land to achieve the same purpose.
- 4.6.52 The maintenance period has been adapted from the Model Provisions to apply to the period 5 years beginning with the date of final commissioning as opposed to the date on which the authorised development is opened for use as this is more appropriate for this type of development. It also alters the maintenance period landscaping and ecological works to bring it in line with the maintenance period approved under the landscape and ecological plan in the requirements under Schedule 2 of the Order. Similar wording has been used in other made Orders for generating stations, including the Hirwaun Generating Station Order 2015 (article 27(11)), the Progress Power (Gas Fired Power Station) Order 2015 (article 28(11)), the Wrexham Gas Fired Generating Station Order 2017 (article 27(11)), the Riverside Energy Park Order 2020 (article 32(11)), The Gate Burton Energy Park Order 2024 (article 28(11)), The Mallard Pass Solar Farm Order 2024 (article 30(11)) and The Cottam Solar Project Order 2024 (article 30(11)).

## **Article 36 – Statutory undertakers**

- 4.6.53 This article provides the Applicant with statutory authority to acquire interests and rights over land owned by statutory undertakers (i.e. utilities such as electricity and gas companies). It also allows the Applicant to

extinguish rights or restrictions for the benefit of land that statutory undertakers have over the Order land, and to remove, relocate or reposition their apparatus.

4.6.54 Additionally, this article provides the Applicant with the power to construct the Proposed Development so as to cross under or over statutory undertakers' apparatus and to construct any necessary track or roadway, together with the right to maintain or remove the same, and to install service media under or over existing apparatus.

4.6.55 The drafting is based on article 31 of the Model Provisions and is substantially similar to article 29 of The Gate Burton Energy Park Order 2024, article 31 of The Mallard Pass Solar Farm Order 2024 and article 31 of The Cottam Solar Project Order 2024) but the article also seeks at paragraphs (c) and (d), in common with other DCOs (see, for example, article 31(c) and (d) of the Thorpe Marsh Gas Replacement Pipeline Order 2016), the power to:

- a. (a) construct the authorised development to cross under or over statutory undertakers' apparatus; and
- b. (b) construct over existing apparatus belonging to statutory undertakers any necessary track or roadway, together with the right to maintain and/or remove the same and install such service media under or over the existing apparatus needed in connection with the authorised development. This power is sought to ensure that the Applicant can erect all necessary above ground installations, site compounds and storage areas in connection with the construction of the authorised development.

4.6.56 This power is sought to ensure that the Applicant can erect all necessary above ground installations, site compounds and storage areas in connection with the construction of the authorised development.

4.6.57 Diligent inquiries have been made to identify all relevant rights and statutory undertakers' apparatus. However, it is still possible that new rights or apparatus may be discovered during the construction of the authorised development. On this basis, a general power for the extinguishment of rights and removal or relocation of apparatus belonging to statutory undertakers over or within the Order limits is required.

- 4.6.58 This article is subject to article 49 (protective provisions) and Schedule 14 which contains provisions for the protection of certain statutory undertakers to ensure their continued ability to carry out their functions despite the interference with their rights/apparatus required to facilitate the Proposed Development.

### **Article 37 - Apparatus and rights of statutory undertakers in stopped up streets**

- 4.6.59 This article governs what happens to statutory utilities' apparatus (pipes, cables, etc.) under streets that are closed by the Order. This article is required because, without it, the statutory undertaker would not have access to the apparatus, since there would no longer be a right of way along the street. Similar wording has been used in other made Orders for generating stations, for example article 30 of The Gate Burton Energy Park Order 2024, article 32 of The Mallard Pass Solar Farm Order 2024 and article 32 of The Cottam Solar Project Order 2024.

### **Article 38 – Acquisitions of wayleaves, easements and other rights**

- 4.6.60 This article explains that Schedule 12 (Acquisition of wayleaves, easements and other rights) shall have effect.

### **Article 39 - Recovery of costs of new connections**

- 4.6.61 This article (which reflects the Model Provisions) provides that if a gas, water, electricity or sewerage undertaker's or public communications provider's apparatus is removed thereby interrupting the service to owners or occupiers of premises, their costs incurred in obtaining a new service can be recovered from the undertaker. This has been used in other made Orders for generating stations, for example article 31 of The Gate Burton Energy Park Order 2024, article 33 of The Mallard Pass Solar Farm Order 2024 and article 33 of The Cottam Solar Project Order 2024.

## **4.7 Part 6 – Miscellaneous and General**

### **Article 40 - Application of landlord and tenant law**

- 4.7.1 This article governs the leasing of land by the Applicant to any other person. It allows the terms of the lease to override any statutory provisions relating to landlord and tenant law. This article is a Model Provision which is included in numerous made DCOs. For example, article 33 of The Heckington Fen Solar Park Order 2025, article 34 of The Gate Burton Energy Park Order 2024, article 36 of The Mallard Pass Solar Farm Order 2024 and article 36 of The Cottam Solar Project Order 2024.

### **Article 41 – Operational land for purposes of the 1990 Act**

- 4.7.2 This article is a Model Provision which is included in numerous made DCOs and has the effect of ensuring that the land on which the authorised development is constructed will be ‘operational land’ under section 264(3)(a) of the 1990 Act. The effect is to ensure that planning rights attaching to the undertaker in relation to operational land have effect as they would do if planning permission had been granted for the authorised development.
- 4.7.3 This article is as found in in article 13 of The Little Crow Solar Park Order 2022, article 35 of The Gate Burton Energy Park Order 2024, article 37 of The Mallard Pass Solar Farm Order 2024, article 37 of The Cottam Solar Project Order 2024 and article 37 of The West Burton Solar Project Order 2025.

### **Article 42 – Planning permission**

- 4.7.4 Article 42 establishes that works done pursuant to a planning permission granted within the Order limits, which are required in connection with the authorised development, shall not constitute a breach of the Order. Equally, works done pursuant to the Order shall not constitute a breach of planning permission.
- 4.7.5 Paragraph (1) is preceded in article 8 of The Slough Multifuel Extension Order 2023 and article 11 in the M42 Junction 6 Development Consent

Order 2020. This article avoids unintended incompatibility between the Order and any further planning permissions sought.

- 4.7.6 Paragraph (2) has a general application and reflects the terminology used by the Supreme Court in the Hillside decision and confirms that planning permissions which conflict with the Proposed Development can proceed without the risk of enforcement action being taken notwithstanding any incompatibility between the Proposed Development and the development authorised under a planning permission. It is considered this is necessary to confirm that developments are not prevented.
- 4.7.7 Paragraph (3) deals with the converse situation and confirms that development under a planning permission is not to prevent activity authorised under the Order.
- 4.7.8 Paragraph (4) has been added to require the undertaker, where it identifies an inconsistency between permissions referred to in paragraph (2)-(3), to notify the relevant local planning authority about the inconsistency and how it proposes to proceed. This ensures that the relevant planning authority has sufficient sight of article 42 being engaged, and should it disagree with the existence of an inconsistency it could engage with the matter accordingly (e.g. via discussions with the undertaker, and ultimately enforcement action).
- 4.7.9 Paragraph (5) sets out the definitions relevant to this article and clarifies the definition of 'planning permission' includes a planning permission granted under article 3 (permitted development) and Classes F, G, I, J, K, L, M and N of Part 8 (Transport related development) of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015.

### **Article 43 - Felling or lopping of trees and removal of hedgerows**

- 4.7.10 This article allows any tree or shrub that is near any part of the authorised development to be felled or lopped, or have its roots cut back, if it is considered to obstruct the construction, operation, maintenance or

decommissioning of the authorised development, endanger anyone using it or obstruct or interfere with the passage of vehicles. Compensation is payable for any loss or damage caused.

- 4.7.11 The article is included to ensure that the undertaker has adequate powers to construct, operate maintain and decommission the authorised development. The undertaker does not have any other statutory powers available to it to fell or lop trees or shrubs and so the article is considered necessary to ensure that trees or shrubs do not obstruct the construction, operation, maintenance and decommissioning of this nationally significant infrastructure.
- 4.7.12 Alongside that specific power, the article also allows for a generic power for any hedgerows within the Order limits to be removed where required for the purposes of the authorised development, to allow for construction flexibility. This generic power is subject to provisions in requirement 7 and the approval by the local planning authority of the landscape and ecology management plan.
- 4.7.13 Similar wording has been used in other made Orders (see, for example, article 35 of The Heckington Fen Solar Park Order 2025, article 36 of the Longfield Solar Farm Order 2023, article 36 of The Gate Burton Energy Park Order 2024, article 38 of The Mallard Pass Solar Farm Order 2024 and article 38 of The Cottam Solar Project Order 2024).

## **Article 44 – Removal of human remains**

- 4.7.14 This article disapplies section 25 of the Burial Act 1857 and replaces it with an alternative procedure for managing the removal of any human remains disturbed during the course of carrying out the Authorised Development.
- 4.7.15 This article is based upon article 17 of the Model Provisions and is required to ensure that the appropriate treatment of such remains does not delay the implementation of the authorised development. This has been included as the Applicant has not been able to rule out the presence of

human remains within the Order Limits given the archaeological history of the area.

- 4.7.16 This article departs from the model provision in that sub-paragraph (11) excludes the requirement to give notice before the removal of remains which the undertaker is satisfied were interred more than 100 years ago and where no relative or personal representative of the deceased is likely to object to their removal.
- 4.7.17 Taken together the effect of this article is to replace the existing and disparate regimes for regulating the removal of human remains and consolidate the applicable provisions in a single article in the Order. It is required by the undertaker to ensure that archaeological remains are recovered appropriately without causing unacceptable delay to the implementation of this nationally significant infrastructure project.
- 4.7.18 This article has precedent in article 17 of The Cottam Solar Project Order 2024, article 12 of the Little Crow Solar Park Order 2022 and is substantially found in article 41 of the A417 Missing Link Development Consent Order 2022 and Article 17 of the Awel y Môr Offshore Wind Farm Order 2023.

#### **Article 45 - Certification of documents, etc.**

- 4.7.19 This article provides for various plans and other documents to be certified by the Secretary of State as true copies of those documents referred to in the Order. The documents in question (with their reference and revision numbers) are listed in Schedule 13. A form of this article is included in the Model Provisions and in the majority of DCOs made to date.

#### **Article 46 - Service of notices**

- 4.7.20 This article governs how any notices that may be served under the Order are deemed to have been served properly. In particular it allows service by email with the consent of the recipient, and deals with the situation of service on an unknown landowner.



- 4.7.21 The provision is useful because it provides clarity on the issue. It is noted that the service of notice provisions under sections 229 and 230 of the PA 2008 apply to notices served under that Act rather than notices served under a DCO made under that Act. This article has precedent in several orders, for example, the Longfield Solar Farm Order 2023 (article 41), the Boston Alternative Energy Facility Order 2023 (article 48), The Gate Burton Energy Park Order 2024 (article 42), The Mallard Pass Solar Farm Order 2024 (article 42), The Cottam Solar Project Order 2024 (article 44) and The West Burton Solar Project Order 2025 (article 44).

### **Article 47 - Arbitration**

- 4.7.22 This article governs what happens when two parties disagree in the implementation of any provision of the Order. The parties must first use reasonable endeavours to settle any difference through negotiations undertaken in good faith but if this does not resolve matters, then the matter is to be settled by arbitration, and if the parties cannot agree on who the arbitrator should be, this is decided by the Secretary of State. Paragraphs (1) and (3) have precedent in The Southampton to London Pipeline Development Consent Order 2020 and The Thurrock Flexible Generation Plant Development Consent Order 2022

### **Article 48 – Requirements, appeals, etc.**

- 4.7.23 This article has the effect of providing that section 78 of the 1990 Act applies to the discharge of requirements included in Schedule 2 of the Order. This provides a formal process for dealing with the requirements and means that the undertaker has a right of appeal to the Secretary of State if an application is made to discharge a requirement and that application is refused or not determined. This approach is precedented, see article 18 of the Little Crow Solar Park Order 2022 and article 43 of the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022.

### **Article 49 – Protective provisions**

- 4.7.24 This article provides that Schedule 14 (protective provisions) has effect.

## **Article 50 – Funding**

- 4.7.25 This article provides that the undertaker may not exercise a number of powers prior to it putting into place a guarantee or security equal to its potential liability to compensation payable under the DCO which is approved by the Secretary of State. This article is as found in article 39 of the Cleve Hill Solar Park Order 2020, article 31 of the Awel y Môr Offshore Wind Farm Order 2023, article 43 of the Longfield Solar Farm Order 2023, article 44 of The Gate Burton Energy Park Order 2024, article 44 of The Mallard Pass Solar Farm Order 2024 and article 46 of The Cottam Solar Project Order 2024.

## **Article 51 – No double recovery**

- 4.7.26 This article provides that compensation is not payable both under this Order and other compensation regimes for the same loss or damage. In addition, the article provides that there is not to be double recovery under two or more different provisions of this Order.
- 4.7.27 The article follows the well-established principle of equivalence in compulsory purchase compensation, namely that a claimant is to be compensated for no more and no less than their loss.
- 4.7.28 This article has precedent in the National Grid (Richborough Connection Project) Development Consent Order 2017 (article 47), the North London Heat and Power Generating Station Order 2017 (article 35), the M25 Junction 28 Development Consent Order 2022 (article 49), the Sizewell C (Nuclear Generating Station) Order 2022 (article 46), the Boston Alternative Energy Facility Order 2023 (article 51), The Gate Burton Energy Park Order 2024 (article 39), and The Cottam Solar Project Order 2024 (article 41).

## 5 Schedules

5.1.1 **Schedule 1 (Authorised development)** - specifies numbered works comprised in the authorised development (the NSIP) for which development consent is sought and other associated development works. The works should be read alongside the Works Plans.

5.1.2 **Schedule 2 (Requirements)** - contains draft requirements corresponding to conditions which, under section 120(2) of the PA 2008, could have been imposed on the grant of planning permission for the authorised development had it not fallen within the regime of the PA 2008. The requirements have a similar purpose to planning conditions.

- Requirement 1 (Interpretation) – this requirement contains several definitions used in the remainder of the Schedule.
- Requirement 2 (Commencement of the authorised development) – this requirement provides that the authorised development must not commence later than 5 years from the date of the Order coming into force. Provision is made if any legal proceedings are brought against the decision to extend this time period.
- Requirement 3 (Detailed design approval) – this requirement stipulates that no part of the authorised development may commence until design details are submitted to and approved by the local planning authority. The details submitted must include details of the topics listed and must be in accordance with design parameters document unless a variation to the design parameters document has been approved by the local planning authority.
- Requirement 4 (Construction environmental management plan) (CEMP) – under this requirement, no part of the authorised development may commence until the undertaker has submitted to the local planning authority and received approval for a CEMP for that part, which are substantially in accordance with the Outline CEMP. The construction of the authorised development must be in accordance with the CEMPs as approved.
- Requirement 5 (Construction traffic management plan) (CTMP) – under this requirement, no part of the authorised development may commence until the undertaker has submitted to the local planning authority and received approval for a CTMP for that part which is in substantial accordance with the outline CTMP.
- Requirement 6 (Landscaping design) – under this requirement, no part of the authorised development may commence until the undertaker has submitted to the local planning authority and received approval for a landscape and ecology plan for that part which is in substantial accordance with the outline landscape strategy plan.

- Requirement 7 (Landscape and ecological management plan) (LEMP) – under this requirement, no part of the authorised development may be commenced until the undertaker has submitted to the local planning authority and received approval for a written LEMP for that part which is in substantial accordance with the Outline LEMP. Any LEMP must be implemented as approved and maintained throughout the operation of the relevant part of the authorised development to which the LEMP relates.
- Requirement 8 (Surface water drainage strategy) – under this requirement, no part of the authorised development may be commenced until the undertaker has submitted a surface water drainage strategy to the local planning authority for approval. Any approved strategy must be implemented as approved and maintained throughout the construction and operation of the authorised development.
- Requirement 9 (Archaeology) – this requirement provides that no part of the authorised development can commence until a written scheme for the investigation of areas of archaeological interest within that part has been submitted to and approved by the local planning authority. Any written scheme of investigation must be substantially in accordance with the archaeological mitigation strategy. Any archaeological works or programme of archaeological investigation to be carried out in accordance with the scheme approved.
- Requirement 10 (Soil management plan) (SMP) – this requirement provides that no part of the authorised development may commence until a SMP (which must substantially accord with the outline SMP) has been submitted to and approved by the local planning authority for that part. The approved SMP for a part must be complied with as part of the construction of that part.
- Requirement 11 (Operational management plan) (OMP) – under this requirement, prior to the date of final commissioning of the authorised development, an OMP must be submitted to and approved by the local planning authority. This OMP must be substantially in accordance with the framework OMP. The operation of the authorised development must be carried out in accordance with the approved OMP.
- Requirement 12 (Operational noise) – this requirement confirms that no part of Works No. 1 may become operational until a noise assessment demonstrating that Work No. 1 will not have a significant operational noise effect for that part has been submitted to and approved by the local planning authority. The design as modelled in the noise assessment must be implemented and maintained as approved throughout the relevant operation of the design to which the plan refers.
- Requirement 13 (Decommissioning and restoration) – this requirement provides that the decommissioning of the authorised development will commence no later than 40 years following the date of final commissioning. No later than 6 months of the date the undertaker decides to decommission any part of the authorised development, the undertaker must submit for approval to the local planning authority a

Decommissioning Management Plan (DMP) which substantially accords with the framework DMP. The DMP must be implemented as approved. This requirement is without prejudice to any other consents or permissions which may be required to decommission any part of the authorised development.

- Requirement 14 (Requirement for written approval) – this requirement confirms that where the approval of a party is required it must be in writing.
- Requirement 15 (Amendments to approved details) – this requirement allows the local planning authority to approve amendments to certified documents and other details, schemes or plans approved by the local planning authority. This is to allow flexibility in the detailed design stage, however this flexibility is given strict parameters in that it only applies to the extent the subject matter of the approval is unlikely to result in materially new or materially different effects to those assessed in the Environmental Statement.
- Requirement 16 (Anticipatory steps towards compliance with any requirement) – this requirement provides that any anticipatory steps which the undertaker, or any other person, takes to comply with the requirements before the Order is made will be treated as effective in complying with the requirements once the Order is made, thereby avoiding the need to repeat such steps.
- Requirement 17 (Consultation) – under this requirement, where the undertaker is required by Schedule 2 to consult with another party prior to discharging a requirement, the undertaker must provide such other party with not less than 21 business days for any response to consultation. Any details submitted to the Secretary of State for approval must be accompanied by a summary report setting out the consultation responses and any responses to them.

5.1.3 Part 2 of Schedule 2 (Procedure for discharge of requirements) applies to any consent, agreement or refusal which needs to be obtained under the Requirements set out in Part 1 of Schedule 2 or under any other provision of the Order. It clarifies the procedure which applies in respect of these additional consents.

5.1.4 **Schedule 3 (Legislation to be disapplied)** This Schedule contains a list of the local legislation that the Order will disapply insofar as the provisions (in that local legislation) still in force are inconsistent with the powers contained in the Order.

5.1.5 **Schedule 4 (Streets subject to streets works)** This Schedule lists the streets shown on the streets and access plans subject to street works pursuant to the power contained in article 12 (Street works).

- 5.1.6      **Schedule 5 (Alteration of streets)** This Schedule lists the streets shown on the streets and access plans which will be permanently altered pursuant to the power contained in article 14 (power to alter layout, etc. of streets).
  
- 5.1.7      **Schedule 6 (Streets to be temporarily closed or restricted)** This Schedule sets out the streets which are subject to temporary closure, alteration, diversion or restriction under article 16.
  
- 5.1.8      **Schedule 7 (Access to works)** – This Schedule lists the existing access to be improved in relation to the streets and access plans [REF 2.4] to facilitate access to works pursuant to article 17.
  
- 5.1.9      **Schedule 8 (Traffic regulation measures)** – This Schedule contains details of the street shown on the traffic regulation measures plan that is subject to temporary traffic regulation measures pursuant to article 19 and contains the details of the nature of the measure for that affected street.
  
- 5.1.10     **Schedule 9 (Land in which only new rights etc. may be acquired)** This Schedule sets out the areas of land over which only new rights may be acquired by the undertaker and the nature of the rights that may be acquired. The plot numbers in column 1 of that table correlate with the land plans, and column (3) explains the purposes for which rights over land may be acquired. The Schedule relates to article 26 (Compulsory acquisition of rights).
  
- 5.1.11     **Schedule 10 (Modification of compensation and compulsory purchase enactments for the creation of new rights and imposition of new restrictive covenants)** This Schedule modifies existing compensation legislation including the Land Compensation Act 1973 and the Compulsory Purchase Act 1965. This has been updated to reflect any necessary changes arising because of the Housing and Planning Act 2016. The Schedule also relates to Article 26 (Compulsory acquisition of rights).
  
- 5.1.12     **Schedule 11 (Land of which temporary possession may be taken)** sets out the land referred to in article 34 which the Applicant may

temporarily occupy and the purpose for which that temporary occupation may be taken.

- 5.1.13 **Schedule 12 (Acquisition of wayleaves, easements and other rights)** makes provision for the undertaker to act on behalf of licence holders, code operators, water and sewerage undertakers and gas transporters in acquiring wayleaves, easements or other rights for the diversion or relocation of electricity, gas, water, sewerage or other telecommunication apparatus. It relates to Article 38 (Acquisition of wayleaves, easements and other rights).
- 5.1.14 **Schedule 13 (Documents and plans to be certified)** lists the documents and plans to be submitted with the application and to be certified by the Secretary of State. The list is subject to change.
- 5.1.15 **Schedule 14 (Protective provisions)** sets out the provisions for the protection of statutory undertakers affected by the authorised development. Part 1 provides protection for the electricity, gas, water and sewerage undertakers. Part 2 provides protection for operators of electronic communications code networks. Part 3 provides protection for drainage authorities. These are draft provisions and subject to change.