

# Steeple Renewables Project

## Explanatory Memorandum

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Infrastructure Planning (Applications: Prescribed Forms and Procedure)

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## Explanatory Memorandum

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# **The Steeple Renewables Project Development Consent Order 202[ ]**

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## **EXPLANATORY MEMORANDUM**

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Planning Act 2008	
The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009	
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## **1 GLOSSARY**

- 1.1 The definitions included in Article 2 (interpretation) of the draft Order apply to the terminology used in this document. Where a specific term is not defined in this glossary the reader should refer to this Article.

“1990 Act” The Town and Country Planning Act 1990 (as amended)

“2008 Act” The Planning Act 2008 (as amended) which is the legislation in relation to applications for NSIPs, including pre-application consultation and publicity, the examination of applications and decision making by the Secretary of State

“APFP Regulations” The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (as amended) which set out detailed procedures that must be followed for submitting and publicising applications for NSIPs

“Applicant” Steeple Solar Farm Limited

“Application” The Application for a DCO made to the Secretary of State under Section 37 of the 2008 Act in respect of the Authorised Development, required pursuant to Section 31 of the 2008 Act because the Authorised Development comprises an NSIP under Section 14(1)(a) and Section 15 of the 2008 Act by virtue of it comprising the construction of a generating station in England or Wales of more than 50 MW

“Application Documents” The documents submitted as part of the Application process indexed in the Application guide (Document Reference EN010163/APP/1.4) including but not limited to the application form, the draft Order, the Environmental Statement, the outline environmental management plans and associated plans that set out the parameters for the Authorised Development

“Associated Development” Defined under Section 115(2)(a) of the 2008 Act as development which is associated with the development for which development consent is required and that has

a direct relationship with it. Associated Development should either support the construction or operation of the Principal Development, or help address its impacts. It should not be an aim in itself but should be subordinate to the Principal Development

“Authorised Development”	The development to which the Application relates and which requires a DCO, as described in Schedule 1 to the draft Order, comprising the Principal Development and Associated Development
“Book of Reference”	The Book of Reference (Document Reference EN010163/APP/4.3) accompanying the Application defined in Regulation 7 of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009
“Consultation Report”	The Consultation Report (Document Reference EN010163/APP/5.1) accompanying the Application which explains the consultation undertaken by the Applicant in accordance with the 2008 Act
“DCO”	A Development Consent Order made by the relevant Secretary of State pursuant to Section 103(1) of the 2008 Act to authorise an NSIP. A DCO does or can incorporate or remove the need for a range of consents which would otherwise be required for a development
the “draft Order”	The draft DCO submitted with the Application Documents
“EIA”	Environmental Impact Assessment. The assessment of the likely significant environmental effects of the Authorised Development undertaken in accordance with the EIA Regulations
“EIA Regulations”	The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (as amended) setting out

how the EIA of NSIPs must be carried out and the procedures that must be followed

“ES”	The Environmental Statement (Document Reference EN010163/APP/6.2) accompanying the Application documenting the findings of the EIA, including the updates to the ES which have been submitted during the examination of the Application
“Explanatory Memorandum”	This document – it explains the intended purpose and effect of the draft Order and the authorisations and powers that the Application seeks
“Land Plans”	The plans (Document Reference EN010163/APP/2.1) showing the land to be used for the Authorised Development and to be certified as the “land plans” by the Secretary of State under article 34 of the Order
“LEMP”	Landscape and ecological management plan to be prepared in accordance with Requirement 6 of Part 1 of Schedule 2 of the draft Order (Document Reference EN010163/APP/6.3.7)
“Local Planning Authority”	Bassetlaw District Council
the “made Order”	The Steeple Renewables Project Order, being the DCO that would be made by the Secretary of State authorising the Authorised Development
“MW”	Megawatts
“NSIP”	As defined under Section 14(1) of the 2008 Act
“Order Land”	The land within the limits of land to be acquired or used and described in the Book of Reference

“Order Limits”	The limits shown on the Land Plans within which the authorised development may be carried out and land acquired or used
“PINS”	The Planning Inspectorate. A Government agency responsible for receiving and administering the acceptance and examination of applications for NSIPs on behalf of the Secretary of State
“Planning Statement”	The Planning Statement (Document Reference EN010163/APP/7.1) accompanying the Application that explains the national local policy support for the Authorised Development together with updates submitted during the examination of the Application
“Principal Development”	The development to which the Application relates and which requires a DCO as described in Schedule 1 to the draft Order
“Statement of Reasons”	The Statement of Reasons (Document Reference EN010163/APP/4.1) accompanying the Application which explains the national need for the Authorised Development and sets out the justification for the acquisition or interference with the Order Land
“Secretary of State”	The Secretary of State for Energy Security and Net Zero who will determine the Application
“Undertaker”	The Applicant or such other person who takes the benefit of the DCO following the procedure within Article 5 of the draft Order
“Works Plans”	The plans (Document Reference EN010163/APP/2.2), which show the Work Nos referred to in Schedule 1 to the draft Order



## 2 SUMMARY

- 2.1 This Explanatory Memorandum explains the purpose and effect of each article of, and the Schedule to, the draft Order, as required by Regulation 5(2)(c) of the APFP Regulations.<sup>1</sup>
- 2.2 Regulation 5(2)(c) requires this memorandum to explain *“the purpose and effect of provisions in the draft order”*.
- 2.3 It also seeks to identify and explain departures from the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 (S.I. 2009/2265) (the **“model provisions”**). Whilst the power for the Secretary of State to designate, and the requirement to have regard to, the model provisions have been removed by the Localism Act 2011, it can be helpful to explain variations made in the draft Order compared to the model provisions.

## 3 PURPOSE OF THE ORDER

- 3.1 The Applicant is seeking development consent for the Authorised Development, which in summary comprises a solar generating station and all infrastructure required to transmit the power generated to the substation to be constructed onsite and from there on to the local electricity network.
- 3.2 It is located within the boundary of Bassetlaw District Council, around the village of Sturton-le-Steeple and south of West Burton Power Station.
- 3.3 A detailed description of the Authorised Development is included in Chapter 4 of the ES.

### **Nationally Significant Infrastructure Project**

- 3.4 The Authorised Development is a NSIP under Sections 14(1)(a) and 15(2) of the 2008 Act as, at the time of application, it consists of the construction of a generating station, being a ground mounted solar photovoltaic generating station, in England with a capacity over 50MW.
- 3.5 The DCO, if made by the Secretary of State, would be known as The Steeple Renewables Project Order.
- 3.6 This Explanatory Memorandum should be read in conjunction with the suite of documents that form the Application, in particular, the ES, the Works Plans, the Land Plans, the Consultation Report, the Planning Statement and the Statement of Reasons.

## 4 AUTHORISED DEVELOPMENT

- 4.1 A detailed description of the Authorised Development can be found in Chapter 4 of the ES. It contains a generating station, associated battery energy storage system, substation and other works, which are summarised below:
- (a) **Work No. 1** – a ground mounted solar photovoltaic generating station;
  - (b) **Work No. 2** – a battery energy storage system compound;
  - (c) **Work No. 3** – works in connection with a new 400/33kV onsite substation;
  - (d) **Work No. 4** – works to install 400kV electrical cables connecting Work No. 3 to Work No. 5;
  - (e) **Work No. 5** – construction and installation works to the existing transmission network substation;
  - (f) **Work No. 6** – works to facilitate project access and cabling;

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

- (g) **Work No. 6A** – works to install 33kV cabling;
  - (h) **Work No. 7** – general works;
  - (i) **Work No. 8** – works for areas of habitat management;
  - (j) **Work No. 9** – works to implement new permissive paths through the Order limits;  
and
  - (k) **Work No. 10** – temporary construction and decommissioning of site compounds.
- 4.2 Full description of the works comprising the Principal Development can be found in Schedule 1 to the draft Order.

#### **Associated Development**

- 4.3 Guidance on associated development has been issued by the Secretary of State.<sup>2</sup>
- 4.4 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”* (paragraph 6) and requiring *“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).
- 4.5 In some cases, there may be some overlap between the Principal Development and the Associated Development. All elements of the Authorised Development either constitute part of the Principal Development or are Associated Development within the meaning of Section 115(2) of the 2008 Act, and so can properly be authorised by the made Order.

### **5 ANCILLARY WORKS**

- 5.1 The draft Order contains several ancillary works, i.e., provisions not consisting of development.
- 5.2 The draft Order seeks to apply and modify statutory provisions, including in relation to the compulsory acquisition of land. It is for this reason that under Sections 117 and 120(5) of the 2008 Act the made Order must be made by way of Statutory Instrument. The draft Order is therefore in that form.
- 5.3 The Authorised Development includes such other ancillary works as may be necessary or expedient for the purposes of or in connection with the relevant parts of the Authorised Development, and which fall within the scope of work assessed by the ES. These include:
- (a) foundations, drainage, culverts and lighting;
  - (b) bunds, embankments and swales;
  - (c) jointing bays, cable ducts, cable protection, joint protection, manholes, construction of crossing structures, kiosks, marker posts, underground cable marker, tiles and tape, and alighting and other works associated with cable laying;
  - (d) altering the course of or otherwise constructing over or under non-navigable watercourses;
  - (e) site preparation works, site clearance, earthworks (including soil stripping and storage, site levelling), remediation of contamination;

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<sup>2</sup> 'Planning Act 2008: associated development applications for major infrastructure projects' (Department for Communities and Local Government) (April 2013)

- (f) working sites, storage areas, temporary vehicle parking, ramps and other means of access, hardstanding, internal roads and tracks, laydown areas, welfare facilities, construction lighting, haulage roads, and other machinery, apparatus, works and conveniences and their restoration;
  - (g) landscape and biodiversity mitigation and enhancement;
  - (h) horizontal directional drilling; and
  - (i) works for the benefit or protection of land affected by the Authorised Development.
- 5.4 The Application also seeks powers and rights in the draft Order to enable the Undertaker to effectively undertake the maintenance works required for the lifetime of the Authorised Development.

#### **Development Phasing**

- 5.5 The Applicant wishes to retain the flexibility to construct the Authorised Development in phases. The proposed approach to phasing is described in Chapter 4 of the ES and will be carried out in accordance with the Works.
- 5.6 The solar generating station will operate for a maximum of 40 years and will be supported by the battery energy storage system comprising Work No. 2 and described in Schedule 1 of the draft Order.
- 5.7 A single onsite substation compound will serve the whole development and connect the distribution network at the West Burton Power Station substation.

#### **Parameters in the draft Order**

- 5.8 The design parameters for the Authorised Development are specified and assessed in the ES. The ES captures the important parameters necessary to ensure the Authorised Development is not constructed in such a way that would exceed the worst-case scenario assessed in the ES.
- 5.9 The detailed design of the Authorised Development shall be in accordance with the ES as secured by a requirement of the made Order, as proposed at Requirement 3 of Part 1 of Schedule 2 to the draft Order.
- 5.10 This approach is intended to provide flexibility in the design of the Authorised Development, such that new technology can be engaged, whilst ensuring compliance with the ES.

### **6 THE DRAFT ORDER**

- 6.1 The purpose and effect of the provisions of the draft Order are now explained in sequence.
- 6.2 Whilst the model provisions have been repealed, the draft Order is based on the model provisions as well as other development consent orders that have been made to date.

#### **Part 1 – Preliminary**

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

- 6.3 Article 1 sets out the name of the Order and the date on which it comes into force.
- 6.4 This article did not appear in the model provisions. However, it is a standard article that is included in all development consent orders.

##### *Article 2 – Interpretation*

- 6.5 Article 2(1) defined terms used in the draft Order. It is a standard article and was included in the model provisions as article 1.
- 6.6 Definitions to note include:
- (a) “building”, which differs slightly from the equivalent definitions provided in section 235 of the 2008 Act. For the purposes of the draft Order, this definition does not exclude plant or machinery comprised in buildings. This definition is taken from the model provisions and is the standard definition of “building” used in development consent orders.
  - (b) “commence”, which makes clear that a number of works that would constitute a ‘material operation’ under the 1990 Act do not mean that the Authorised Development has been ‘commenced’. This enables the Applicant to undertake certain site preparation works prior to the submission of relevant details for approval under the Requirements, which the Applicant considers proportionate. The works that are excluded from the definition of “commence” are either *de minimis* or have minimal potential for adverse environmental impacts. In some cases, the works may need to be carried out to comply with the pre-commencement requirements, for example, to inform assessment and proposals required to be submitted for approval. The Applicant should be permitted to carry out low impact preparatory works, and the manner in which they would be controlled is set out in the Outline Construction Environmental Management Plan (Document Reference EN010163/APP/6.3.4).
  - (c) “local planning authority”, which differs from the equivalent definition provided in Section 235 of the 2008 Act. For the purposes of the draft Order, the term is defined specifically to clarify that it is used to refer to the local planning authority or the area to which the relevant provision of the draft Order relates.
  - (d) “maintain”, which includes inspect, repair, adjust, alter, remove, refurbish, reconstruct, replace and improve. This enables clarity as to what is authorised under Article 4 so as to provide the Applicant with certainty.
  - (e) “Order limits”, which means the red line boundary for the Authorised Development as shown on the Works Plans and the Land Plans.
- 6.7 Article 2(2) defines measures as approximate. The purpose of this is to ensure that if upon the construction of the works it transpires that the distances are marginally different to those listed in the made Order, there is no issue over whether the made Order permits the works. This provision therefore allows for a small tolerance, although all works will take place within the limits of deviation. It is now common practice to include such provision in development consent orders and the model provisions include similar wording at article 1(3).
- 6.8 Article 2(3) confirms that references to lettered or numbered points and numbered works are to points lettered or numbered on the relevant plans and works numbered in Schedule 1, as appropriate.
- 6.9 Article 2(7) provides that areas given in the Book of Reference are approximate, as this is not covered by Article 2(2). This is intended to clarify the position of the areas in the Book of Reference and the purpose and effect is the same as set out in paragraph 6.7 above.

## **Part 2 – Principal Powers**

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

- 6.10 Article 3 provides the principal power to construct and operate the Authorised Development within the Order Limits. Schedule 1 to the draft Order describes the Authorised Development.

- 6.11 Development consent is subject to the provisions of the draft Order, including the Requirements listed in Part 1 of Schedule 2. This is based on article 2 of the model provisions.

*Article 4 – Power to maintain the authorised development*

- 6.12 This article sets out the scope within which the Undertaker may maintain the Authorised Development. The definition of “maintain” is contained in Article 2(1), as described at paragraph 6.6(d) above.
- 6.13 Powers of maintenance are subject to the other provisions of the draft Order and any agreements made under the draft Order and do not authorise any works that are likely to give rise to any materially new or materially more adverse environmental effects compared to those identified in the ES.

*Article 5 – Consent to transfer benefit of Order*

- 6.14 This article allows the benefit of the made Order to be transferred or leased to others by the Undertaker. The exercise of any transferred benefits or rights is subject to the same restrictions, liabilities and obligations as would apply under the made Order if those benefits or rights were exercised by the Undertaker. The consent of the Secretary of State is required for a transfer or grant, except where it is made to a specified company in respect of a particular work or where the time limits for claims for compensation in respect of the acquisition of land or effects upon land under the Order have elapsed and such claims have not been made or are withdrawn or settled.
- 6.15 This article is based on article 5 of the model provisions. It differs in that it allows a transfer or grant to a specified company to take place without the Secretary of State’s consent, on the basis that it is appropriate for those companies to be able to carry out those works.
- 6.16 Article 5(8) provides that where the Undertaker has transferred the benefit of the Order or granted the benefit of the Order to a transferee or lessee then:
- (a) the transferred benefit will include any rights that are conferred and any obligations that are imposed;
  - (b) the transferred benefit will reside exclusively with the transferee or the lessee and shall not be enforceable against the Undertaker; and
  - (c) the benefits or rights conferred under sub-paragraph (2) of the article are subject to the same restrictions, liabilities and obligations as applies to the Undertaker.
- 6.17 Article 5 has precedent in The Cleve Hill Solar Park Order 2020, The Little Crow Solar Park Order 2022, and The Longfield Solar Farm Order 2023.

*Article 6 – Disapplication and modification of legislative provisions*

- 6.18 This article provides (in reliance on Section 120(5)(a) of the 2008 Act) for the disapplication in relation to the Authorised Development of certain requirements, which would otherwise apply under general legislation.
- 6.19 Section 120(5)(a) provides that a DCO may apply, modify or exclude a statutory provision that relates to any matter for which provision may be made in the order.
- 6.20 Article 6 is derived from article 6 of the model provisions.
- 6.21 Paragraph 1(a)-(c) disapplies sections 23 and 32 of the Land Drainage Act 1991, and the provisions of any byelaws made under section 66 of the Land Drainage Act 1991. The provisions in relation to the Land Drainage Act 1991 are requirements for consents for the construction of culverts, together with the requirements for approval under bylaws made under the Land Drainage Act 1991. The Authorised Development involves the crossing of an ordinary watercourse, which would ordinarily require consent to be obtained from

Nottinghamshire County Council under these provisions in its capacity as lead local flood authority. To provide certainty that the Authorised Development can proceed, the draft Order disapplies the requirement for a separate statutory consent to be obtained in relation to these activities. These provisions were included in The Longfield Solar Farm Order 2023, The Mallard Pass Solar Farm Order 2024, The Cottam Solar Project Order 2024 and The Gate Burton Energy Park Order 2024. This disapplication is sought on the basis that protective provisions for the protection of drainage authorities are included in the draft Order.

6.22 Paragraph (1)(d) provides for the modification of the Neighbourhood Planning Act 2017 insofar as it relates to the temporary possession of land. This is on the basis that the temporary possession of land is dealt with by articles 26 and 27, and the wording of those provisions is well established, as explained in detail below. The 2017 Act contains untested provisions that differ from those in the draft Order and although they are not yet in force it is therefore necessary to disapply them in case they should come into force in the future. This approach has precedent in The Cleve Hill Solar Park Order 2020, The Longfield Solar Farm Order 2023, The Mallard Pass Solar Farm Order 2024, The Cottam Solar Project Order 2024 and The Gate Burton Energy Park Order 2024.

6.23 Paragraph (2) provides for the modification of Regulation 6 of the Hedgerows Regulations 1997 so that the removal of any hedgerow to which the Regulations apply is permitted for carrying out development that has been authorised by a DCO made pursuant to the 2008 Act. The Hedgerows Regulations allow a local planning authority to object to and prohibit interference with a hedgerow. The normal exception for development permitted by a planning permission does not apply to development authorised by a DCO and therefore this modification is necessary to extend the exception to development authorised by a DCO. This approach has precedent in The Little Crow Solar Park Order 2022 (Article 6 – Disapplication and modification of legislative provisions)

*Article 7 - Defence to proceedings in respect of statutory nuisance*

6.24 Article 7 provides that no one is able to bring statutory nuisance proceedings under the Environmental Protection Act 1990 in respect of noise, if the noise is created in the course of carrying out construction, maintenance or decommissioning of the Authorised Development and for which notice has been given under Section 60 or consent obtained under Section 61 of the Control of Pollution Act 1974, or which cannot be reasonably avoided as a consequence of the Authorised Development.

6.25 Article 7 has precedent in The Gate Burton Energy Park Order 2024 (Article 7 – Defence to proceedings in respect of statutory nuisance), The Cottam Solar Project Order 2024 (Article 7 – Defence to proceedings in respect of statutory nuisance) and The Mallard Pass Solar Farm Order 2024 (Article 7 – Defence to proceedings in respect of statutory nuisance).

6.26 Section 158 of the 2008 Act confers statutory authority for the carrying out of development for which consent is granted by a DCO for the purpose of providing a defence in civil or criminal proceedings for nuisance. This provides a defence to proceedings brought in a magistrates' court under Section 82(1) of the Environmental Protection Act 1990 in relation to certain nuisances set out in Section 79(1) of that Act.

6.27 However, the view taken under the NSIP regime is that Section 158 of the 2008 Act does not extend to a situation by which, if somebody considers that the local authority ought to be tackling a nuisance using its statutory nuisance powers, but it is not, that person may apply to the magistrates' court under Section 82 of the Environmental Protection Act 1990. This article seeks to fill in a legislative gap by extending the effect of Section 158.

6.28 As a matter of practice, those seeking development consent generally only seek to apply this article where there is a possibility of a statutory nuisance occurring. The Applicant has followed this approach by seeking to restrict the application of this article so that it only applies to nuisances identified as potentially resulting from the Authorised Development, as set out in the Statement of Statutory Nuisance [EN010163/APP/5.4]

accompanying the Application. This ensures that this article is focused only on those nuisances that may be of relevance.

- 6.29 In respect of this Application, the article is therefore only applied in relation to the statutory nuisance of noise.
- 6.30 The defence in this article is only available if the nuisance:
- (a) relates to premises used by the Undertaker for the purposes of or in connection with the construction or maintenance of the Authorised Development and that nuisance is attributable to the carrying out of the Authorised Development in accordance with a notice served under Section 60 (control of noise on construction sites), or a consent given under Section 61 (prior for work on construction sites) of the Control of Pollution Act 1974; or
  - (b) is a consequence of the construction, maintenance or decommissioning of the Authorised Development and cannot reasonably be avoided; or
  - (c) is a consequence of the use of the Authorised Development and cannot reasonably be avoided.
- 6.31 It is recognised that noise will arise as a consequence of the Authorised Development and that provision to define its consequences in an appropriate and balanced manner will be needed. However, the Applicant has considered and assessed this in Chapter 11: Noise of the ES, which did not identify any likely significant effects following implementation of mitigation measures.
- 6.32 Requirement 14 of the draft Order requires an operational noise assessment to be undertaken and submitted to and approved by the local planning authority prior to the commencement of the Authorised Development.
- 6.33 Requirement 19 of the draft Order also requires any constructions works audible at the boundary of the Order Limits to be carried out during restricted hours.
- 6.34 Given the mitigation measures and protections secured under the draft Order, it is considered appropriate and proportionate to make provision for a defence to any proceedings in respect of statutory nuisance relating to noise.
- 6.35 Article 7 is a model provision that has been amended to remove reference to Section 65 (noise exceeding registered level) of the Control of Pollution Act 1974, which has been repealed.

### **Part 3 – Streets**

#### *Article 8 – Street works*

- 6.36 Article 8 allows the Undertaker to interfere with and execute works in or under the streets within the Order Limits for the purposes of the Authorised Development. The authority given by this article is a statutory right for the purposes of Sections 48(3) and 51(1) of the New Roads and Street Works Act 1991. Certain provisions of the 1991 Act apply to works carried out under this article.
- 6.37 Article 8 is based on article 8 of the model provisions. The definition of ‘apparatus’ that was included as paragraph (4) of the model provisions is omitted because that term is already defined in Article 2.

#### *Article 9 – Power to alter layout, etc., of streets*

- 6.38 Article 9 allows the Undertaker to alter the layout of or carry out any works in a street. Schedule 4 sets out the temporary and permanent alteration works to streets.

6.39 This article is necessary because to construct, operate, maintain and decommission the Authorised Development, the Undertaker will need to alter street layouts for access to minimise disruption to the local highway network.

6.40 The powers conferred by paragraph (2), which is a general power enabling the Undertaker to alter the layout of any street, require the consent of the street authority before they can be exercised.

6.41 Article 9 has precedent in The Longfield Solar Farm Order 2023.

*Article 10 – Access to works*

6.42 Article 10 gives the Undertaker powers to form new or to improve existing means of access as detailed in Schedule 5 of the draft Order, for the purposes of the Authorised Development.

6.43 This article also provides that other means of access or works can be provided in alternative locations where reasonably required, subject to the prior approval of the relevant planning authority in consultation with the highway authority.

6.44 Powers to carry out permanent improvement works to existing means of access are sought for the purposes of construction and decommissioning access. Given the accesses already exist, it is appropriate for improvement works to be permanent.

6.45 Article 10 has precedent in The Longfield Solar Farm Order 2023.

6.46 Article 10 is included in the model provisions at article 12.

*Article 11 – Temporary stopping up of streets and public rights of way*

6.47 This article allows for the temporary stopping up, alteration, diversion or restriction of streets and public rights of way for the purposes of the Authorised Development, whilst ensuring that essential pedestrian access to and from premises along those streets and public rights of way is maintained if necessary (paragraph (3)).

6.48 Paragraph (2) confers a power on the Undertaker where a street or public right of way have been temporarily stopped up under this article to use it as a temporary working site.

6.49 Under paragraph (5), the consent of the street authority is required where the Undertaker is not the street authority. The street authority may attach reasonable conditions to any consent but must not unreasonably withhold or delay consent.

6.50 Paragraph (6) provides a right to compensation for any person suffering loss due to the suspension of a street or private right of way under this article.

6.51 Paragraph (7) states that a street authority that fails to notify the Undertaker of its decision in respect of an application for consent within 28 days, or such longer period that may be agreed in writing between the street authority and the Undertaker, of the application being made is deemed to have given its consent. This time limit is necessary to remove the possibility for delay and provide certainty that the Authorised Development can be delivered by the Applicant in a timely fashion. As a NSIP, the Authorised Development should not be at risk of delay due to a failure to respond to an application for consent.

6.52 Article 11 is included in the model provisions at article 11.

*Article 12 – Agreements with street authorities*

6.53 Article 12 allows the Undertaker to enter into agreements with the street authority in respect of the temporary stopping up of a street authorised by the made Order and the carrying out of any street works.

6.54 Article 12 is included in the model provisions at article 13.



#### *Article 13 – Traffic regulation measures*

- 6.55 Article 13 allows the Undertaker to temporarily place traffic signs and signals in the extents of the roads specified in Schedule 4 for the purposes of, or in connection with, the construction of the Authorised Development. These traffic regulation measures are required to safely regulate traffic during the construction of the Authorised Development.
- 6.56 Paragraph (2) of this article includes a general power that would authorise other temporary traffic regulation measures for the purposes of the construction or decommissioning of the Authorised Development. The inclusion of this power is necessary to ensure the Undertaker has sufficient flexibility to respond to changing conditions on the road network during the lifetime of the Authorised Development. This general power may only be exercised with the consent of the relevant traffic authority, which ensures the use of the power is appropriately regulated.
- 6.57 The likely significant effects of the Authorised Development on transport and access have been assessed in Chapter 13: Transport and Access of the ES, and no significant effects have been identified.
- 6.58 The Applicant has submitted an Outline Construction Traffic Management Plan as part of the Application Documents (Document Reference EN010163/APP/6.3.13), which includes a number of embedded mitigation measures to limit the impact on the local highway network.
- 6.59 This article is common in DCOs permitting 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.
- 6.60 This approach has precedent in The Mallard Pass Solar Farm Order 2024, The Gate Burton Energy Park Order 2024, The Sunnica Energy Farm Order 2024 and The Cottam Solar Project Order 2024.

#### **Part 4 – Supplemental Powers**

##### *Article 14 – Discharge of water*

- 6.61 Article 14 is a model provision that enables the Undertaker to discharge water into any watercourse, public sewer or drain in connection with the construction and maintenance of the Authorised Development with the approval of the owner of the watercourse, public sewer or drain, such approval not to be unreasonably withheld, and subject to certain conditions.
- 6.62 The reference in the model provisions to Section 85 of the Water Resources Act 1991 has been removed, as this section has been repealed, and replaced instead with a reference to the Environmental Permitting (England and Wales) Regulations 2016 instead.
- 6.63 Paragraph (9) has been updated from the model provisions to reflect the current approach to the drafting of statutory instruments such that if the Undertaker makes an application for consent under the provisions of the article but the relevant party does not provide notification of its decision within 28 days, or such longer period that may be agreed in writing between the relevant party and the Undertaker, of the Undertaker's application, then consent will have been deemed to have been given.

##### *Article 15 – Protective works to buildings*

- 6.64 The purpose of Article 15 is to allow the Undertaker to carry out protective works to any building affected by the Authorised Development.
- 6.65 It was included in the model provisions at article 15.

##### *Article 16 – Authority to survey and investigate the land*

- 6.66 Article 16 gives the Undertaker the power to enter land for the purpose of surveying and investigating. It provides that the Undertaker must give 14 days' notice before exercising the powers of entry. Compensation is payable for any loss or damage caused.
- 6.67 Paragraphs (1) to (5) were included in the model provision as article 16. The model provisions have been modified so that trial holes may not be made in a highway or private street without the consent of the highway authority or street authority.
- 6.68 Paragraph (6) provides that if a highway authority or street authority after having received an application to make trial holes within a highway fails to notify the Undertaker of its decision within 28 days, or such longer period as may be agreed in writing between the relevant authority and the Undertaker, of having received the application, it will have been deemed to have provided consent.
- 6.69 This approach has precedent in The Walney Extension Offshore Wind Farm Order 2014, The Hornsea One Offshore Wind Farm 2014, The Hornsea Two Offshore Wind Farm Order 2016, The East Anglia THREE Offshore Wind Farm Order 2017, The Cleve Hill Solar Farm Order 2020 and The Little Crow Solar Park Order 2022 and The Sunnica Energy Farm Order 2024.

## **Part 5 – Powers of Acquisition**

### *Article 17 – Compulsory acquisition of land*

- 6.70 This article authorises the acquisition of land by compulsory purchase. It grants the power to acquire the land that is required for the Authorised Development. This is subject to Articles 19 (compulsory acquisition of rights) and 26 (temporary use of land for carrying out the authorised development), which are explained below.
- 6.71 Article 17 is based on article 18 of the model provisions with the following differences:
- (a) Paragraph (2) of the model provisions is omitted as the vesting of land is governed by the Compulsory Purchase (Vesting Declarations) Act 1981, which applies as though the draft Order were a compulsory purchase order by virtue of Article 21 (application of the 1981 Act). Article 20 (private rights) also provides for all private rights over land subject to compulsory acquisition to be extinguished.
  - (b) Paragraph (3) relating to compensation for loss arising due to the extinguishment or suspension of a private right of way is omitted because that is dealt with separately in Article 20(4) and (5).
  - (c) Paragraph (2) relates to Article 19 (compulsory acquisition of rights) of the draft Order rather than article 25 of the model provisions, which related to the acquisition of land limited to subsoil lying more than 9 metres beneath the surface and is not included in the draft Order.
- 6.72 The Applicant's justification for the use of compulsory acquisition powers is set out in the Statement of Reasons.
- 6.73 As temporary compulsory acquisition is not available under English law, it is not possible for the Applicant to compulsorily acquire land, or rights in land, for a temporary period.
- 6.74 The Applicant is seeking compulsory acquisition of the land on which it is proposed solar panels will be sited. This is considered necessary and proportionate as the Applicant requires exclusive possession of the Order Land during the lifetime of the Authorised Development.
- 6.75 The Applicant has entered into an option agreement with the principal freehold landowner of the site. Given adequate rights have been secured by agreement with that landowner the Book of Reference makes clear that in respect of those specific freehold interests no powers of compulsory acquisition ("CA") are being sought in the dDCO. However, for other freehold interests and for all leasehold interests and any other rights of occupation,

where no voluntary agreements have been secured to allow development to proceed, CA powers are being sought.

- 6.76 As set out in the Statement of Reasons and Planning Statement, there is a critical national priority for the provision of nationally significant low carbon infrastructure. Compulsory acquisition powers have therefore been included in the draft Order to ensure that the Authorised Development can be delivered should the landowner default on the voluntary agreement, or where unknown interest in the Order Land emerge.

*Article 18 – Time limit for exercise of authority to acquire land compulsorily*

- 6.77 Article 18 gives the Undertaker five years to issue notices to treat or to execute a general vesting declaration to acquire the land that may be compulsorily acquired under the made Order. These are the two main procedural methods by which the process of compulsorily acquiring land may be implemented should the draft Order be made.
- 6.78 This article also sets a five-year time limit on the power to take temporary possession of land under Article 26, although it does not prevent the Undertaker from remaining in possession of land after that time if it took possession within the five-year limit.
- 6.79 This article was included in the model provisions at article 20.

*Article 19 – Compulsory acquisition of rights*

- 6.80 Article 19 allows for rights over land to be acquired as well as the land itself, and for new rights to be created over the Order Land. This includes the power to impose restrictive covenants.
- 6.81 It provides for such rights as may be required to be acquired by the Undertaker over land that it is authorised to acquire under Article 17. The public benefit of this is that it would allow the Undertaker to reduce the area of outright acquisition if possible and rely on rights instead.
- 6.82 Paragraph (2) provides that for the land described in Schedule 7, the Undertaker'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 the purposes set out in that Schedule.
- 6.83 The power to impose restrictive covenants will allow for the possibility of reducing the area of outright acquisition and enable a more proportionate exercise of compulsory powers.
- 6.84 Paragraph (3) provides that where the Undertaker only needs to acquire rights over land it is not obliged to acquire any greater interest in that land.
- 6.85 Paragraph (4) applies Schedule 8, which imposes modifications to the compulsory purchase and compensation provisions under general legislation. They do not affect the entitlement to compensation but generally ensure that the compensation code applies to the additional categories of acquisition covered by the draft Order and the creation of new rights and the imposition of restrictive covenants. This is a consequence of the extension of land acquisition powers to these categories, to allow lesser land interests to be acquired.
- 6.86 For the purposes of Section 126(2) of the 2008 Act, the relevant compensation provisions are modified only to the extent necessary to ensure that they apply properly to the acquisition/creation of rights and the imposition of restrictive covenants, and not to affect the amount of compensation to which landowners would be entitled.
- 6.87 The Applicant's justification for use of compulsory acquisition powers is set out in the Statement of Reasons. As temporary compulsory acquisition is not available under English law it is not possible for the Applicant to compulsorily acquire land, or rights in land, for a temporary period.

- 6.88 The Applicant is seeking compulsory acquisition of rights in land where necessary to facilitate access to the solar array site, or to facilitate the grid connection cabling and environmental management areas.
- 6.89 The acquisition of rights only is considered necessary and proportionate as the Applicant does not require exclusive possession of this land during the lifetime of the Authorised Development but does require to be able to use the land for specific purposes e.g., for access, and the installation and keeping of the electrical cabling.
- 6.90 As set out in the Statement of Reasons, the Applicant is committed to only relying on powers of compulsory acquisition as a last resort.
- 6.91 As set out in the Statement of Reasons and Planning Statement, there is a critical national priority for the provision of nationally significant low carbon infrastructure. Compulsory acquisition powers have therefore been included in the draft Order to ensure that the Authorised Development can be delivered should the landowners default on the voluntary agreements, or where unknown interests in the Order Land emerge.

*Article 20 – Private rights*

- 6.92 Article 20 provides for the extinguishment of private rights over land that is subject to compulsory acquisition under the draft Order.
- 6.93 In so far as the Undertaker acquires land or creates new rights over land under the made Order, where the continuance of private rights over that land would be inconsistent with the exercise of the right being acquired or created then the private rights in question will be extinguished.
- 6.94 Paragraph (3) provides that all private rights over land that the Undertaker takes temporary possession of under the made Order will be suspended and unenforceable for as long as the Undertaker remains in lawful possession of the land.
- 6.95 Paragraphs (4) to (7) make provision for compensation and for circumstances where rights are preserved.
- 6.96 Article 20 is based on article 22 of the model provisions. It differs from the model provisions in the following respects:
- (a) it applies to all private rights, not just private rights of way. This is to reflect the broad nature of private rights that may exist over the Order Land;
  - (b) paragraph (2) is included to confirm that where the land is subject to the acquisition or creation of rights or the imposition of restrictive covenants, any other rights in that land are extinguished if their continuance would be incompatible with the right or covenant being acquired or created by the Undertaker;
  - (c) paragraph (3) is included to clarify the position where the Undertaker takes temporary possession of land;
  - (d) paragraph (4) modifies paragraph (4) of the model provisions to include a reference to Section 152 of the 2008 Act;
  - (e) sub-paragraph (6)(a)(i) is amended to also refer to the acquisition of rights or imposition of restrictive covenants; and
  - (f) paragraph (8) sets out what are considered to be ‘private rights over land’. This is necessary to clarify the nature of the private rights to which Article 20 relates.

*Article 21 – Application of the 1981 Act*

- 6.97 Article 21 applies, with minor modifications to ensure consistency between the terms of the draft Order and the 1981 Act, the provisions of the Compulsory Purchase (Vesting

Declarations) Act 1981 to compulsory acquisition under the draft Order so the Undertaker has the option to acquire land via the vesting declarations procedure. Vesting declarations allow title in the land concerned to pass to the acquiring authority more quickly than using the notice to treat method. They also enable several parcels of land to be acquired under the same legal instrument and therefore more efficiently than under the notice to treat procedure.

- 6.98 Article 21 has been amended from the model provision to incorporate and reflect changes brought about by the Housing and Planning 2016, which has precedent in The HyNet Carbon Dioxide Pipeline Order 2024, The Mallard Pass Solar Farm Order 2024, The Gate Burton Energy Park Order 2024, The Sunnica Energy Farm Order 2024 and The Cottam Solar Project Order 2024.
- 6.99 The modifications to the 1981 Act contained in this article can be summarised as follows:
- (a) Paragraph (3) modifies Section 1(2) so that Section 1 applies to the Undertaker;
  - (b) Paragraph (4) modifies Section 5 to remove the reference to situations where the compulsory purchase order is subject to special parliamentary procedure, as the draft Order is not subject to special parliamentary procedure;
  - (c) Paragraph (5) omits Section 5A on the basis that the draft Order prescribed the time limit for compulsory acquisition in Article 18 and Section 5A is therefore not appropriate for the purposes of applying the 1981 Act to the draft Order;
  - (d) Paragraph (6) modifies the statutory reference in Section 5B(1) on the basis that the 2008 Act contains equivalent provisions that apply in respect of DCOs. The cross-reference to Section 5A is also modified to reflect that the time limit is set out in Article 18 of the draft Order;
  - (e) Paragraph (7) modifies the statutory references in Section 6(1)(b) on the basis that the 2008 Act contains equivalent provisions that apply in respect of DCOs;
  - (f) Paragraph (8) modifies Section 7(1)(a) to omit the words “(as modified by section 4 of the Acquisition of Land Act 1981)”;
  - (g) Paragraph (9) modifies paragraph 1(2) of Schedule A1 to change the reference to compulsory purchase orders excluding land that is 9 metres or more below the surface from the counter-notice procedure to refer to Article 22(3) of the draft Order, which has the same effect in relation to the acquisition of subsoil only; and
  - (h) Paragraph (10) clarifies that references to the Compulsory Purchase Act 1965 in the 1981 Act are to be construed as references to the 1965 Act as applied by section 125 of the 2008 Act and as modified by Article 24 of the draft Order, on the basis that both Section 125 and Article 24 modify the provisions of the 1965 Act.
- 6.100 Vesting declarations are one of two ways of acquiring land that is subject to compulsory purchase (the other being by means of a notice to treat). They allow several parcels to be acquired at once and therefore more efficiently than under the notice to treat procedure.
- 6.101 The modifications to the 1981 Act do not have the effect of disapplying any control or power by another body, but simply make modifications necessary to allow the relevant terms of the 1981 Act to be properly applied in relation to the draft Order. These modifications are made in relation to Section 120(5)(a) of the 2008 Act, which allows a DCO to modify statutory provisions.
- 6.102 Article 21 is based on article 23 of the model provisions. Due to extensive changes to the relevant provisions of the 1981 Act since the model provisions came into force, the wording of this article departs significantly from the model provisions and the Undertaker has instead sought to follow the precedent established by recent orders.

#### *Article 22 – Acquisition of subsoil only*

- 6.103 This article allows the Undertaker to acquire, or create rights in, the subsoil below the land, rather than having to acquire the land itself.
- 6.104 The purpose of Article 22 is to give the Undertake the flexibility to minimise, so far as practicable, the extent of interest to be acquired, with consequently less impact on the landowner, and lower payments of compensation – both of which are in the public interest.
- 6.105 Article 22 is based on article 24 of the model provisions.

#### *Article 23 – Power to override easements and other rights*

- 6.106 Article 23 provides the Undertaker with the power to override easements and other rights and is supplementary to Article 17 (compulsory acquisition of land) and Article 19 (compulsory acquisition of rights). This article is necessary to give full effect to the Authorised Development.
- 6.107 Paragraph (2) defines the meaning of ‘authorised activity’ for the purposes of this article and any authorised activity is authorised notwithstanding it may interfere with any easement, liberty, privilege, right or advantage annexed to land and affecting other land, including any natural right to support and include restrictions as to the user of land arising by virtue of a contract.
- 6.108 Article 23 is not a model provision but is required to clarify that erection, construction and operation of the Authorised Development is authorised by the draft Order if it is done in accordance with the terms of the draft Order, even if it involves interference with easements and other right. This is necessary to ensure that the existence of easements and other rights over the Order Land does not compromise or prejudice delivery of the Authorised Development.
- 6.109 Paragraph (4) provides that compensation is payable under Section 7 (measure of compensation in case of severance) or Section 10 (further provision as to compensation for injurious affection) of the Compulsory Purchase Act 1965 for any such interference or breach.
- 6.110 Given the provision for compensation, any interference with rights is considered proportionate and necessary.
- 6.111 Article 23 has precedent in article 26 of The Mallard Pass Solar Farm Order 2024, article 23 of The Gate Burton Energy Park Order 2024, and article 23 of The Sunnica Energy Farm Order 2024.

#### *Article 24 – Modification of Part 1 of the Compulsory Purchase Act 1965*

- 6.112 The purpose of this article is to ensure consistency between the terms of the draft Order and the Compulsory Purchase Act 1965, as applied by Section 125 of the 2008 Act.
- 6.113 The provision reflects changes introduced by the Housing and Planning Act 2016 and is required to ensure that Part 1 of the 1965 Act is applied correctly to compulsory acquisition authorised under the draft Order.
- 6.114 Paragraphs (1) to (3) amend the provisions of the 1965 Act so they are consistent with the terms of the draft Order and paragraph (5) makes it clear that the notice periods introduced by the Housing and Planning Act 2016 do not apply to the temporary possession or use of land under Article 16 (protective works to buildings), Article 26 (temporary use of land for carrying out the authorised development) or Article 27 (temporary use of land for maintaining the authorised development). These modifications have precedent in numerous made DCOs and other legislation, including The Longfield Solar Farm Order 2023 and The Gate Burton Energy Park Order 2024.

- 6.115 The modifications to the 1965 Act do not have the effect of disapplying any control or power by another body, but simply make the modifications necessary to allow the relevant terms of the 1965 Act to be properly applied in relation to the draft Order. These modifications are made in relation to Section 120(5)(a) of the 2008 Act, which allows a DCO to modify statutory provisions.

*Article 25 – Rights under or over streets*

- 6.116 Article 25 allows the Undertaker to appropriate and use land above or below streets within the Order Limits without having to acquire the street or any right or easement in it. The exercise of this power, without acquisition, is prohibited in the circumstances set out in paragraph (3).
- 6.117 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 as set out in paragraphs (4) and (5).
- 6.118 Article 25 was included in the model provisions as article 27.

*Article 26 – Temporary use of land for carrying out the authorised development*

- 6.119 The purpose of Article 26 is to allow any of the Order Land to be occupied temporarily whilst the works are carried out. This is land that is required during site preparation works, construction and decommissioning of the Authorised Development but is not required permanently. Article 26 allows for the temporary occupation of any of the land intended for permanent acquisition that has not yet been acquired.
- 6.120 Paragraph (4) provides that the Undertaker must not remain in possession of land for longer than reasonably necessary and, in any event, must not without the agreement of the owners of the land remain in possession of land after the end of the period of one year beginning with the date of final commissioning of that part of the Authorised Development for which temporary possession of the land was taken, unless the Undertaker commences compulsory acquisition procedure.
- 6.121 The Article also requires the Undertaker to give 14 days' notice before taking possession and to restore the land following the temporary works (paragraph 3).
- 6.122 Paragraph (1)(a)(ii) allows Article 26 to apply to land that may later be the subject of compulsory acquisition. This reflects a common approach to designing and building infrastructure projects, whereby possession is taken of a wider area required for the purposes of construction and once the location of new apparatus is known definitively, after it has been built, then the final area of land required permanently is defined and acquired. This allows a more proportionate approach to the extent of land acquisition. The Applicant has consulted with affected landowners as required by Section 42 of the 2008 Act. This process of consultation is detailed in the Consultation Report.
- 6.123 This article is based on article 28 of the model provisions, with the exception of paragraph (8) of that article, which has been removed as any permanent acquisition of rights and subsoil permitted by that paragraph is dealt with separately in the draft Order by way of Article 19 (compulsory acquisition of rights) and Article 22 (acquisition of subsoil only).
- 6.124 Paragraphs (6) to (8) make provision for compensation.

*Article 27 – Temporary use of land for maintaining authorised development*

- 6.125 Article 27 provides that the Undertaker may take temporary possession of land within the Order Limits as required for the purpose of maintaining the Authorised Development, at any time within a period of five years from the date on which that part of the Authorised Development is first used.
- 6.126 Paragraph (4) provides that the Undertaker may only remain in possession of land for so long as may be reasonably necessary to carry out the maintenance of the part of the

Authorised Development of which possession of the land was taken. Article 27 also requires the Undertaker to give 28 days' notice before taking possession, and to restore the land following the temporary works.

6.127 Paragraphs (6) to (8) make provision for compensation.

6.128 This article was included in the model provisions as article 29.

#### *Article 28 – Statutory undertakers*

6.129 Article 28 allows the Undertaker to extinguish rights of statutory undertakers and remove and reposition their apparatus.

6.130 Reference is made to the Order Land so that this power is not restricted to apparatus that has been specifically shown on the Land Plans and described in the Book of Reference. In practice, it is impractical to show and describe all such apparatus and so a general power for the extinguishment of rights and the removal or relocation of apparatus belonging to statutory undertakers over or within any of the Order Land is required.

6.131 Article 28 is required to clarify that the Undertaker may compulsorily acquire land, or rights in land, held by statutory undertakers, and may alter a statutory undertakers' rights in relation to apparatus within the Order Land. In recognition of the need to ensure the apparatus of statutory undertakers is appropriately protected, if the Undertaker does require to exercise these powers, how such powers can be exercised is governed by the provisions set out in Schedule 10 (protective provisions).

6.132 This power is required over the whole of the Order Land and similar wording has been used in other made Orders including the Immingham Open Cycle Gas Turbine Order 2020, the Longfield Solar Farm Order 2023, The Gate Burton Energy Park Order 2024, The Mallard Pass Solar Farm Order 2024, The Sunnica Energy Farm Order 2024 and The Cottam Solar Project Order 2024.

6.133 Article 28 is based on article 31 of the model provisions. It differs from the model provisions in that sub-paragraph (c) is omitted, as rights are referred to in sub-paragraph (a).

#### *Article 29 – Apparatus and rights of statutory undertakers in stopped up streets*

6.134 Article 29 provides that where a street is diverted or its use is temporarily prohibited or restricted under the made Order, any statutory undertaker whose apparatus is under, in, on, along or across the effected street has the same powers as if the Order had not been made, subject to Schedule 10 (protective provisions).

6.135 This Article is required to ensure that any such powers or rights held by statutory undertakers in relation to apparatus are maintained. The protective provisions then set out the provisions that apply where the Authorised Development may have a direct or indirect impact on that apparatus.

6.136 Article 29 is included as article 32 of the model provisions, which has been amended to remove paragraphs (2) onwards to avoid duplication with Schedule 10 (protective provisions).

#### *Article 30 – Recovery of costs of new connections*

6.137 This article provides that if any statutory undertaker's apparatus is removed and this halts the supply from that apparatus to owners or occupiers of premises such that they must seek a connection to other apparatus, then their reasonable costs in obtaining a new supply can be claimed from the Undertaker.

#### *Article 31 – Compulsory acquisition of land – incorporation of the mineral code*



- 6.138 Article 31 incorporates Parts 2 and 3 of Schedule 2 (minerals) to the Acquisition of Land Act 1981 to any land acquired by the Undertaker that may contain mines and minerals.
- 6.139 The effect of this provision is that the Undertaker is prevented from acquiring the rights to any mines and minerals underneath the acquired land, unless expressly purchased, and provides mine owners with the ability to work the mines and extract minerals, subject to restrictions.
- 6.140 Article 31 is based on the model provisions.

## **Part 6 – Operations**

### *Article 32 – Operation of generating station*

- 6.141 Article 32 authorises the Undertaker to operate and use the solar generating station comprising the Authorised Development.
- 6.142 Paragraph (2) specifically preserves the need for the Undertaker to obtain any other consent that may be required to operate the generating station in addition to the made Order.
- 6.143 Article 32 was not included in the model provisions, but it is considered to be a sensible addition to avoid any potential disagreement about whether the Undertaker is authorised to operate, as well as construct the Authorised Development.
- 6.144 It has become common wording in DCOs, including The Kemsley Paper Mill K4 Combined Heat and Power Generating Station Order 2019, The Cleve Hill Solar Park Order 2020, The Little Crow Solar Park Order 2022, The Mallard Pass Solar Farm Order 2024, The Gate Burton Energy Park Order 2024, The Cottam Solar Project Order 2024 and The Sunnica Energy Farm Order 2024.

## **Part 7 – Miscellaneous and General**

### *Article 33 – Operational land for the purposes of the 1990 Act*

- 6.145 Article 33 is a model provision, which confirms that the consent granted by the made Order is to be treated as planning permission for the purposes of Section 264(3)(a) of the 1990 Act.

### *Article 34 – Certification of plans, etc.*

- 6.146 Article 34 is a model provision, which lists various plans and other documents that are to be certified by the Secretary of State as true copies of those documents referred to in the made Order.

### *Article 35 – Service of notices*

- 6.147 Article 35 governs the proper services of notices under the made Order and is considered necessary by the Undertaker because it allows service by email with the consent of the recipient and deals with the situation of service on an unknown landowner.
- 6.148 This article was not included in the model provisions, but it is based on those appear in the Transport and Works (Model Provisions for Railways and Tramways) Order 2006, and it is now a common article in DCOs, including The Brechfa Forest Wind Farm Connection Order 2016, The Kemsley Mill K4 Combined Heat and Power Generating Station Development Consent Order 2019 and The Little Crow Solar Park Order 2022.

### *Article 36 – Felling or lopping of trees or removal of hedgerows*

- 6.149 Article 36 allows any tree or shrub that is near the Authorised Development to be felled or lopped, or have its roots cut back, if it is considered to obstruct the construction, operation or maintenance of the Authorised Development or endanger anyone using it.

- 6.150 Compensation is payable for any loss or damage caused, and the Undertaker must not do any unnecessary damage to any tree or shrub.
- 6.151 Further, this article also authorises the removal of any hedgerow as defined in the Hedgerow Regulations 1997.
- 6.152 Article 36 is necessary to give full effect to the Authorised Development. Any important hedgerows (as defined in the Hedgerow Regulations 1997) proposed to be impacted by the Authorised Development have been assessed in the ES.
- 6.153 Hedgerow mitigation, woodland creation, tree planting and scrub creation are all measures of habitat creation as secured in the Outline LEMP and are part of the Authorised Development.
- 6.154 This article provides broader powers in addition to those available for hedgerows listed in Schedule 9. This ensures appropriate flexibility to remove hedgerows, which, at the date of the made Order, are not listed within Schedule 9, in the circumstances outlined in paragraph (1). No prior consent of the relevant planning authority is sought, as any removal of hedgerow will be mitigated through habitat creation.
- 6.155 This article is based on article 39 of the model provisions. It differs from the model provisions as paragraphs (4) and (5) are added to extend the powers of the Undertaker to also apply to hedgerows, since these may also need to be removed for the Authorised Development to be carried out.

#### *Article 37 – Arbitration*

- 6.156 Article 37 is an arbitration provision and is a departure from the model provisions. This drafting, and that in the associated Schedule 11, is precededented in The Little Crow Solar Park Order 2022, The Longfield Solar Farm Order 2023, The Mallard Pass Solar Farm Order 2024, The Cottam Solar Project 2024, The Sunnica Energy Farm Order 2024 and The Gate Burton Energy Park Order 2024. It is considered that this approach will provide greater certainty to all parties involved in the process and is preferential to the approach adopted in the model provisions.
- 6.157 The article provides that differences under the made Order should be settled by arbitration unless another means of resolving a dispute is provided for in the made Order, in accordance with the drafting presented in the draft Order.
- 6.158 The arbitrator will be appointed by the parties within 14 days of receipt of a notice of arbitration or failing agreement within this time period, by the Secretary of State following an application by one of the parties. If the Secretary of State fails to make an appointment within 14 days of referral, the referring party may refer to the Centre for Effective Dispute Resolution for appointment of an arbitrator.
- 6.159 Where the referral to arbitration relates to a difference with the Secretary of State and the parties cannot agree an arbitrator then either party may refer the matter to the Centre for Effective Dispute Resolution for appointment of an arbitrator.
- 6.160 It applies Schedule 11 to the draft Order, which sets out further detail of the arbitration process. The detail of Schedule 11 is included in this Explanatory Memorandum below.

#### *Article 38 – Requirements, appeals, etc.*

- 6.161 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 draft Order. This 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 has precedent in The Cleve Hill Solar Park Order 2020 and The Little Crow Solar Park Order 2022.

*Article 39 – Application of landlord and tenant law*

- 6.162 Article 39 governs the leasing of land by the Undertaker to any other person. It allows the terms of the lease to override any statutory provisions relating to landlord and tenant law.
- 6.163 This article was included in the model provisions as article 35.

*Article 40 – Protective provisions*

- 6.164 This article gives effect to Schedule 10, which contains provisions protecting the interests of third parties. It was not included in the model provisions but is a standard article in DCOs that include protective provisions.

*Article 41 – Funding*

- 6.165 Article 41 provides that the Undertaker may not exercise a number of powers prior to it putting into place a guarantee equal to liabilities upon the Undertaker to pay compensation under the relevant provisions, such sum to be approved by the Secretary of State, or an alternative form of security approved by the Secretary of State.
- 6.166 The relevant powers are Article 17 (compulsory acquisition of land), Article 19 (compulsory acquisition of rights), Article 20 (private rights), Article 22 (acquisition of subsoil only), Article 25 (rights under or over streets), Article 26 (temporary use of land for carrying out the authorised development), Article 27 (temporary use of land for maintaining the authorised development) and Article 28 (statutory undertakers).
- 6.167 This article provides that the funding guarantee or alternative form of security must be in a form that enables a person entitled to compensation to be able to enforce the guarantee or alternative form of security. The guarantee or alternative form of security is required to be in place for a maximum of 15 years from the date that the relevant power has been exercised.

*Article 42 – Inconsistent planning permissions*

- 6.168 Paragraph (1) permits certain development authorised by way of a planning permission, which has been initiated prior to the commencement of the Authorised Development, to continue to be implemented notwithstanding any physical incompatibility with the Authorised Development.
- 6.169 Paragraphs (2) and (5) address inconsistencies between the made Order and the implementation of the Authorised Development, and developments consented under the planning regime. These provisions seek to address any overlap with other planning conditions and planning obligations and to provide clarity in terms of enforcement and which consent has effect.
- 6.170 The wording is deemed necessary following *Hillside Park Limited v Snowdonia National Park Authority* [2022] UKSC 30.
- 6.171 In that case, the Supreme Court ruled that unless there is an express provision otherwise, whether another planning permission may lawfully be implemented depends upon whether it remains physically possible to carry out the development authorised by the second permission considering what has already been done under the first permission.
- 6.172 Paragraph (5) ensures that enforcement action is not taken in respect of planning permissions granted under the 1990 Act, which are inconsistent with the works and exercise of powers under the made Order.
- 6.173 This article was not included in the model provisions and is based on article 8(2) of the Drax Power Station Bioenergy with Carbon Capture and Storage Extension Order 2024.

*Article 43 – No double recovery*

- 6.174 Article 42 provides that compensation is not payable both under the made Order and other compensation regimes for the same loss or damage.
- 6.175 In addition, the article provides that there is not to be double recovery under two or more different provisions of the made Order.
- 6.176 This article was not provided for in the model provisions but is based on article 44 of the model clauses for railway contained in Schedule 1 to the Transport and Works (Model Clauses for Railways and Tramways) Order 2006, and has been included in granted orders including The Port of Tilbury (Expansion) Order 2019. This article simply reflects the established position that a claimant in a compulsory purchase matter shall be compensated for no more and no less than their loss.

## **7 THE SCHEDULES**

### **Schedule 1 – The Authorised Development**

- 7.1 Schedule 1 of the draft Order, with reference to individual work numbers (“**Work Nos.**”), represent a different part of the Authorised Development, describes the Authorised Development in detail.
- 7.2 The Authorised Development has been separated into Work Nos. to enable the draft Order to refer to specific elements of the Authorised Development by citing the relevant Work No.
- 7.3 A summary of the individual Work Nos. can be found at paragraph 4.1 above.

### **Schedule 2**

#### **Part 1 – Requirements**

- 7.4 Part 1 to Schedule 2 of the draft Order places requirements upon the Undertaker to ensure the Authorised Development, comprising each of the Principal Development and the Associated Development, is implemented within the parameters assessed in the ES and obliges the Undertaker to deliver the mitigation measures identified within the ES. In doing so, Part 1 to Schedule 2 of the draft Order secures this mitigation and other measures outlined within the Application Documents.
- 7.5 The Applicant is of the view that each of the requirements are necessary and relevant to the implementation of the Authorised Development as they have been identified as a result of the findings within the ES and are enforceable and reasonable in all respects.
- 7.6 Where requirements are identified in the following paragraphs as requiring the submission of details post-consent for the approval by the local planning authority, either alone or in consultation with a third party, this is a departure from the model provisions. The obligation to approve details in consultation with a third party rests with the local planning authority.
- 7.7 The requirements within the draft Order and be summarised as follows:
- (a) **Requirement 1 – Time limits:** This requirement provides that the Authorised Development must not commence later than five (5) years from the date the made Order comes into force.
  - (b) **Requirement 2 – Phases of the authorised development and date of final commissioning:** This requirement requires the Undertaker to submit a written scheme setting out the phases of construction of the Authorised Development to the local planning authority prior to commencement of development. The Undertaker is obliged to implement the written scheme as approved by the local planning authority.

- (c) **Requirement 3 – Detailed design approval:** This requirement provides that no phase of the Authorised Development may commence until the details contained within that requirement relating to each phase of the Authorised Development have been submitted to and approved in writing by the local planning authority.

In accordance with paragraph (2) of requirement 3, the detailed designs submitted for approval must accord with the Land Plans, Works Plans, the design parameters and the outline design principles.

- (d) **Requirement 4 – Implementation and maintenance of landscaping:** This requirement obliges the Undertaker to carry out all landscaping works in accordance with the LEMP and appropriate British Standards.

Paragraph (2) provides that any tree or shrub that is planted as part of an approved landscaping management scheme that within five years of planting is removed, dies or, in the opinion of the local planning authority, becomes seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted.

- (e) **Requirement 5 – Arboricultural method statement (AMS):** This requirement provides that no phase of the Authorised Development may comment until an AMS for that phase has been submitted to and approved in writing by the local planning authority.

- (f) **Requirement 6 – Landscape and ecological management plan (LEMP):** This requirement provides that no phase of the Authorised Development can commence until a LEMP for that phase, prepared in accordance with the outline LEMP, which forms part of the Application Documents, has been submitted to and approved by the local planning authority.

The requirement at paragraph (2) prescribes that the LEMP must include details of how the plan will secure a minimum of 10% biodiversity net gain.

Paragraph (3) of requirement 6 requires the LEMP to be implemented by the Undertaker as approved by the local planning authority and maintained throughout the operation of the relevant part of the authorised development to which the plan relates.

- (g) **Requirement 7 – Construction environmental management plan (CEMP):** This requirement prevents the Undertaker from commencing any phase of the Authorised Development until a CEMP for that phase has been submitted to and approved by the local planning authority in consultation with the Environment Agency and Natural England.

The requirement obliges the CEMP to be submitted for the local planning authority's approval and in accordance with the outline CEMP submitted as part of the Application Documents.

As set out in paragraph (2)(i) of requirement 7, the CEMP must include a protocol, prepared in consultation with the Environment Agency, for the event that unexpected, contaminated land is identified during ground investigation or construction of the Authorised Development.

- (h) **Requirement 8 – Construction traffic management plan (CTMP):** This requirement provides that no phase of the Authorised Development can commence until a CTMP for that phase, prepared in accordance with the outline CTMP, has been submitted to and approved by the local planning authority, in consultation with the highway authority for the highway(s) to which the CTMP for that phase relates.

Paragraph (3) of requirement 8 requires the CTMP to be implemented by the Undertaker as approved by the local planning authority.

- (i) **Requirement 9 - Operational environmental management plan (OEMP):** This requirement provides that no phase of the Authorised Development may commence until an OEMP, which accords with the outline OEMP submitted as part of the Application Documents, has been submitted to and approved by the local planning authority.

Paragraph (2) sets out the prescribed detail of the OEMP, including nuisance management and the potential solar panel replacement measures.

Paragraph (3) requires the OEMP to be implemented as approved by the local planning authority and maintained throughout the operation of the relevant part of the authorised development to which the plan relates.

- (j) **Requirement 10 – Fire risk management plan (FRMP):** This requirement provides that prior to the commencement of Work No. 2, being the battery energy storage system, the FRMP must be submitted to and approved by the local planning authority.

Paragraph (2) requires that in submitting the FRMP, the Undertaker is obliged to submit a FRMP that is either in accordance with the outline FRMP, which forms part of the Application Documents, or detail such changes as are considered required.

In the event changes are proposed to the submitted FRMP that divert from the strategy in the outline FRMP, the local planning authority is required to consult with the Health and Safety Executive and Derbyshire Fire and Rescue Service prior to approving the submitted FRMP (paragraph 3).

- (k) **Requirement 11 – Soil management plan (SMP):** This requirement provides that no phase of the authorised development may commence until an SMP, which accords with the outline SMP, has been submitted to and approved by the local planning authority for that phase.

Paragraph (2) provides that the SMP must be implemented as approved.

- (l) **Requirement 12 – Land contamination:** This requirement provides that no phase of the Authorised Development, and no part of the site preparation works for that phase comprising remedial works, may commence until a contamination risk assessment in respect of soils has been produced.

Paragraph (2) provides that the steps and measures that are identified as necessary for the purposes of carrying out the Authorised Development are implemented as referred to in the assessment.

Paragraph (3) sets out the procedure where contaminated material is found and paragraph (4) sets out the procedure where the Undertaker determines that remediation is necessary.

- (m) **Requirement 13 – Public rights of way diversions:** This requirement provides that no phase of the Authorised Development can commence or decommissioning undertaken until a public rights of way management plan for any sections of public rights of way shown to be temporarily closed on the streets, access and rights of way plans for that phase has been submitted to and approved by the local planning authority in consultation with the highway authority.

Paragraph (3) requires the public rights of way management plan to be implemented as approved unless otherwise agreed with the relevant planning authority in consultation with the highway authority.

- (n) **Requirement 14 – Operational noise:** This requirement provides that no phase of the Authorised Development can commence until an operational noise assessment is submitted to and approved by the local planning authority. The

Undertaker must ensure the design as described in the operational noise assessment is implemented as approved by the local planning authority and maintained throughout the operation of the relevant part of the authorised development to which the plan relates.

- (o) **Requirement 15 – Fencing and other means of enclosure:** This requirement provides that no phase of the Authorised Development can commence until written details of all proposed permanent and temporary fences, walls or other means of enclosure of the connection works for that phase have been submitted to and approved by the local planning authority as part of the detailed design approval required by requirement 3(1).

“Commence” for the purposes of requirement 15(1), includes any site preparation works.

- (p) **Requirement 16 – Surface and foul water drainage:** This requirement provides that no phase of the Authorised Development can commence until written details of the surface and foul water drainage system for that phase has been submitted to and approved by the local planning authority.

Paragraph (3) requires the Authorised Development to be implemented in accordance with the approved details and maintained throughout the operation of the relevant part of the authorised development to which the plan relates.

- (q) **Requirement 17 – Archaeology:** This requirement provides that no phase of the Authorised Development can commence until an archaeological written scheme of investigation (“WSI”) for that phase has been submitted to and approved by the local planning authority. The submitted WSI must be in accordance with the outline WSIs.

Paragraph (2) requires any archaeological works or programme of archaeological investigation carried out under the approved WSI to be carried out by an organisation registered with the Chartered Institute for Archaeologists or by a member of the Chartered Institute for Archaeologists.

Paragraph (3) requires any archaeological works or programme of archaeological investigation to be carried out in accordance with the approved WSI under paragraph (1) of requirement 17.

- (r) **Requirement 18 – Permissive path:** This requirement provides that where a phase of the Authorised Development includes a permissive path, the permissive path must be provided and open to the public within 12 months of final commissioning in respect of that phase.

Paragraph (3) of Requirement 18 obliges the Undertaker to maintain the permissive path(s) and ensure access to the public is permitted for 264 days a year until the commencement of decommissioning of the Authorised Development, save for closures due to maintenance or emergency.

- (s) **Requirement 19 – Construction hours:** This requirement prohibits construction works except between the hours specified in paragraph (1), save for emergency works and works that do not cause noise to be audible at the boundary of the Order limits (paragraph 2).

Paragraph (3) requires the Undertaker to notify the local planning authority of any emergency works carried out within 72 hours of commencing the emergency works.

- (t) **Requirement 20 – Protected species:** This requirement provides that no phase of the Authorised Development may commence until protected species surveys have been carried out by a suitably qualified person. The surveys shall then inform the mitigation measures required to protect such species as incorporated into a

Species Protection Plan, which must be implemented as approved by the local planning authority in consultation with Natural England.

- (u) **Requirement 21 – Decommissioning and restoration:** This requirement provides that within 3 months of the date the Undertaker decides to decommission any part of the Authorised Development, or no later than 6 months before the 40th anniversary of the date of final commissioning of the first phase of Work No. 1, the Undertaker must submit to the relevant local planning authority for that part a decommissioning plan and a decommissioning traffic management plan.

Paragraph (1) of requirement 21 also provides that decommissioning of the Authorised Development will commence no later than 40 years following the date of final commissioning of the first phase of Work No. 1.

Paragraph (2) of requirement 21 requires the Undertaker to submit for approval a decommissioning plan and a decommissioning traffic management plan for that part of the Authorised Development that may be decommissioned prior to the date in paragraph (1) in the event that any part of the Authorised Development stops generating electricity for a period of 12 continuous months beginning with the date of the notice to be served on the local planning authority following any part of the Authorised Development having stopped generating electricity for more than 6 months.

Paragraph (6) of requirement 21 provides that decommissioning must be completed within 2 years, or such other time period as is agreed in writing between the Undertaker and the local planning authority, of any approval under paragraph (1).

- (v) **Requirement 22 – Skills, supply chain and employment:** This requirement provides that a skills, supply chain and employment plan must be submitted to and approved in writing by the local planning authority prior to the commencement of any part of the authorised development.

Paragraph (3) of the requirement sets out that the plan must identify opportunities for individuals and businesses to access employment and supply chain opportunities associated with that part of the authorised development and the means for publicising such opportunities. The skills, supply chain and employment plan must be implemented as approved and maintained throughout the operation of the relevant part of the authorised development to which the plan relates.

- (w) **Requirement 23 - Requirement for written approval:** This requirement provides that where the approval, agreement or confirmation of a third party, including the Secretary of State, local planning authority or another person, is required under a requirement within Part 1 of Schedule 2, that approval, agreement or confirmation must be given to the Undertaker in writing.

- (x) **Requirement 24 – Amendments to approved details:** This requirement provides that any details submitted to and approved by the local planning authority under the requirements must be carried out in accordance with the approval, unless an amendment or variation has been approved in writing by the local planning authority provided that such agreement is only given in relation to immaterial changes.

Paragraph (2) provides that any amendments to or variations from the approved details must be in accordance with the principles and assessments set out in the environmental statement.

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



- (y) **Requirement 25 – Consultation:** This requirement provides that where the local planning authority is required by the made Order or other statute to consult with another person or body before discharging a requirement, the Undertaker is obliged to consult with such person or body prior to making an application to discharge the requirement.

## **Part 2 – Procedure for Discharge of Requirements**

- 7.8 Part 2 to Schedule 2 of the draft Order provides for the procedure for the discharge of requirements.
- 7.9 Paragraph 27 (applications made under requirements) provides that applications made to the relevant authority must be determined by the relevant authority within eight weeks beginning with either the day immediately following that on which the application is received by the relevant authority or, where information is requested under paragraph 28, the day immediately following that on which the further information is supplied by the Undertaker. Sub-paragraph (1)(b) allows for a longer period to be agreed in writing between the Undertaker and the relevant authority.
- 7.10 Paragraph 28 (further information regarding requirements) provides that a relevant authority can request further information from an Undertaker it considers necessary to determine an application to discharge a requirement.
- 7.11 Paragraph 29 (appeals) sets out the circumstances in which an applicant who has submitted an application to a relevant authority may appeal to the Secretary of State including where the relevant authority grants such an application subject to conditions and the relevant authority refuses an application for any consent. The remaining sub-paragraphs set out the appeals procedure.
- 7.12 Paragraph 30 (fees) provides that where an application to discharge a requirement is made to the relevant authority, the applicant submitting such an application must pay the requisite fee to the local planning authority.

## **Schedule 3 – Streets Subject to Street Works**

- 7.13 Schedule 3 to the draft Order sets out the streets subject to street works as part of the Authorised Development. Column (1) identifies the area of the street works. Column (2) identifies the streets subject to street works. Column (3) provide a description of those street works. Schedule 3 relates to Article 8 (street works).

## **Schedule 4 – Alteration of Streets**

- 7.14 Schedule 4 to the draft Order sets out the streets subject to alteration as part of the Authorised Development. Part 1 to Schedule 4 identifies the streets subject to permanent alteration to their layout and Part 2 to Schedule 4 identifies the streets subject to temporary alteration to their layout.
- 7.15 Column (1) of each table in each part to Schedule 4 identifies the area of the street works. Column (2) of each table in each part to Schedule 4 identifies the streets subject to alteration. Column (3) of each table in each part to Schedule 4 identifies the extent of those alterations. Schedule 3 relates to Article 9 (power to alter layout etc., of streets).

## **Schedule 5 – Access to Works**

- 7.16 Schedule 5 to the draft Order sets out the private means of access to the Works comprising the Authorised Development. Part 1 to Schedule 5 identifies the permanent private means of access to Works and Part 2 to Schedule 5 identifies the temporary private means of access to Works.
- 7.17 Column (1) of each table in each part to Schedule 5 identifies the area of the accesses. Column (2) of each table in each part to Schedule 5 identifies the accesses by reference to the streets, access and rights of way plan. Column (3) of each table in each part to

Schedule 5 provides a description of the access required. Schedule 5 relates to Article 10 (access to works).

#### **Schedule 6 – Streets and Public Rights of Way to be Temporarily Stopped Up**

- 7.18 Schedule 6 to the draft Order sets out the streets and public rights of way to be temporarily stopped up as part of the Authorised Development.
- 7.19 Column (1) of the table in Schedule 6 identifies the area of the temporary stopping up works. Column (2) of the table in Schedule 6 identifies the streets and public rights of way to be temporarily stopped up. Column (3) identifies the extent of the temporary stopping up. Schedule 6 relates to Article 11 (temporary stopping up of streets and public rights of way).

#### **Schedule 7 – Land in which only new rights etc. may be acquired**

- 7.20 Schedule 7 to the draft Order sets out the land in which only new rights etc. may be acquired as identified in the Book of Reference, with the plot number(s) in Column (1) of the table in Schedule 7 mirroring those in the Book of Reference.
- 7.21 Column (2) of the table in Schedule 7 identifies the Work No. requiring the acquisition of new rights in the plot number(s) and column (3) sets out the purpose for which rights may be acquired.

#### **Schedule 8 – Modification of compensation and compulsory purchase enactments for the creation of new rights and imposition of new restrictive covenants**

- 7.22 Schedule 8 to the draft Order modifies existing compensation legislation including the Land Compensation Act 1973 and the Compulsory Purchase Act 1965.
- 7.23 It is commonly included in DCOs, including The Cleve Hill Solar Park Order 2020, The Longfield Solar Farm Order 2023, The Gate Burton Energy Park Order 2024, and The Mallard Pass Solar Farm Order 2024. It reflects the necessary changes arising as a result of the Housing and Planning Act 2016.
- 7.24 Schedule 8 relates to Article 19 (compulsory acquisition of rights).

#### **Schedule 9 – Hedgerows**

##### **Part 1 – Removal of important hedgerows**

- 7.25 Part 1 of Schedule 9 to the draft Order identifies the important hedgerows to be removed in order for the Authorised Development to be implemented and identifies the effected important hedgerows by reference to the local of the important hedgerows on Tree Retention/Removal Plan and Protection Plan at column (1) of the table in Part 1 of Schedule 9, the reference number of the important hedgerow at column (2) and the extent of the removal works in column (3).

##### **Part 2 – Removal of hedgerows**

- 7.26 Part 2 of Schedule 9 to the draft Order identifies the hedgerows to be removed in order for the Authorised Development to be implemented and identifies the effected hedgerows by reference to the location of the hedgerows on the Tree Retention/Removal Plan and Protection Plan at column (1) of the table in Part 2 of Schedule 9, the reference number of the hedgerow at column (2) and the extent of the removal works in column (3).

#### **Schedule 10 – Protective provisions**

- 7.27 Schedule 10 sets out the protective provisions for the benefit of statutory undertakers and developers whose equipment may be affected by the implementation of the Authorised Development. Schedule 10 relates to Article 40 (protective provisions) and contains protective provisions for the benefit for defined classes of service undertakers:

- (a) Part 1 of Schedule 10 sets out the protective provisions for the protection of electricity, gas, water and sewerage undertakers;
- (b) Part 2 of Schedule 10 sets out the protective provisions for the protection of operators of electronic communications code networks;
- (c) Part 3 of Schedule 10 sets out the protective provisions for the protection of drainage authorities;
- (d) Part 4 of Schedule 10 sets out the protective provisions for the protection of National Grid Electricity Distribution (East Midlands) plc as electricity undertaker;
- (e) Part 5 of Schedule 10 sets out the protective provisions for the protection of Cadent Gas Limited as gas undertaker;
- (f) Part 6 of Schedule 10 sets out the protective provisions for the protection of Exolum Pipeline Systems Limited as gas undertaker;
- (g) Part 7 of Schedule 10 sets out the protective provisions for the protection of Anglian Water Limited as water and drainage undertaker;
- (h) Part 8 of Schedule 10 sets out the protective provisions for protection of West Burton Solar Project Limited; and
- (i) Part 9 of Schedule 10 sets out the protective provisions for the protection of the UK Atomic Energy Authority.

7.28 The Applicant's engagement with statutory undertakers to agree protective provisions for their benefit are ongoing. The Applicant will keep the Examining Authority informed of agreed updates to the set of protective provisions included within the draft Order throughout the course of Examination.

#### **Schedule 11 – Arbitration rules**

7.29 Schedule 11 relates to Article 37 (arbitration) and has precedent in The Longfield Solar Farm Order 2023 and The Mallard Pass Solar Farm Order 2024. The intention of the drafting is to achieve a fair, impartial, final and binding award on substantive differences between the parties within 4 months from the date an arbitrator is appointed in accordance with Article 37 (arbitration) of the draft Order.

7.30 Paragraph 3 of Schedule 11 sets out the timetable for the arbitration as follows:

- (a) Within 14 days of the arbitrator being appointed, the Claimant must provide both the Respondent and arbitrator with a written Statement of Claim and all statements of evidence;
- (b) Within 14 days of receipt of the Claimant's statements by the arbitrator and Respondent, the Respondent must provide the Claimant and the arbitrator with a written Statement of Defence responding to the Claimant's Statement of Claim, all supporting statements of evidence and any objections it wishes to make to the Claimant's statements; and
- (c) Within 7 days of receipt of the Respondent's statements by the arbitrator and Claimant, the Claimant may provide the Respondent and the arbitrator with a written statement responding to the Respondent's submissions, all supporting statements of evidence, any expert report in response to the Respondent's submissions, any objections to the statements of evidence and its written submissions in response to the legal and factual issues involved.

7.31 Paragraph 4 sets out the procedure for any arbitration carried out under Schedule 11 and paragraph 5 details the role and powers of the arbitrator. Paragraph 6 provides that the costs of the arbitration must include the fees and expenses of the arbitrator, the

reasonable fees and expenses of any experts and the reasonably legal and other costs incurred by the parties. The arbitrator will determine the final costs award and in what proportion parties are to bear their own costs. Paragraph 7 provides that any hearings held in the carrying out of arbitration under Schedule 11 are to be private.

#### **Schedule 12 – Documents to be certified**

- 7.32 The table in Schedule 12 sets out the documents to be certified under the made Order with reference to the document title, application reference, Examination Library reference, revision and date. Schedule 12 will be finalised before the final deadline to ensure all references are up to date.