

# **The Keadby Next Generation Power Station Project**

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**The Keadby Next Generation Power Station Development  
Consent Order [year]**

**Land at, and in the vicinity of, the Keadby Power Station  
(Trentside, Keadby, Scunthorpe DN17 3EF)**

## **Draft Development Consent Order**

**The Planning Act 2008**

**The Infrastructure Planning (Applications: Prescribed Forms  
and Procedure) Regulations 2009 Regulation 5(2)(b)**

**Applicant: Keadby Next Generation Limited**

**Date: ~~May~~June 2026**

**202[X] No. \*\*\*\***

**INFRASTRUCTURE PLANNING**

**The Keadby Next Generation Power Station Order 202[X]**

*Made* - - - - - \*\*\*  
*Laid before Parliament* \*\*\*  
*Coming into force* \*\*\*

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

[The application has been examined by the Examining Authority appointed by the Secretary of State pursuant to Chapter 3 of Part 6 of the 2008 Act. The examination was carried out in accordance with Chapter 4 of Part 6 of the 2008 Act and the Infrastructure Planning (Examination Procedure) Rules 2010(c). The Examining Authority has submitted a report and recommendation to the Secretary of State under section 83 of the 2008 Act.]

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

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

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(a) 2008 c. 29. Parts 1 to 7 were amended by Chapter 6 of Part 6 of the Localism Act 2011 (c. 20). Part 7 was amended by S.I. 2017/16.

(b) S.I. 2009/2264, as amended by S.I. 2012/635 and S.I. 2013/522. There are other amendments to the Regulations which are not relevant to this Order.

(c) S.I. 2010/103 amended by S.I. 2012/635.

(d) S.I. 2017/572 amended by S.I. 2018/695, S.I. 2018/942.

(e) Section 104 was amended by section 58(5) of the Marine and Coastal Access Act 2009 (c. 23) and by section 128(2) and Schedule 13, paragraphs 1 and 49(1) to (6) of the Localism Act 2011 (c. 20).

[Accordingly, the Secretary of State, in exercise of the powers conferred by sections 114(a), 115(b), 120(c), 122 and 123 of the 2008 Act, makes the following Order—]

## PART 1

### PRELIMINARY

#### Citation and commencement

1. This Order may be cited as the Keadby Next Generation Power Station Order 202[X] and comes into force on [ ].

#### Interpretation

2. —(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961(d);

“the 1965 Act” means the Compulsory Purchase Act 1965(e);

“the 1980 Act” means the Highways Act 1980(f);

“the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981(g);

“the 1990 Act” means the Town and Country Planning Act 1990(h);

“the 1991 Act” means the New Roads and Street Works Act 1991(i);

“the 2008 Act” means the Planning Act 2008(j);

“access and rights of way plans” means the plans of that name identified in Schedule 11 (documents and plans to be certified) and which are certified by the Secretary of State as the access and rights of way plans for the purposes of this Order;

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

“AOD” means above ordnance datum;

“apparatus” has the same meaning as in Part 3 of the 1991 Act except that it further includes pipelines (and parts of them), aerial markers, cathodic protection test posts, field boundary markers, transformer rectifier kiosks, electricity and fibre optic cables, pipe and cable protection, telecommunications equipment and electricity cabinets;

“application guide” means the document of that name identified in Schedule 11 (documents and plans to be certified) and which is certified by the Secretary of State as the application guide for the purposes of this Order;

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

“book of reference” means the document of that name identified in Schedule 11 (documents and plans to be certified) and which is certified by the Secretary of State as the book of reference for the purposes of this Order;

“building” includes any structure or erection or any part of a building, structure or erection;

(a) Section 114 was amended by paragraph 55 of Part 1 of Schedule 13 to the Localism Act 2011.

(b) Section 115 was amended by paragraph 56 of Part 1 of Schedule 13 and Part 20 of Schedule 25 to the Localism Act 2011. Relevant amendments were made to section 115 by section 160(1) to (6) of the Housing and Planning Act 2016 (c. 22).

(c) Section 120 was amended by section 140 of, and paragraph 60 of Part 1 of Schedule 13 to the Localism Act 2011.

(d) 1961 c. 33.

(e) 1965 c. 56.

(f) 1980 c. 66.

(g) 1981 c. 66.

(h) 1990 c. 8.

(i) 1991 c. 22.

(j) 2008 c. 29.

“canal” means the Stainforth and Keadby Canal;

“Canal & River Trust” means the body of that name which is a company limited by guarantee (company no. 07807276) and a registered charity (charity commission No 146792) whose registered office is at National Waterways Museum, Ellesmere Port, South Pier Road, Ellesmere Port, Cheshire, CH65 4FW;

“carriageway” has the same meaning as in the 1980 Act;

“combined heat and power assessment” means the document of that name identified in Schedule 11 (documents and plans to be certified) and which is certified by the Secretary of State as the combined heat and power assessment for the purposes of this Order;

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

“commercial use” means the export of electricity from the authorised development on a commercial basis, following the completion of commissioning of the authorised development and the first occupation of the authorised development by the undertaker;

“commissioning” means the process of testing all systems and components of the authorised development (including all systems and components which are not yet installed but the installation of which is near to completion) in order to verify that they function in accordance with the design objectives, specifications, safety and operational requirements of the undertaker and “commission” and other cognate expressions, in relation to the authorised development are to be construed accordingly;

“construction working site” means a construction site associated with the authorised development including hard standings, lay down and storage areas for materials, equipment, areas for spoil, areas for vehicle parking, areas for welfare facilities including offices, canteen and washroom facilities, workshop facilities temporary fencing or other means of enclosure and areas for other facilities required for construction purposes;

“Crown land plans” means the plans of that name identified in Schedule 11 (documents and plans to be certified) and which are certified by the Secretary of State as the crown land plans for the purposes of this Order;

“design principles statement” means the document of that name identified in Schedule 11 (documents and plans to be certified) and which is certified by the Secretary of State as the design principles statement for the purposes of this Order;

“Electricity Act” means the Electricity Act 1989(a);

“electronic transmission” means a communication transmitted—

- (a) by means of an electronic communications network; or
- (b) by other means but while in electronic form;

“Environment Agency” means the non-departmental public body of that name created by section 1 of the Environment Act 1995 (including any statutory successor);

“environmental statement” means the document of that name identified in Schedule 11 (documents and plans to be certified) and which is certified by the Secretary of State as the environmental statement for the purposes of this Order;

“flood risk assessment” means the document of that name identified in Schedule 11 (documents and plans to be certified) and which is certified by the Secretary of State as the flood risk assessment for the purposes of this Order;

“finished ground level” means the level of the surface of the ground adjoining the building or structure and if the level of the surface of the ground where the building or structure is situated or is to be situated is not uniform, the level of the highest part of the surface of the ground adjacent to it;

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

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(a) 1989 C.29.

“haul road plans” means the document of that name identified in Schedule 11 (documents and plans to be certified) and which is certified by the Secretary of State as the haul road plans for the purposes of this Order;

“haul road” means the temporary haul road constructed pursuant to the haul road planning permission (together with such alterations pursuant to Work No. 9D);

“haul road planning permission” means the conditional planning permission with North Lincolnshire Council reference PA/2019/1595, dated 15 November 2019 as varied by planning permission referenced PA/2021/188 dated 1 April 2021 and any other variations thereto together with the Keadby CCS Order which authorised the retention of the haul road;

“highway” and “highway authority” have the same meaning as in the 1980 Act;

“hydrogen provider” means a provider or supplier of hydrogen;

“indicative landscape and biodiversity plan” means the document of that name identified in Schedule 11 (documents and plans to be certified) and which is certified by the Secretary of State as the indicative landscape and biodiversity plan for the purposes of this Order;

“indicative surface water drainage plan” means the document of that name identified in Schedule 11 (documents and plans to be certified) and which is certified by the Secretary of State as the indicative surface water drainage plan for the purposes of this Order;

“Keadby CCS Order” means The Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022;

“land plans” means the plans of that name identified in Schedule 11 (documents and plans to be certified) and which are certified by the Secretary of State as the land plans for the purposes of this Order;

“limits of deviation” means the limits of deviation for each of the works as comprised in the works plans;

“main river” means a watercourse shown as such on the main river map for England and includes any structure or appliance for controlling or regulating the flow of water into or out of the channel which—

(a) is a structure or appliance situated in the channel or in any part of the bank of the channel; and

(b) is not a structure or appliance vested in or controlled by an internal drainage board,

and “river” shall be construed accordingly;

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

“NGET” means National Grid Electricity Transmission plc (company registration number 02366977) whose registered office is at 1 to 3 Strand, London, WC2N 5EH;

“NGT” means National Gas Transmission plc (company registration number 02006000) whose registered office is at National Grid House, Warwick Technology Park, Gallows Hill, Warwick, CV34 6DA;

“Order land” means the land delineated and marked as such on the land plans;

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

“outline construction environmental management plan” means the document of that name identified in Schedule 11 (documents and plans to be certified) and which is certified by the Secretary of State as the outline construction environmental management plan for the purposes of this Order;

“outline construction traffic management plan” means the document of that name identified in Schedule 11 (documents and plans to be certified) and which is certified by the Secretary of State as the outline construction traffic management plan for the purposes of this Order;

“outline construction workers travel plan” means the document of that name identified in Schedule 11 (documents and plans to be certified) and which is certified by the Secretary of State as the outline construction workers travel plan for the purposes of this Order;

“outline landscape and biodiversity management and enhancement plan report” means the document of that name identified in Schedule 11 (documents and plans to be certified) and which is certified by the Secretary of State as the outline landscape and biodiversity management and enhancement plan report for the purposes of this Order;

“outline lighting strategy” means the document of that name identified in Schedule 11 (documents and plans to be certified) and which is certified by the Secretary of State as the outline lighting strategy for the purposes of this Order;

“outline written scheme of investigation” means the document of that name identified in Schedule 11 (documents and plans to be certified) and which is certified by the Secretary of State as the outline written scheme of investigation for the purposes of this Order;

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

“permitted preliminary works” means all or any of—

- (a) environmental surveys, geotechnical surveys, intrusive archaeological surveys and other investigations for the purpose of assessing ground conditions;
- (b) removal of plant, structures and machinery, and remediation works;
- (c) above ground site preparation for temporary facilities for the use of contractors;
- (d) the provision of temporary means of enclosure and site security for construction;
- (e) the temporary display of site notices or advertisements;
- (f) site clearance and preparation (including vegetation removal and infilling of drains); and
- (g) ecological works and/or habitat creation or protection works;

“Pilfrey laydown area” means the Pilfrey laydown area as identified on the Pilfrey laydown plans;

“Pilfrey laydown plans” means the plans of that name identified in Schedule 11 (documents and plans to be certified) approved as part of the Pilfrey laydown planning permission and which are certified by the Secretary of State as the Pilfrey laydown plans for the purposes of this Order;

“Pilfrey laydown planning permission” means the conditional planning permission granted by North Lincolnshire Council with reference PA/2018/1950, dated 23 November 2018, and any other variations thereto together with Keadby CCS Order which authorised the retention of the Pilfrey laydown area;

“Planning Acts” means the Town and Country Planning Act 1947(b), the Town and Country Planning Act 1962(c), the Town and Country Planning Act 1971(d), and the 1990 Act;

“plot(s)” means each of the plots listed in the book of reference and shown on the land plans;

“relevant planning authority” means the district planning authority for the area in which the land to which the provisions of this Order apply is situated;

“requirements” means those matters set out in Schedule 2 (requirements) to this Order and “requirement” means any one of the requirements;

“statutory undertaker” means any person falling within section 127(8) of the 2008 Act;

“street” means a street within the meaning of section 48 of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes any footpath and any part of a street;

“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

“street works” means the works listed in article 10(1) (street works);

“Upper Tribunal” means the Lands Chamber of the Upper Tribunal;

“undertaker” means Keadby Next Generation Limited, company number 15866301, whose registered address is One Forbury Place, 43 Forbury Road, Reading RG1 3JH;

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- (a) 1981 c. 67. The definition of “owner” was amended by paragraph 9 of Schedule 15 to the Planning and Compensation Act 1991 (c. 34). There are other amendments to section 7 which are not relevant to the Order.
  - (b) 1947 c. 51. This Act was repealed by the Planning (Consequential Provision) Act 1990 (c. 11).
  - (c) 1962 c. 38. This Act was repealed by the Planning (Consequential Provision) Act 1990.
  - (d) 1971 c. 78. This Act was repealed by the Planning (Consequential Provision) Act 1990.

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

“works plans” means the plans (which show limits of deviation for each numbered work) of that name identified in Schedule 11 (documents and plans to be certified) and which are certified by the Secretary of State as the works plans for the purposes of this Order.

(2) References in this Order to rights over land include references to rights to do or to place and maintain anything in, on or under land or in the air-space above its surface and to any trusts or incidents (including restrictive covenants) to which the land is subject and references to the creation or acquisition of new rights include the imposition of restrictive covenants which interfere with the interests or rights of another and are for the benefit of land which is acquired under this Order or over which rights are created and acquired under this Order or as otherwise comprised in this Order.

(3) All distances, directions and lengths referred to in this Order (except for the parameters referred to in Schedule 10 (design parameters)) are approximate and distances between lines and/or points on a numbered work comprised in the authorised development and shown on the works plans and access and rights of way plans are to be taken to be measured along that work.

(4) References in this Order to numbered works are references to the works comprising the authorised development as numbered in Schedule 1 (authorised development) and shown on the works plans and a reference in this Order to a work designated by a number, or by a combination of letters and numbers (for example, “Work No. 1A” or “numbered work 1A”), is a reference to the work so designated in that Schedule and a reference to “Work No. 1” or “numbered work 1” means numbered works 1A to 1C inclusive, together with all additional works referred to in paragraph (d) of Work No. 1 and the same principle applies to such numbered works that contain letters.

(5) In this Order, the expression “includes” is to be construed without limitation.

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

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

(8) References in this Order to points identified by letters or numbers are to be construed as references to points so lettered or numbered on the access and rights of way plans.

(9) References to any registered body listed in article 5 (benefit of the order) or article 7 (consent to transfer benefit of the Order) includes that body’s or that company’s successor bodies from time to time.

(10) In this Order, references to giving rise to materially new or materially different environmental effects than those assessed in the environmental statement must not be construed as to include the avoidance, removal or reduction of an adverse environmental effect, or the increase of assessed positive environmental effect, that was reported in the environmental statement as a result of the authorised development.

(11) In this Order references to any written approval, notice or agreement shall be construed to include approval, notice or agreement by any electronic means of communication where the recipient party has agreed to such method.

## PART 2

### PRINCIPAL POWERS

#### **Development consent etc. granted by the Order**

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

(2) Each numbered work may be situated only within the corresponding numbered area shown on the works plans.

#### **Operation of authorised development**

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

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

### **Benefit of the Order**

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

- (a) Work No. 2A in relation to which the provisions of this Order have effect for the benefit of the undertaker and hydrogen provider;
- (b) Work No. 3A in relation to which the provisions of this Order have effect for the benefit of the undertaker and NGT; and
- (c) Work No. 4 in relation to which the provisions of this Order have effect for the benefit of the undertaker and NGET.

### **Maintenance of authorised development**

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

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

### **Consent to transfer benefit of the Order**

7. —(1) The undertaker may—

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order which resides for the time being in the undertaker (including any of the numbered works) and such related statutory rights as may be agreed in writing between the undertaker and the transferee; or
- (b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order which resides for the time being in the undertaker (including any of the numbered works) and such related statutory rights as may be so agreed in writing between the undertaker and the lessee.

(2) Where a transfer or grant has been made in accordance with paragraph (1) references in this Order to the undertaker, except in paragraph (3), include references to the transferee or the lessee.

(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

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

- (a) the transferee or lessee is—
  - (i) the holder of a licence under section 6 of the Electricity Act(a);
  - (ii) a gas transporter within the meaning of Part 1 of the Gas Act 1986(b);
  - (iii) in relation to a transfer or lease of any works within a highway, a highway authority responsible for the highways within the Order land; or
  - (iv) in relation only to a transfer or lease or all or part of Work No. 2 to a hydrogen provider.
- (b) the time limits for all claims for compensation in respect of the acquisition of land or effects upon land under this Order have elapsed and—

(a) 1989 c. 29. Section 6 was amended by section 30 of the Utilities Act 2000 (c. 27), sections 89, 136, 145 of, and Schedules 19 and 23 to, the Energy Act 2004 (c. 29), paragraph 2 of Schedule 8 to the Climate Change Act 2008 (c. 27), regulation 19 of S.I. 2011/2704, articles 6 and 21 of S.I. 2012/2400, paragraph 1 of Schedule 1 to the Nuclear Energy (Financing) Act 2022 c. 15 and section 166, 186 of the Energy Act 2023 c. 52.

(b) 1986 c. 44.

- (i) no such claims have been made;
- (ii) any such claims that have been made have all been compromised or withdrawn;
- (iii) compensation has been paid in final settlement of all such claims;
- (iv) payment of compensation into court in lieu of settlement of all such claims has taken place; or
- (v) it has been determined by a tribunal or court of competent jurisdiction in respect of all such claims that no compensation is payable.

(5) Where the consent of the Secretary of State is not required under paragraph (4), the undertaker must notify the Secretary of State in writing before transferring or granting a benefit referred to in paragraph (1).

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

- (a) the name and contact details of the person to whom the benefit of the powers will be transferred or granted;
- (b) subject to paragraph (7), the date on which the transfer will take effect;
- (c) the powers to be transferred or granted;
- (d) the restrictions, liabilities and obligations that will apply to the person exercising the powers transferred or granted; and
- (e) where relevant, a plan showing the works or areas to which the transfer or grant relates.

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

(8) The notice given under paragraph (5) must be signed by the undertaker and the person to whom the benefit of the powers will be transferred or granted as specified in that notice.

### **Application and modification of statutory provisions**

**8.**—(1) The provisions of the Neighbourhood Planning Act 2017<sup>(a)</sup> insofar as they relate to temporary possession of land under articles 31 (temporary use of land for carrying out the authorised development) and 32 (temporary use of land for maintaining the authorised development) do not apply in relation to the construction of any work or the carrying out of any operation required for the purpose of, or in connection with, the construction, operation or maintenance of any part of the authorised development.

(2) As from the date on which the authorised development (including the permitted preliminary works) is commenced any approval, grant, permission, authorisation or agreement made under the Planning Acts or Electricity Act prior to that date will cease to have effect but only insofar as such approval, grant, permission, authorisation or agreement is inconsistent with the authorised development or anything approved under the requirements to be carried out within the Order limits.

## **PART 3**

### **STREETS**

#### **Application of the 1991 Act**

**9.**—(1) The provisions of the 1991 Act mentioned in paragraph (2) apply in relation to the carrying out of street works under that Act and any regulations made or code of practice issued or approved under those provisions apply (with all necessary modifications) in relation to—

- (a) the carrying out of works under articles 10 (street works) and 11 (power to alter layout, etc. of streets); and
- (b) the temporary closure, alteration or diversion of a street by the undertaker under article 12 (temporary restriction of use of streets);

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<sup>(a)</sup> 2017 c. 20.

whether or not the carrying out of the works, closure alteration or diversion constitutes street works within the meaning of that Act.

(2) The provisions of the 1991 Act(a) are—

- (a) subject to paragraph (3), section 55 (notice of starting date of works);
- (b) section 57 (notice of emergency works);
- (c) section 60 (general duty of undertakers to co-operate);
- (d) section 68 (facilities to be afforded to street authority);
- (e) section 69 (works likely to affect other apparatus in the street);
- (f) section 76 (liability for cost of temporary traffic regulation);
- (g) section 77 (liability for cost of use of alternative route); and
- (h) all provisions of that Act that apply for the purposes of the provisions referred to in subparagraphs (a) to (g).

(3) Section 55 of the 1991 Act as applied by paragraph (2) has effect as if references in section 57 of that Act to emergency works included a reference to a stopping up, alteration or diversion (as the case may be) required in a case of emergency.

(4) The following provisions of the 1991 Act(b) do not apply in relation to any works executed under the powers conferred by this Order—

- (a) section 56 (power to give directions as to timing of street works);
- (b) section 56A (power to give directions as to placing of apparatus);
- (c) section 58 (restriction on works following substantial road works);
- (d) section 58A (restriction on works following substantial street works); and
- (e) schedule 3A (restriction on works following substantial street works).

### Street works

**10.**—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets specified in Schedule 3 (streets subject to permanent street works) as is within the Order limits and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) drill, tunnel or bore under the street or carry out works to strengthen or repair the carriageway;
- (c) remove or use all earth and materials in or under the street;
- (d) place and keep apparatus in the street;
- (e) maintain apparatus in the street, change its position or remove it;
- (f) demolish, remove, replace and relocate any street furniture within the street;
- (g) execute and maintain any works to provide hard and soft landscaping;
- (h) carry out re-lining and placement of road markings;
- (i) remove and install temporary and permanent signage;
- (j) construct a bridge over the street; and
- (k) execute any works required for or incidental to any works referred to in sub-paragraphs (a)-(j).

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

(3) Where the undertaker is not the street authority, sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1).

(a) Changes to Sections 55, 57, 60, 68 and 69 were amended by the Traffic Management Act 2004 (c. 18)

(b) Sections 56 and 58, were amended by and sections of 56A, 58A and Schedule 3A inserted by the Traffic Management Act 2004 (c. 18)

(4) Without limiting the scope of the powers conferred by paragraph (1) but subject to paragraph (5) the undertaker may, for the purposes of the authorised development, or for the purposes ancillary to it, enter on or so much of any other street whether or not in the Order limits, for the purposes of carrying out the work set out in paragraph (1).

(5) The powers conferred by paragraph (4) must not be exercised without the consent of the street authority but such consent not to be unreasonably withheld or delayed.

(6) If a street authority that receives an application for consent under paragraph (5) fails to notify the undertaker of its decision within 42 days beginning with the date on which the application was made, that authority will be deemed to have granted consent.

(7) In this article ‘apparatus’ has the same meaning as in Part 3 of the 1991 Act save that ‘apparatus’ includes pipelines (and parts thereof), fibre optic or other telecommunication cables, aerial markers, cathodic protection test posts, field boundary markers, mandatory kiosks and electricity cabinets.

### **Power to alter layout, etc. of streets**

**11.—**(1) The undertaker may for the purposes of the authorised development alter the layout of or carry out any works in the street specified in column (2) of Schedule 3 (streets subject to permanent street works) in the manner specified in relation to that street in column (3).

(2) Without prejudice to the specific powers conferred by paragraph (1) but subject to paragraph (4), the undertaker may, for the purposes of constructing, operating or maintaining the authorised development, permanently or temporarily alter the layout of any street (and carry out such works ancillary to such alterations) within the Order limits and, without limitation on the scope of this paragraph, the undertaker may—

- (a) alter the level or increase the width of any kerb, footway, cycle track or verge;
- (b) make and maintain passing places;
- (c) execute any works of surfacing or resurfacing the highway; and
- (d) execute and maintain any works to provide hard and soft landscaping.

(3) The powers conferred by paragraph (2) may not be exercised without the consent of the street authority but such consent not to be unreasonably withheld or delayed.

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

(5) If within 42 days of receiving an application for approval under paragraph (3) a highway authority fails to notify the undertaker of its decision or refuses approval without giving any grounds for its refusal that highway authority is deemed to have granted approval.

### **Temporary restriction of use of streets**

**12.—**(1) The undertaker, during and for the purposes of carrying out the authorised development, may temporarily close, alter or divert any street and may for any reasonable time—

- (a) divert the traffic or a class of traffic from the street; and
- (b) subject to paragraph (3), prevent all persons from passing along the street.

(2) Without limiting paragraph (1), the undertaker may use any street temporarily closed under the powers conferred by this article within the Order limits as a temporary working site.

(3) The undertaker must provide reasonable access for pedestrians going to or from premises abutting a street affected by the temporary closure, alteration or diversion of a street under this article if there would otherwise be no such access.

(4) The undertaker must not temporarily close, alter, divert or use as a construction working site, any street without the consent of the street authority, which may attach reasonable conditions to the consent but such consent is not to be unreasonably withheld or delayed.

(5) Any person who suffers loss by the suspension of any private right of way under this article is entitled to compensation to be determined as if it were a dispute under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

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

### **Construction and maintenance of new or altered means of access**

**13.**—(1) Those parts of each means of access specified in Schedule 4 (access - those parts of the access to be maintained at the public expense) to be constructed under this Order must be completed to the reasonable satisfaction of the highway authority and, unless otherwise agreed by the highway authority, must be maintained by and at the expense of the undertaker for a period of 12 months from their completion and from the expiry of that period and following an inspection by the highway authority and it being reasonably satisfied with the standard of the highway works (including for the avoidance of doubt any remedial works carried out by the undertaker) by and at the expense of the highway authority.

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

(3) For the purposes of a defence under paragraph (2), a court must in particular have regard to the following matters—

- (a) the character of the street including the traffic which was reasonably to be expected to use it;
- (b) the standard of maintenance appropriate for a street of that character and used by such traffic;
- (c) the state of repair in which a reasonable person would have expected to find the street;
- (d) whether the undertaker knew, or could reasonably have been expected to know, that the condition of the part of the street to which the action relates was likely to cause danger to users of the street; and
- (e) where the undertaker could not reasonably have been expected to repair that part of the street before the cause of action arose, what warning notices of its condition had been displayed,

but for the purposes of such a defence it is not relevant that the undertaker had arranged for a competent person to carry out or supervise the maintenance of that part of the street to which the action relates unless it is also proved that the undertaker had given that person proper instructions with regard to the maintenance of the street and that those instructions had been carried out.

(4) Nothing in this article—

- (a) prejudices the operation of section 87 of the 1991 Act (prospectively maintainable highways) and the undertaker is not by reason of any duty under this article to maintain a street to be taken to be a street authority in relation to that street for the purposes of Part 3 of that Act; or
- (b) has effect in relation to street works with regard to which Part 3 of the 1991 Act apply.

### **Access to works**

**14.**—(1) The undertaker may, for the purposes of the authorised development with the approval of the relevant planning authority after consultation with the highway authority, form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

(2) If a highway authority fails to notify the undertaker of its decision within 28 days of receiving an application under paragraph (1) or refuses approval without giving any grounds for its refusal that highway authority is deemed to have granted approval.

### **Agreements with street authorities**

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

- (a) the construction of any new street including any structure carrying the street or bridge over or under any part of the authorised development;
- (b) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;
- (c) the maintenance of the structure of any bridge or tunnel carrying a street;
- (d) any stopping up, prohibition, restriction, alteration or diversion of a street;
- (e) the undertaking in the street of any of the works referred to in article 13(1) (construction and maintenance of new or altered means of access); or
- (f) the adoption by a street authority which is the highway authority of works—
  - (i) undertaken on a street which is existing publicly maintainable highway; or
  - (ii) which the undertaker and highway authority agree are to be adopted as publicly maintainable highway.

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

- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question;
- (b) specify a reasonable time for the completion of the works; and
- (c) contain such terms as to payment and otherwise as the parties consider appropriate.

### **Temporary traffic regulation**

**16.—(1)** Subject to the provisions of this article the undertaker, may for the purposes of and during the construction of the authorised development and so far as may be necessary or expedient for the purposes of or in connection with construction of the authorised development, temporarily—

- (a) revoke, amend or suspend in whole or in part any order made, or having effect as if made, under the 1984 Act;
- (b) permit, prohibit or restrict the stopping, waiting, loading or unloading of vehicles on any road;
- (c) suspend or authorise the use as a parking place of any road;
- (d) make provision as to the speed or direction or priority of vehicular traffic on any road; and
- (e) permit or prohibit vehicular access to any road,

either at all times or at times, on days or during such periods as may be specified by the undertaker.

(2) The powers conferred by paragraph (1) may only be exercised after the undertaker has consulted the chief officer of police and such other persons as it considers necessary and appropriate, after the undertaker has taken into consideration any representations made to it by any such person and after the undertaker has obtained the consent of the traffic authority in whose area the road concerned is situated (which must not be unreasonably withheld but may be given subject to reasonable conditions).

(3) The undertaker must not exercise the powers conferred by this article in relation to any road unless it has—

- (a) given not less than 4 weeks' notice in writing of its intention so to do to the chief officer of police and to the traffic authority in whose area the road is situated; and
- (b) advertised its intention in such manner as the traffic authority may, within 7 days of its receipt of notice of the undertaker's intention specify in writing.

(4) Any prohibition, suspension or other provision made by the undertaker under paragraph (1) has effect as if duly made by, as the case may be—

- (a) the traffic authority in whose area the road is situated, as a traffic regulation order under the 1984 Act; or
- (b) the local authority in whose area the road is situated, as an order under section 32 of the 1984 Act,

and the instrument by which it is effected may specify savings and exemptions (in addition to those mentioned in Schedule 9 to the 1984 Act) to which the prohibition, restriction or other provision is subject.

(5) Any prohibition, restriction or other provision made under this article may be suspended, varied or revoked by the undertaker from time to time by subsequent exercise of the powers of paragraph (1).

(6) Expressions used in this article and in the 1984 Act have the same meaning in this article as in that Act.

(7) The powers conferred on the undertaker by this article with respect to any road have effect subject to any agreement entered into by the undertaker with any person with an interest in (or who undertakes activities in relation to) premises served by the road.

## PART 4

### SUPPLEMENTAL POWERS

#### Discharge of water

17.—(1) Subject to paragraph ~~32(2)~~[34\(2\)](#) of Part 3 of Schedule 9 to this Order (for the protection of the Canal & River Trust), the undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

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

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

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

- (a) in accordance with plans approved by the person to whom the sewer or drain belongs but approval must not be unreasonably withheld or delayed; and
- (b) where that person has been given the opportunity to supervise the making of the opening.

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

(6) The undertaker must not, in carrying out or maintaining works pursuant to this article, damage or interfere with the bed or banks of any watercourse forming part of a main river other than in accordance with a consent granted by the Environment Agency.

(7) Nothing in this article overrides the requirement for an environmental permit under regulation 12(1) of the Environmental Permitting (England and Wales) Regulations 2016<sup>(b)</sup>.

(8) If a person who receives an application for consent under paragraph (3) or approval under paragraph (4)(a) fails to notify the undertaker of a decision within 28 days of receiving an application, that person is deemed to have granted consent or given approval as the case may be.

(9) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to the Environment Agency, an internal drainage board, a joint planning board, a local authority, or a sewerage undertaker; and

<sup>(a)</sup> 1991 c. 56. This Section was amended by sections 35 and 43(2) of Schedule 2 to the Competition and Service (Utilities) Act 1992 (c. 43), sections 36 and 99 of the Water Act 2003 (c. 37) and paragraph 16 of Schedule 3 to the Flood and Water Management Act 2010 (c. 29).

<sup>(b)</sup> S.I. 2016/1154.

- (b) other expressions, excluding watercourse, used both in this article and in the Environmental Permitting (England and Wales) Regulations 2016 have the same meaning as in those Regulations.

#### **Authority to survey and investigate the land**

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

- (a) survey or investigate the land;
- (b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.

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

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

- (a) must, if so required on entering the land, produce written evidence of their authority to do so; and
- (b) may take with them such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

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

- (a) in land located within the highway boundary without the consent of the highway authority; or
- (b) in a private street without the consent of the street authority.

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

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

#### **Temporary interference with canal and River Trent and public rights of navigation**

**19.**—(1) The undertaker may in connection with the construction of the authorised development (and subject to Part 3 of Schedule 9 (for the protection of the Canal & River Trust))—

- (a) temporarily interfere with the waterway, by constructing or maintaining temporary works at any point within the Order limits as it considers necessary or expedient;
- (b) temporarily moor or anchor barges or other vessels or craft in the River Trent or the canal;
- (c) temporarily close any part of the canal within the Order limits to navigation; and
- (d) load or unload into and from such barges, other vessels or craft equipment, machinery, soil and any other materials within the Order limits in connection with the construction of the authorised development.

(2) The power conferred by paragraph (1)(c) must be exercised in a way which secures—

- (a) that no more of the canal is closed to navigation at any time than is necessary in the circumstances; and

- (b) that if complete closure of a part of the canal to navigation becomes necessary, all reasonable steps are taken to secure that the minimum obstruction, delay or interference is caused to vessels or craft which may be using or intending to use it.

(3) Any person who, as a result of the exercise of powers conferred by this article, suffers loss by reason of the interference with any private right of navigation is entitled to compensation to be paid by the undertaker to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

### **Use of private roads**

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

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

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

### **Maintenance of drainage works**

**21.**—(1) Nothing in this Order, or the construction, operation or maintenance of the authorised development under it, affects any responsibility for the maintenance of any works connected with the drainage of land, whether that responsibility is imposed or allocated by or under any enactment, or otherwise, unless otherwise agreed in writing between the undertaker and the person responsible.

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

## **PART 5**

### **POWERS OF ACQUISITION**

#### **Compulsory acquisition of land**

**22.**—(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised development or to facilitate it, or is incidental to it, and may use any land so acquired for the purposes authorised by this Order or for any other purposes in connection with or ancillary to the authorised development.

(2) This article is subject to article 25 (compulsory acquisition of rights and restrictive covenants), article 28 (acquisition of subsoil or airspace only), article 31 (temporary use of land for carrying out the authorised development), article 32 (temporary use of land for maintaining the authorised development) and article 36 (Crown rights).

#### **Power to override easements and other rights**

**23.**—(1) The carrying out or use of the authorised development and the doing of anything else authorised by this Order is authorised for the purpose specified in section 158(2) of the 2008 Act (nuisance: statutory authority), notwithstanding that it involves—

- (a) an interference with an interest or right to which this article applies; or
- (b) a breach of a restriction as to use of land arising by virtue of contract.

(2) The undertaker must pay compensation to any person whose land is injuriously affected by—

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(a) 1991 c. 59. The definition of “drainage” (in section 72(1) of the Land Drainage Act 1991 (c. 59)) was substituted by section 100(2) of the Environment Act 1995 (c. 25).

- (a) an interference with an interest or right to which this article applies; or
- (b) a breach of a restriction as to use of land arising by virtue of contract,

caused by carrying out or use of the authorised development and the operation of section 158 of the 2008 Act.

(3) The interests and rights to which this article applies are any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support and any restrictions as to the use of land arising by virtue of a contract.

(4) Section 10(2) of the 1965 Act applies to paragraph (2) by virtue of section 152(5) of the 2008 Act (compensation in case where no right to claim in nuisance).

(5) Any rule or principle applied to the construction of section 10 of the 1965 Act must be applied to the construction of paragraph (2) (with any necessary modifications).

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

**24.**—(1) After the end of the period of seven years beginning on the day on which this Order is made—

- (a) no notice to treat is to be served under Part 1 (compulsory purchase under the Acquisition of Land Act 1946) of the 1965 Act; and
- (b) no declaration is to be executed under section 4 (execution of declaration) of the 1981 Act as applied by article 27 (application of the 1981 Act and Part 1 of the 1961 Act).

(2) The authority conferred by article 31 (temporary use of land for carrying out the authorised development) ceases at the end of the period referred to in paragraph (1), except that nothing in this paragraph is to prevent the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

#### **Compulsory acquisition of rights and restrictive covenants**

**25.**—(1) Subject to the provisions of this article the undertaker may acquire compulsorily such rights over the Order land or impose restrictive covenants affecting the land for the benefit of a statutory undertaker or any other person as may be required for any purpose for which that land may be acquired under article 22 (compulsory acquisition of land) by creating new rights as well as by acquiring rights already in existence.

(2) In the case of the Order land specified in column (1) of the table in Schedule 5 (new rights and restrictive covenants) the undertaker's powers under paragraph (1) are limited to acquiring compulsorily the rights or the imposition of restrictive covenants over land as may be required for the purpose specified in column (2) of that Schedule.

(3) In the case of Order land required for Work No. 4A or 4B, the undertaker's powers under paragraph (1) are respectively limited to either plots falling within Work No. 4A or plots falling within Work No. 4B and following approval by the relevant planning authority of the details for Work No. 4 pursuant to requirement 5(4) the undertaker shall—

- (a) if Work No. 4A is to be developed, serve written notice on those plots (being plots falling within Work No. 4B) confirming that the undertaker no longer intends to implement any powers of compulsory acquisition in relation to such plots; or
- (b) if Work No. 4B is to be developed, serve written notice on those plots (being plots falling within Work No. 4A) confirming that the undertaker no longer intends to implement any powers of compulsory acquisition in relation to such plots.

(4) Subject to section 8 of the 1965 Act (other provisions as to divided land), Schedule 2A to the 1965 Act (counter-notice requiring purchase of land not in notice to treat) as substituted by paragraph 5(8) of Schedule 6 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of restrictive covenants), and section 12 of the 1981 Act (divided land), where the undertaker creates or acquires a right over land under paragraph (1) or (2), the undertaker is not required to acquire a greater interest in that land.

(5) Schedule 6 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of restrictive covenants) has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation

to the compulsory acquisition under this article of a right over land by the creation of a new right or imposition of a restrictive covenant.

(6) In any case where the acquisition of new rights or the imposition of a restrictive covenant under paragraph (1) or (2) is required for the purposes of diverting, replacing or protecting the apparatus of a statutory undertaker, the undertaker may, with the consent of the Secretary of State, transfer the power to create and acquire such rights to the statutory undertaker in question.

(7) The exercise by a statutory undertaker of any power in accordance with a transfer under paragraph (6) is subject to the same restrictions, liabilities and obligations as would apply under this Order if that power were exercised by the undertaker.

(8) This article is subject to article 36 (Crown rights).

### **Private rights**

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

- (a) as from the date of acquisition of the land, or of the right, or of the benefit of the restrictive covenant by the undertaker, whether compulsorily or by agreement;
- (b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act (powers of entry);
- (c) on commencement of any activity authorised by the Order which interferes with or breaches those rights; or
- (d) on carrying out any activity authorised by the Order which interferes with or breaches those rights,

whichever is the earliest.

(2) Subject to the provisions of this article, all private rights and restrictions over land subject to the compulsory acquisition of rights or imposition of restrictive covenants under this Order are suspended and unenforceable or, where so notified by the undertaker, extinguished in so far as in either case their continuance would be inconsistent with the exercise of the right or the burden of the restrictive covenant—

- (a) as from the date of acquisition of the right or the imposition of the restrictive covenant by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act (powers of entry) in pursuance of the right or enforcement of the restrictive covenant,

whichever is the earlier.

(3) Subject to the provisions of this article, all private rights and restrictions over land owned by the undertaker within the Order land are extinguished on commencement of any activity authorised by this Order which interferes with or breaches such rights.

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

(5) Any person who suffers loss by the extinguishment or suspension of any private right or restriction under this Order is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(6) This article does not apply in relation to any right or apparatus to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 33 (statutory undertakers) applies.

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

- (a) any notice given by the undertaker before—
  - (i) the completion of the acquisition of the land, the acquisition of rights over the land or the imposition of restrictive covenants over or affecting the land;
  - (ii) the undertaker's appropriation of it;
  - (iii) the undertaker's entry onto it; or

- (iv) the undertaker's taking temporary possession of it;
- that any or all of those paragraphs do not apply to any right specified in the notice; or
- (b) any agreement made at any time between the undertaker and the person in or to whom the right or restriction in question is vested or belongs.
- (8) If any such agreement as is referred to in paragraph (7)(b)—
- (a) is made with a person in or to whom the right is vested or belongs; and
  - (b) is expressed to have effect also for the benefit of those deriving title from or under that person,
- it is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

### **Application of the 1981 Act and Part 1 of the 1961 Act**

- 27.**—(1) The 1981 Act applies as if this Order were a compulsory purchase order.
- (2) The 1981 Act, as applied by paragraph (1), has effect with the following modifications.
- (3) In section 1 (application of act) for subsection (2) substitute—
- (2) This section applies to any Minister, any local or other public authority or any other body or person authorised to acquire land by means of a compulsory purchase order.
- (4) In section 5(2) (earliest date for execution of declaration), omit the words from “, and this subsection” to the end.
- (5) Omit section 5A (time limit for general vesting declaration).
- (6) In section 5B (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 5A” substitute—
- section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent), the seven year period mentioned in article 24 (time limit for exercise of authority to acquire land compulsorily) of the Keadby Next Generation Power Station Order 20[ ].
- (7) In section 6 (notices after execution of declaration) for subsection (1)(b) substitute—
- (b) on every other person who has given information to the acquiring authority with respect to any of that land further to the invitation published and served under section 134 (notice of authorisation of compulsory acquisition) of the Planning Act 2008, .
- (8) In section 7 (constructive notice to treat) in subsection (1)(a), omit “(as modified by section 4 of the Acquisition of Land Act 1981)”.
- (9) In Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration), for paragraph 1(2) substitute—
- (2) But see article 28(3) (acquisition of subsoil or airspace only) of the Keadby Next Generation Power Station Order 20[ ] which excludes the acquisition of subsoil or airspace only from this Schedule. .
- (10) References to the 1965 Act in the 1981 Act are to be construed as references to the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act and as modified by article 29 (modification of Part 1 of the 1965 Act).
- (11) Part 1 of the 1961 Act shall apply where pursuant to this Order there arises a dispute as to compensation which is payable pursuant to this Order notwithstanding that such dispute may not relate to compensation for the acquisition of land authorised by this Order.

### **Acquisition of subsoil or airspace only**

- 28.**—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil or airspace of the land referred to in paragraph (1) of article 22 (compulsory acquisition of land) and paragraph (1) of article 25 (compulsory acquisition of rights and restrictive covenants) as may be required for any purpose

for which that land or rights over land may be created or acquired under those provisions instead of acquiring the whole of the land.

(2) Where the undertaker acquires any part of, or rights in, the subsoil of or airspace over land under paragraph (1), the undertaker is not to be required to acquire an interest in any other part of the land.

(3) The following do not apply in connection with the exercise of the power under paragraph (1) in relation to subsoil or airspace only—

- (a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act;
- (b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and
- (c) section 153(4A) (reference of objection to Upper Tribunal: general) of the 1990 Act.

(4) Paragraphs (2) and (3) do not apply where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

### **Modification of Part 1 of the 1965 Act**

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

(2) In section 4A(1) of the 1965 Act (extension of time limit during challenge)(a) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the applicable period for the purposes of section 4” substitute “section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent), the seven year period mentioned in article 24 (time limit for exercise of authority to acquire land compulsorily) of the Keadby Next Generation Power Station Order 20[ ]”.

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

- (a) in subsection (1)(a) after “land” insert “under that provision”; and
- (b) in subsection (2) after “land” insert “under that provision”.

(4) In section 22(2) (interests omitted from purchase)(c), for “section 4 of this Act” substitute “article 24 (time limit for exercise of authority to acquire land compulsorily) of the Keadby Next Generation Power Station Order 20[ ]”.

### **Rights under or over streets**

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

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

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

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

(4) Subject to paragraph (5), any person who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) is exercised without the undertaker acquiring any part of that person’s interest in the land, and who suffers loss by the exercise of that power, is to be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(a) Inserted by section 202(1) of the Housing and Planning Act 2016 (c. 22).

(b) Inserted by section 183(6) of the Housing and Planning Act 2016 c. 22.

(c) Section 22(2) was modified by section 13 of and paragraphs 4 and 5 of Schedule 3 to the Agriculture (Miscellaneous Provisions) Act 1968 c. 34.

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

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

**31.**—(1) The undertaker may, in connection with the carrying out of the authorised development—

- (a) enter on and take temporary possession of—
  - (i) so much of the land specified in column (1) of the table in Schedule 7 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (2) of that table; and
  - (ii) any other Order land in respect of which no notice of entry has been served under section 11 (powers of entry) of the 1965 Act and no declaration has been made under section 4 (execution of declaration) of the 1981 Act;
- (b) remove any buildings, fences, debris and vegetation from that land;
- (c) construct temporary works (including the provision of means of access) and buildings on that land;
- (d) use the land for the purposes of a construction working site or access to a construction working site in connection with the authorised development;
- (e) construct any works specified in relation to that land in column (2) of the table in Schedule 7 (land of which temporary possession may be taken), or any mitigation works;
- (f) carry out or construct any mitigation works; and
- (g) construct any works on that land as mentioned in Schedule 1 (authorised development) or in accordance with a scheme, plan, programme or other document approved by the relevant planning authority pursuant to article 40 (restoration works) or Schedule 2 (requirements).

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

- (a) any house or garden belonging to a house; or
- (b) any building (other than a house) if it is for the time being occupied.

(3) Not less than 28 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land and explain the purpose for which entry is taken in respect of land specified under paragraph (1)(a)(ii).

(4) The undertaker must not, without the agreement of the owners of the land, remain in possession of any land under this article—

- (a) in the case of land specified in paragraph (1)(a)(i), after the end of the period of one year beginning with the date of commercial use of the part of the authorised development specified in relation to that land in column (3) of Schedule 7 (land of which temporary possession may be taken);
- (b) in the case of any land referred to in paragraph (1)(a)(ii), after the end of the period of one year beginning with the date of commercial use for which temporary possession of the land was taken unless the undertaker has, by the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act in relation to that land.

(5) Unless the undertaker has served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act in relation to the land or has otherwise acquired the land subject to temporary possession, the undertaker must, before giving up possession of land of which temporary possession has been taken under this article, remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not required to—

- (a) replace a building/structure or debris removed under this article;
- (b) remove any drainage works installed by the undertaker under this article;
- (c) restore the land on which any permanent works (including ground strengthening works) have been constructed under paragraph 1(g); or

- (d) remove any measures installed over or around statutory undertakers apparatus to protect that apparatus from the authorised development.

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

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

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

(9) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i) except that nothing in this article precludes the undertaker from—

- (a) creating and acquiring new rights over any part of the Order land identified in Schedule 5 (new rights and restrictive covenants) where permitted under article 25 (compulsory acquisition of rights and restrictive covenants); or
- (b) acquiring any right in the subsoil of or airspace over any part of the Order land under article 28 (acquisition of subsoil or airspace only) or article 30 (rights under or over streets).

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

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

(12) Nothing in this article prevents the taking of temporary possession more than once in relation to any land specified in Schedule 7 (land of which temporary possession may be taken).

### **Temporary use of land for maintaining the authorised development**

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

- (a) enter on and take temporary possession of any Order land if such possession is reasonably required for the purpose of maintaining the authorised development;
- (b) enter on any land within the Order land for the purpose of gaining such access as is reasonably required for the purpose of maintaining the authorised development; and
- (c) construct such temporary works (including the provision of means of access and works area including laydown provision) and buildings on the land as may be reasonably necessary for that purpose.

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

- (a) any house or garden belonging to a house; or
- (b) any building (other than a house) if it is for the time being occupied.

(3) Not less than 28 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land (save in the case of emergency in which case no notice is required to be given).

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

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(a) Section 13 was amended by Tribunals Courts and Enforcement Act 200 (c. 15).

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

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

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

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

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

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

(11) In this article "the maintenance period" means the period of 5 years beginning with the date which that part of the authorised development is first operational for commercial use except in respect of any part of the authorised development which is comprised of landscaping where "the maintenance period" means such period as set out in the landscape and biodiversity management and enhancement plan which is approved by the relevant planning authority pursuant to requirement 6 of Schedule 2 (requirements) beginning with the date on which that part of the landscaping is completed.

### **Statutory undertakers**

**33.** Subject to Schedule 9 (protective provisions), the undertaker may—

- (a) acquire compulsorily, or acquire new rights or impose restrictive covenants over, the land belonging to statutory undertakers within the Order land; and
- (b) extinguish or suspend the rights of or restrictions for the benefit of, and remove or reposition the apparatus belonging to, statutory undertakers on, under or within the Order land.

### **Apparatus and rights of statutory undertakers in streets**

**34.** Where a street is altered or diverted or its use is temporarily prohibited or restricted under article 10 (street works), article 11 (power to alter layout, etc., of streets), article 13 (construction and maintenance of new or altered means of access) or article 14 (access to works) any statutory undertaker whose apparatus is under, in, on, along or across the street is to have the same powers and rights in respect of that apparatus, subject to Schedule 9 (protective provisions), as if this Order had not been made.

### **Recovery of costs of new connections**

**35.—(1)** Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 33 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 33 (statutory undertakers), any person who is—

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

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

(3) This article does not have effect in relation to apparatus to which article 34 (apparatus and rights of statutory undertakers in streets) or Part 3 of the 1991 Act applies.

(4) In this article—

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

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

## PART 6 OPERATIONS

### **Crown rights**

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

- (a) belonging to His Majesty in right of the Crown and forming part of The Crown Estate without the consent in writing of the Crown Estate Commissioners;
- (b) belonging to His Majesty in right of the Crown and not forming part of The Crown Estate without the consent in writing of the government department having the management of that land; or
- (c) belonging to a government department or held in trust for His Majesty for the purposes of a government department without the consent in writing of that government department.

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

(3) A consent under paragraph (1) or paragraph (2) may be given unconditionally or subject to terms and conditions, and is deemed to have been given in writing where it is sent electronically.

### **Felling or lopping of trees and removal of hedgerows**

**37.**—(1) The undertaker may fell or lop any tree or shrub adjoining or within the Order limits or cut back its roots, if it reasonably believes it to be necessary to do so, to prevent the tree or shrub from obstructing or interfering with the construction or operation of the authorised development or its decommissioning or any apparatus used in connection with the authorised development.

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

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

(4) The undertaker may, for the purposes of the authorised development subject to paragraph (2) remove any hedgerows within the Order limits that may be required for the purposes of carrying out the authorised development.

(5) The undertaker may not pursuant to paragraph (1) or (4) fell or lop a tree or remove hedgerows within the extent of the publicly maintainable highway without the prior consent of the highway authority such consent not to be unreasonably withheld or delayed.

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(a) 2003 c. 21.

(6) In this article “hedgerow” has the same meaning as in the Hedgerows Regulations 1997<sup>(a)</sup>.

(7) If a highway authority fails to notify the undertaker of its decision within 28 days of receiving an application under paragraph (5) or refuses approval without giving any grounds for its refusal that highway authority is deemed to have granted approval.

### **Protective works to buildings**

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

(2) Protective works may be carried out—

- (a) at any time before or during the carrying out of the construction of the authorised development in the vicinity of the building of any part of the authorised development; or
- (b) after the completion of that part of the authorised development in the vicinity of the building at any time up to the end of the period of 5 years beginning with the day on which that part of the authorised development is first brought into commercial use.

(3) For the purpose of determining how the functions under this article are to be exercised the undertaker may enter and survey any building falling within paragraph (1) and any land within its curtilage and place on, leave on, and remove from the land and building any apparatus and equipment for use in connection with the survey.

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

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

(5) Before exercising—

- (a) a right under paragraph (1) to carry out protective works to a building;
- (b) a right under paragraph (3) to enter a building and land within its curtilage;
- (c) a right under paragraph (4)(a) to enter a building and land within its curtilage; or
- (d) a right under paragraph (4)(b) to enter land,

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

(6) Where a notice is served under paragraph (5)(a), (c) or (d) the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question of whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 48 (arbitration).

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

(8) Where—

- (a) protective works are carried out under this article to a building; and
- (b) within the period of 5 years beginning with the date of commissioning of the part of the authorised development carried out in the vicinity of the building it appears that the protective works are inadequate to protect the building against damage caused by the carrying out or use of that part of the authorised development,

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

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<sup>(a)</sup> S.I. 1997/1160.

(9) Nothing in this article relieves the undertaker from any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance).

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

(11) In this article “protective works” in relation to a building means—

- (a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the carrying out, maintenance or use of the authorised development;
- (b) any works the purpose of which is to remedy any damage which has been caused to the building by the carrying out, maintenance or use of the authorised development; and
- (c) any works the purpose of which is to secure the safe operation of the authorised development or to prevent or minimise the risk to such operation being disrupted.

## PART 7

### MISCELLANEOUS AND GENERAL

#### Protective provisions

39. Schedule 9 (protective provisions) has effect.

#### ~~Restoration works~~

#### Interaction with the Keadby CCS Order

40.—(1) If the authorised development has not been commenced within the period specified in requirement 2 the undertaker will within 6 months from the expiry of such period—

- (a) submit to the relevant planning authority for its written approval a scheme for the removal of the haul road, including its road bridges and associated infrastructure and restoration of the land, including the incorporation of biodiversity enhancements and a timetable for implementation; and
- (b) submit to the relevant planning authority for its written approval a scheme for the restoration of the Pilsfrey laydown area.

(2) If neither—

- (a) the authorised development has been commenced within the period specified in requirement 2; nor
- (b) the authorised development permitted by the Keadby CCS Order has been commenced within the period specified in requirement 2 of that Order,

the undertaker will within 6 months from the expiry of such period submit to the relevant planning authority for its written approval a scheme for the removal of the temporary buildings and structures the retention of which was permitted by the scheme approved by North Lincolnshire Council on 17 May 2023 (planning ref: PA/2023/467).

(3) As from the date of this Order article 36 (restoration works) of the Keadby CCS Order is amended as follows—

- (a) after “Requirement 2” insert “and the undertaker has not given written notice to the relevant planning authority that works pursuant to the Keadby Next Generation Power Station Order are to be commenced”.

(4) The schemes referred to in this article shall be implemented by the undertaker as approved and thereafter retained unless agreed otherwise with the relevant authority.

(5) As from the date of this Order—

- (a) article 20 (time limit for exercise of authority to acquire land compulsorily) of the Keadby CCS Order is amended as follows—

in paragraph (1) for “five years” substitute “seven years” and for “this Order” substitute “the Keadby Next Generation Power Station Order”;

(b) paragraph 2 (commencement of the authorised development) of Schedule 2 (requirements) to the Keadby CCS Order is amended as follows—

in sub-paragraph (1) for “this Order” substitute “the Keadby Next Generation Power Station Order”;

(c) the following definition is added to article 2 (interpretation) of the Keadby CCS Order—

““Keadby Next Generation Power Station Order” means the development consent order granted pursuant to the development consent order application submitted by Keadby Next Generation Limited and accepted for examination on 22 September 2025 with reference EN0110001;”.

### **Application of landlord and tenant law**

41.—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised development or the right to operate the same; and
- (b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised development, or any part of it,

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

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

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

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

### **Operational land for purposes of the 1990 Act**

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

### **Defence to proceedings in respect of statutory nuisance**

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

- (a) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the 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

(a) 1990 c. 43. This section was amended by section 103 of the Clean Neighbourhoods and Environment Act 2005 (c. 16).

(b) 1990 c. 43. This section was amended by section 102 of the Clean Neighbourhoods and Environment Act 2005 (c. 16).

given under section 61 (prior consent for work on construction sites) of the Control of Pollution Act 1974(a); or

- (b) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (c) is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction sites) of the Control of Pollution Act 1974 does not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

### **Planning legislation**

**44.**—(1) Any planning permission which has been initiated prior to the commencement of the authorised development pursuant to this Order may continue to be lawfully implemented thereafter notwithstanding any physical incompatibility with the authorised development or inconsistency with any provision of this Order.

(2) As from the date on which the authorised development is commenced, any conditions of a planning permission granted pursuant to Part 3 (control over development) of the 1990 Act (whether express or otherwise) which relate to land within the Order limits or land adjacent to the Order limits cease to have effect to the extent they are inconsistent with the authorised development or with anything done or approved under the requirements in Schedule 2 (requirements).

(3) As from the date of this Order where planning permission (whether express or otherwise) is granted (whether prior to the date of this Order or after) pursuant to Part 3 of the 1990 Act in respect of land within the Order limits for development not forming part of the authorised development, the carrying out of development pursuant to such planning permission is not to operate to prevent the undertaker from carrying out further works for the development of the authorised development pursuant to the terms of this Order.

(4) Nothing in this Order restricts the undertaker from seeking or implementing, or the relevant planning authority from granting, planning permission for development within the Order limits.

### **Certification of plans etc.**

**45.**—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of all documents and plans listed in the table in Schedule 11 (documents and plans to be certified) for certification that they are true copies of the documents referred to in this Order.

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

### **Service of notices**

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

- (a) by post;
- (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or
- (c) with the consent of the recipient and subject to paragraphs (5) to (8), by electronic transmission.

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

(a) 1974 c. 40. Words in this section were repealed by section 133(2) of, and Schedule 7 to, the Building Act 1984 (c. 55) and by section 120(3) of, and paragraph 1 of Schedule 24 to, the Environment Act 1995 (c. 25) and inserted by section 162(1) of, and paragraph 15(3) of Schedule 15 to, that Act.

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

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
- (b) in any other case, the last known address of that person at that time of service.

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

- (a) addressing it to that person by the description of “owner”, or as the case may be “occupier” of the land (describing it); and
- (b) either leaving it in the hands of the person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is to be taken to be fulfilled only where—

- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
- (b) the notice or document is capable of being accessed by the recipient;
- (c) the notice or document is legible in all material respects; and
- (d) the notice or document is in a form sufficiently permanent to be used for subsequent reference.

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

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

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

- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
- (b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.

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

(10) In this article “legible in all material respects” means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served, given or supplied by means of a notice or document in printed form.

#### **Procedure in relation to certain approvals etc.**

47.—(1) Where an application is made to or request is made of any authority or body named in any of the provisions of this Order for any consent, agreement or approval required or contemplated by any of the provisions of this Order, such consent, agreement or approval to be validly given, must be given in writing and must not be unreasonably withheld or delayed.

(2) Schedule 8 (procedure for discharge of requirements) has effect in relation to all consents, agreements or approvals granted, refused or withheld in relation to any provision of this Order.

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(a) 1978 c. 30.

## Arbitration

48.—(1) Any difference under any provision of this Order, unless otherwise provided for, is to be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the Secretary of State or a person appointed by the Secretary of State.

(2) Any matter for which the consent or approval of the Secretary of State is required under the provisions of this Order shall not be subject to arbitration pursuant to this article 48 (arbitration).

## Guarantees in respect of payment of compensation

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

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

(2) The provisions are—

- (a) article 22 (compulsory acquisition of land);
- (b) article 25 (compulsory acquisition of rights and restrictive covenants);
- (c) article 26 (private rights);
- (d) article 30 (rights under or over streets);
- (e) article 31 (temporary use of land for carrying out the authorised development);
- (f) article 32 (temporary use of land for maintaining the authorised development); and
- (g) article 33 (statutory undertakers).

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

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

## No double recovery

50. Compensation will not be payable in respect of the same matter both under this Order and under any other enactment, any contract or any rule of law, or under two or more articles of this Order.

Signed by authority of the Secretary of State for Energy Security and Net Zero

Address  
Date

*Name*  
Deputy Director Energy Infrastructure Planning  
Department for Energy Security and Net Zero

## SCHEDULE 1

Article 3

### AUTHORISED DEVELOPMENT

In the Borough of North Lincolnshire, a nationally significant infrastructure project as defined in sections 14(1)(a) and 15 of the 2008 Act and associated development, comprising—

**Work No. 1** – A high efficiency electricity generating station with a net output capacity of up to 910 megawatts (MWe) designed to run on hydrogen, natural gas or a blend of hydrogen and natural gas comprising—

- (a) **Work No. 1A** – A combined cycle gas turbine plant, comprising—
  - (i) a gas turbine with air intake filters;
  - (ii) a steam turbine;
  - (iii) gas turbine hall and steam turbine hall and associated buildings (including generator hall);
  - (iv) heat recovery steam generator and associated buildings;
  - (v) emissions stack;
  - (vi) transformers;
  - (vii) feed water pump house buildings;
  - (viii) nitrogen oxide emissions control equipment and chemical storage;
  - (ix) chemical dosing and sampling plants and buildings;
  - (x) fuel conditioning compound;
  - (xi) fuel blending equipment;
  - (xii) continuous emissions monitoring system; and
  - (xiii) gas vents.
- (b) **Work No. 1B** – Water treatment and cooling infrastructure, comprising—
  - (i) hybrid cooling towers;
  - (ii) cooling water connection to Work No. 1A;
  - (iii) cooling water pumps, plant and buildings;
  - (iv) cooling water dosing and sampling plant and buildings; and
  - (v) water treatment plant.
- (c) **Work No. 1C** – Generating station supporting uses, comprising—
  - (i) administration and control buildings;
  - (ii) storage buildings;
  - (iii) vehicle parking;
  - (iv) gatehouse;
  - (v) operation and maintenance facilities; and
  - (vi) chemical storage facilities.
- (d) In connection with and in addition to Work Nos. 1A, 1B, and 1C—
  - (i) hydrogen supply connection works and supply pipework;
  - (ii) natural gas supply connection works and supply pipework;
  - (iii) administration and control buildings;
  - (iv) auxiliary plant, buildings, enclosures and structures;
  - (v) auxiliary boiler and associated stack;
  - (vi) emergency generators and banded fuel storage tank(s);
  - (vii) chemical storage facilities;

- (viii) demineralised water treatment plant, including storage tank(s);
- (ix) firefighting equipment and building;
- (x) fire water storage tank(s);
- (xi) fire water retention basin;
- (xii) gatehouses;
- (xiii) mechanical, electrical, heating and process gas, telecommunications and water networks, pipework, pipe runs, cables, racks, infrastructure (including pumps and skids), instrumentation and utilities including connections between Work Nos, 2, 3, 4, 5, 6, 7 and 8, and parts of Work Nos. 1A, 1B and 1C;
- (xiv) permanent laydown area(s) for operation and maintenance activities;
- (xv) effluent treatment facilities;
- (xvi) workshops; and
- (xvii) storage buildings and facilities;

and associated development within the meaning of section 115(2) of the 2008 Act in connection with the nationally significant infrastructure project referred to in Work No. 1, comprising—

**Work No. 2** – A hydrogen supply pipeline connection for the transport of hydrogen to Work No. 1, comprising a high pressure steel pipeline, including cathodic protection posts and marker posts and above ground installation, comprising—

- (a) **Work No. 2A** – A compound for the hydrogen supplier’s apparatus comprising—
  - (i) a connection from the hydrogen supply network;
  - (ii) above and below ground valves, flanges and pipework;
  - (iii) hydrogen gas equipment and buildings
  - (iv) instrumentation, telemetry and electrical kiosks;
  - (v) pipeline inspection gauge launchers, receivers and traps;
  - (vi) interface equipment between Work Nos. 2A & 2B;
  - (vii) gas metering, conditioning and pressure regulation equipment; and
  - (viii) gas vents.
- (b) **Work No. 2B** – A compound for the undertaker’s apparatus, comprising—
  - (i) above and below ground valves, flanges and pipework;
  - (ii) hydrogen gas equipment and buildings;
  - (iii) interface equipment between Work Nos. 2A and 2B;
  - (iv) pipeline inspection gauge launchers, receivers and traps;
  - (v) instrumentation, telemetry and electrical kiosks;
  - (vi) gas metering, conditioning and pressure regulation equipment; and
  - (vii) gas vents.

**Work No. 3** – A natural gas supply pipeline connection for the transport of natural gas to Work No. 1, comprising a high pressure steel pipeline, including cathodic protection posts and marker posts and above ground installation, comprising—

- (a) **Work No. 3A** – A compound for the natural gas supplier’s apparatus, comprising—
  - (i) connection from the natural gas transport and storage network;
  - (ii) above and below ground valves, flanges and pipework;
  - (iii) natural gas equipment and buildings;
  - (iv) instrumentation, telemetry and electrical kiosks;
  - (v) pipeline inspection gauge launchers, receivers and traps;
  - (vi) interface equipment between Work Nos. 3A and 3B;
  - (vii) gas metering, conditioning and pressure regulation equipment; and

- (viii) gas vents.
- (b) **Work No. 3B** – A compound for the undertaker’s apparatus, comprising—
  - (i) above and below ground valves, flanges and pipework;
  - (ii) natural gas equipment and buildings;
  - (iii) interface equipment between Work Nos. 3A and 3B;
  - (iv) pipeline inspection gauge launchers, receivers and traps;
  - (v) instrumentation, telemetry and electrical kiosks;
  - (vi) gas metering, conditioning and pressure regulation equipment; and
  - (vii) gas vents.

**Work No. 4** – Electrical connection works for the export and import of electricity to and from the national electricity transmission networks, comprising—

- (a) **Work No. 4A** – up to 400 kilovolt overground and/or underground electrical cables and control systems cables running from Work No. 1A to the south-east of the existing NGET substation, including works within the substation; or
- (b) **Work No. 4B** – alternative up to 400 kilovolt overground and/or underground electrical cables and control systems cables running from Work No. 1A to the north-west of the existing NGET substation, including works within the substation.

**Work No. 5** – Water supply connection works to provide cooling and make-up water and other water to Work No. 1, comprising—

- (i) water abstraction and pumping station including as necessary, fish returns systems, a temporary cofferdam structure, plant, buildings, enclosures, intake structures screens and other structures, temporary moorings and temporary repositioning of existing moorings;
- (ii) underground and/or overground water pipeline connection works;
- (iii) underground and/or overground electrical pipeline connection works;
- (iv) access works, vehicle parking, security, screening, lighting, and signage;
- (v) utility service crossings works; and
- (vi) instrumentation, telemetry and electrical kiosks.

**Work No. 6** – Works to connect Work No. 1B and the effluent treatment facilities to be constructed in Work No. 1 to the existing cooling water discharge pipeline(s) which connects to existing outfall structures within the River Trent for the discharge of used cooling water, surface water and treated effluent including, as necessary new, upgraded or replacement pipelines, plant, enclosures, utility service crossings works and other structures and cables.

**Work No. 7** – Public water supply pipeline to supply potable water to Work No. 1 from the supply point east of Chapel Lane including works to the existing public water supply pipelines, replacement and new pipelines, plant, enclosures and structures, utility service crossings works and other structures and cables.

**Work No. 8** – New permanent accesses to Work Nos. 1 to 7 comprising—

- (a) **Work No. 8A** – access route comprising the maintenance, improvement, surfacing works and signage of an existing private track running between A18 and Work No. 1 together with the westernmost existing private bridge crossing (Mabey Bridge);
- (b) **Work No. 8B** – installation of gatehouse building and laybys, road improvements, barriers, enclosures, drainage and lighting;
- (c) **Work No. 8C** – local utilities connection works to gatehouse building, signage and lighting in the vicinity of the junction with the A18; and
- (d) **Work No. 8D** – emergency access route comprising the installation of a bridge crossing of an existing drainage channel, the maintenance, widening and improvement of an existing private track running between Work No. 1 and Chapel Lane, surfacing and strengthening works, drainage, enclosures, signage and lighting.

**Work No. 9** – Temporary construction and laydown areas and temporary and permanent accesses, comprising—

- (a) **Work No. 9A** – temporary construction and laydown areas comprising hard standing, earthworks and levelling, laydown and open storage areas, contractor compounds and construction staff welfare facilities, surface water drainage and gatehouse and weighbridge and the placement of mobile cranes;
- (b) **Work No. 9B** – construction access to temporary construction and laydown areas including the maintenance and improvement of the existing private tracks connecting the existing junctions with the A18 with Work No. 9A, including the replacement, widening, improvement and maintenance of the westernmost existing private bridge crossing (Mabey Bridge), surfacing, drainage and strengthening works, barriers and enclosures;
- (c) **Work No. 9C** – temporary construction and laydown area in association with the replacement of the westernmost existing private bridge crossing of the Hatfield Waste Drain, comprising laydown and open storage areas, hard standing, and the placement of mobile cranes;
- (d) **Work No. 9D** – temporary haul route comprising the maintenance and improvement of the existing temporary paved haul route and ditch crossings and their subsequent removal; and
- (e) **Work No. 9E** – wharf and crane offloading facilities for waterborne transport on land east of the Keadby Power Station site and Stainforth and Keadby Canal and at the River Trent comprising—
  - (i) the inspection and repair of the existing wharf, and temporary placement of mobile cranes including the temporary oversailing of crane arms above the River Trent;
  - (ii) use of river bed of the River Trent for the mooring of vessels and craft at the waterborne transport offloading area at lower tide; and
  - (iii) access to and use of wharf to south of Stainforth and Keadby Canal at Keadby Lock for the mooring of vessels and craft at the waterborne transport offloading area.

**Work No. 10** – Soft landscaping including planting and biodiversity enhancement measures.

**Work No. 11** – An area reserved for carbon capture readiness infrastructure.

### **Ancillary Works**

In connection with and in addition to Work Nos. 1 to 11, further associated development including—

- (a) surface water drainage systems, storm water attenuation systems including storage basins, oil water separators, including channelling and culverting and works to existing drainage systems;
- (b) electrical, gas, hydrogen, potable water supply, foul water drainage and telecommunications infrastructure connections and works, and works to alter the position of such services and utilities connections;
- (c) hard standings and hard landscaping;
- (d) soft landscaping, including bunds, embankments and planting;
- (e) biodiversity enhancement measures;
- (f) fencing, gates, boundary treatment and means of enclosure;
- (g) external lighting, including lighting columns;
- (h) closed circuit television cameras and columns and other security measures;
- (i) fire protection, prevention and detection facilities, apparatus and structures;
- (j) site establishment and preparation works, including site clearance (including vegetation removal, demolition of existing buildings and structures); earthworks (including soil stripping and storage and site levelling and formation of embankments) and excavations; the creation of temporary construction access points; the alteration of the position of services and utilities; and works for the protection of buildings and land;

- (k) temporary construction laydown areas and contractor facilities, including materials and plant storage and laydown areas; generators; concrete batching facilities; vehicle and cycle parking facilities; pedestrian and cycle routes and facilities; offices and staff welfare facilities; security fencing and gates; external lighting; roadways and haul routes; wheel wash facilities; and signage;
- (l) vehicle parking and cycle storage facilities;
- (m) accesses, roads and pedestrian and cycle routes;
- (n) tunnelling, boring and drilling works;
- (o) demolition;
- (p) temporary works associated with the maintenance of the authorised development including laydown for outages, contractor facilities, offices and staff welfare facilities; security fencing and gates; external lighting; wheel wash facilities; and signage; and
- (q) to the extent that it does not form part of such works, further associated development comprising such other works (i) as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised development and (ii) which fall within the scope of the works assessed in the environmental statement.

## SCHEDULE 2 REQUIREMENTS

Article 2

### Interpretation

#### 1. —(1) In this Schedule—

“bank holiday” means Easter Monday, the first and last Monday in May and Christmas Day, 26 December if it is not a Sunday and 27 December or 28 December in a year in which 25 or 26 December is a Sunday;

“community liaison group” means the existing local forum at which details and updates relating to SSE plc’s development and operations in the Keadby area are shared and where communities have the opportunity to ask questions and provide feedback to SSE plc (or any subsequent equivalent group which is created);

“environmental permit” means a permit granted pursuant to the Environmental Permitting (England and Wales) Regulations 2016<sup>(a)</sup> (or any such licence, authorisation or consent as may replace it);

“functions” includes powers and duties;

“lead local flood authority” means the body designated as such, for the area in which the authorised development is located, pursuant to section 6(7) of the Flood and Water Management Act 2010<sup>(b)</sup>;

“means of enclosure” means fencing, walls or other means of boundary treatment and enclosure;

“part” of the authorised development means any part, element or component of Work Nos. 1-11;

“relevant internal drainage board” means the Isle of Axholme and North Nottinghamshire Water Level Management Board of Wellington House, Manby Park, Manby, Louth, Lincolnshire LN11 8UU;

“shut-down period” means a period after construction works have finished for the day during which activities including changing out of work wear, the departure of workers, post-works briefings and closing and securing the site take place;

“start-up period” means a period prior to physical construction works starting for the day during which activities including the opening up of the site, the arrival of workers, changing in to work wear and pre-works briefings take place;

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<sup>(a)</sup> S. I. 2016/1154.

<sup>(b)</sup> 2010 c.29

“substantially in accordance with” means that the plan, document or detail to be submitted should in the main accord with the outline plan, document or detail and where it varies from the outline plan, document or detail should not give rise to any materially new or materially different environmental effects than those assessed in the environmental statement.

(2) In this Schedule, where a requirement requires consultation with specified persons, the specified persons are only required to be consulted to the extent the scheme, plan, programme or other document in question relates to their functions or to matters related to their functions.

### **Commencement of the authorised development**

2. —(1) The authorised development must not be commenced after the expiration of 7 years from the date this Order comes into force.

(2) The authorised development must not commence unless the undertaker has given the relevant planning authority 14 days’ notice of its intention to commence the authorised development.

### **Notice of commencement and completion of commissioning**

3. —(1) Notice of the intended start of commissioning of Work No. 1 must be given to the relevant planning authority and Ministry of Defence where practicable prior to such start and in any event within 14 days from the date that commissioning is started.

(2) Notice of the intended completion of commissioning of the authorised development must be given to the relevant planning authority and Ministry of Defence where practicable prior to such completion and in any event within 7 days from the date that commissioning is completed.

### **Notice of commencement of commercial use**

4. Notice of the intended start of commercial use of the authorised development must be given to the relevant planning authority where practicable prior to such start and in any event within 14 days from the date that commercial use is started.

### **Detailed design**

5. —(1) In relation to any part of the authorised development comprised in Work No. 1 (electricity generating station) no part may commence, save for the permitted preliminary works, until details of the following for that part, as relevant, have been submitted to and approved by the relevant planning authority—

- (a) the siting, layout, scale and external appearance, including the colour, materials and surface finishes of all new permanent buildings and structures;
- (b) finished floor levels;
- (c) the siting and height of any stack AOD which must be sited and at a level at which ~~the environmental effects will be no worse~~ there will be no materially new or materially different environmental effects than those identified in chapter 8 of the environmental statement;
- (d) hard standings; and
- (e) the internal vehicular access and circulation roads, loading and unloading areas, vehicle parking and turning facilities, cycle parking and routes, and pedestrian facilities and routes.

(2) No part of the authorised development comprised in Work No. 2 (a hydrogen supply pipeline connection for the transport of hydrogen to Work No. 1) may commence, save for the permitted preliminary works, until details of the following for that part, as relevant, have been submitted to and approved by the relevant planning authority—

- (a) temporary construction laydown and open storage areas, including contractor compounds;
- (b) temporary construction accesses;

- (c) the route and method of installation of the hydrogen supply pipeline connection and any electrical supply, telemetry and other apparatus;
- (d) the method of connecting the hydrogen supply pipeline to the hydrogen supply network;
- (e) the approximate number and location of cathodic protection posts and marker posts;
- (f) the siting, layout, scale and external appearance, including the colour, materials and surface finishes of all new permanent buildings, structures and above ground apparatus;
- (g) hard standings; and
- (h) the internal vehicular access and circulation roads, loading and unloading areas, vehicle parking and turning facilities.

(3) No part of the authorised development comprised in Work No. 3 (a natural gas supply pipeline connection for the transport of natural gas to Work No. 1) may commence, save for the permitted preliminary works, until details of the following for that part, as relevant, have been submitted to and approved by the relevant planning authority—

- (a) temporary construction laydown and open storage areas, including contractor compounds;
- (b) temporary construction accesses;
- (c) the route and method of installation of the natural gas supply pipeline connection and any electrical supply, telemetry and other apparatus;
- (d) the method of connecting the natural gas supply pipeline to the natural gas supply network;
- (e) the approximate number and location of cathodic protection posts and marker posts;
- (f) the siting, layout, scale and external appearance, including the colour, materials and surface finishes of all new permanent buildings, structures and above ground apparatus;
- (g) hard standings; and
- (h) the internal vehicular access and circulation roads, loading and unloading areas, vehicle parking and turning facilities.

(4) No part of the authorised development comprised in Work No. 4 (electrical connection works) may commence, save for the permitted preliminary works, until details of the following for that part, as relevant, have been submitted to and approved by the relevant planning authority—

- (a) confirmation of the selected route and method of installation of the 400-kilovolt overground and/or underground electrical cables and control system cables running from Work No. 1A to the existing NGET substation; and
- (b) the connections within the existing NGET substation, including the overground and/or underground electrical cables, connections to the existing busbars and new, upgraded or replacement equipment.

(5) No part of the authorised development comprised in Work No. 5 (water supply connection works) may commence, save for the permitted preliminary works, until details of the following for that part, as relevant, have been submitted to and approved by the relevant planning authority (and the Canal & River Trust shall be consulted in relation to any details submitted to the relevant planning authority in relation to Work No. 5)—

- (a) the route and method of construction of the work;
- (b) the method of construction, siting, layout, scale and external appearance of any new, upgraded or replacement intake structures within the waterway, including the screens to be installed to those structures in accordance with the Eel (England and Wales) Regulations 2009(a) and any ancillary plant, buildings, enclosures or structures; and
- (c) the method and timing of installation and removal of any cofferdams at the intake and outfall points, their phasing, and the extent to which each extends into the waterway.

(6) No part of the authorised development comprised in Work No. 6 (works to connect to the existing cooling water discharge pipeline) may commence, save for permitted preliminary works, until details of

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(a) 2009/3344

the route and method of construction for that part have been submitted to and approved by the relevant planning authority.

(7) No part of the authorised development comprised in Work No. 7 (public water supply pipeline) may commence, save for permitted preliminary works, until details of the following for that part, as relevant, have been submitted to and approved by the relevant planning authority—

- (a) the route and method of installation of the new and replacement public water connections; and
- (b) the siting, layout, scale and external appearance, including the colour, materials and surface finishes of all new permanent buildings, enclosures and structures.

(8) No part of the authorised development comprised in Work Nos. 8A, 8B and 8D (new permanent access works to Work Nos. 1 to 7) may commence, save for the permitted preliminary works, until details of the following for that part, as relevant, have been submitted to and, after consultation with the street authority, approved by the relevant planning authority—

- (a) details of any new and modified highways signage at the A18;
- (b) details of any surfacing and signage works to the private track;
- (c) construction specification, vertical and horizontal levels, and deck, parapet and foundation design of the proposed emergency access bridge crossing of the existing drainage channel;
- (d) means of enclosure, vehicle control barriers, and security;
- (e) the siting, layout, scale and external appearance, including the colour, materials and surface finishes of all new permanent buildings and structures;
- (f) finished floor levels; and
- (g) vehicle loading and unloading areas, vehicle parking and turning facilities, cycle parking and routes, and pedestrian facilities and routes.

(9) No part of the authorised development comprised in Work Nos. 9A, 9B and 9C (temporary construction and laydown area works and temporary and permanent accesses) may commence, save for the permitted preliminary works, until details of the following for that part, as relevant, have been submitted to and approved by the relevant planning authority—

- (a) hard standings, laydown and open storage areas;
- (b) contractor compounds and construction staff welfare facilities;
- (c) details of surfacing, existing and proposed levels, culverts and crossings, barriers and enclosures for the improvements to the private track;
- (d) construction specification, vertical and horizontal levels, and deck, parapet and foundation design of any replacement or improvement of the existing private bridges over the Hatfield Waste Drain;
- (e) gatehouse and weighbridge;
- (f) lighting;
- (g) means of enclosure and security; and
- (h) the internal vehicular access and circulation roads, loading and unloading areas, vehicle parking and turning facilities, cycle parking and routes, and pedestrian facilities and routes.

(10) No part of the authorised development comprised in Work Nos. 9D and 9E (temporary haul route and wharf and crane offloading facilities) may commence, save for the permitted preliminary works, until details of the following for that part, as relevant, have been submitted to and approved by the relevant planning authority—

- (a) construction specification of any maintenance, resurfacing, and improvement works to the temporary haul route;
- (b) laydown and open storage areas;
- (c) means of enclosure, vehicle control barriers, and security;
- (d) the siting, maximum vertical and horizontal dimensions, working radius, and maximum oversailing of river bed of the River Trent, of mobile crane(s) to be placed temporarily,

and the specifications of inspections and repairs to the wharf that may be carried out in connection with the placing of the cranes; and

- (e) the internal vehicular access and circulation roads, loading and unloading areas, and vehicle parking and turning facilities.

(11) Work Nos. 1A and 1B must be carried out in accordance with the design parameters in Schedule 10 (design parameters).

(12) Work Nos. 1, 5, 8A, 8B, 8D, 9B and 10 must be carried out in accordance with the design principles statement (as applicable).

(13) Work Nos. 1, 2, 3, 4, 5, 6, 7, 8A, 8B, 8D, 9A, 9B, 9C, 9D and 9E must be carried out and thereafter maintained in accordance with the approved details unless otherwise agreed with the relevant planning authority.

### **Landscape and biodiversity management and enhancement plan**

6.—(1) No part of the authorised development may be commissioned until a landscape and biodiversity management and enhancement plan, which specifies maintenance periods, for that part has been submitted to and approved by the relevant planning authority.

(2) The plan submitted and approved pursuant to sub-paragraph (1) must include details of—

- (a) implementation and management of all new shrub and tree planting;
- (b) measures to enhance and maintain existing shrubs and trees that are to be retained;
- (c) measures to maintain access for nocturnal wildlife along existing habitat corridors;
- (d) measures to enhance biodiversity and habitats within Order land or land within the Borough of North Lincolnshire that is under the control of the undertaker or other land within the Borough of North Lincolnshire provided it is accompanied by detailed implementation proposals incorporating an implementation timetable;
- (e) an implementation timetable and responsibilities for implementation by third parties where appropriate;
- (f) measures to re-instate areas of open water including field drain enhancement works, removal of excess silt and emergent swamp vegetation, removal of overhanging trees and the scope for connections to the surface water drainage scheme;
- (g) a biodiversity net gain strategy substantially in accordance with Appendix D of the outline landscape and biodiversity management and enhancement plan report;
- (h) monitoring measures; and
- (i) annual landscaping and biodiversity management and maintenance.

(3) Any shrub or tree planted within Work Nos. 1-11 as part of the plan approved pursuant to sub-paragraph (1) that is removed, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced in accordance with the approved plan unless otherwise agreed with the relevant planning authority.

(4) The plan submitted and approved pursuant to sub-paragraph (1) must—

- (a) be substantially in accordance with the principles of the outline landscape and biodiversity management and enhancement plan report and the indicative landscape and biodiversity plan; and
- (b) be accompanied by a statement explaining how any planting proposed adjoining the Order limits has been subject to consultation with Keadby with Althorpe Parish Council and how any replanting of trees proposed adjacent to the water abstraction point forming part of Work No. 5 has been subject to consultation with the Canal & River Trust along with the regard had to feedback received subject to the principles of the outline landscape and biodiversity management and enhancement plan report.

(5) The plan submitted pursuant to sub-paragraph (1) must be implemented and maintained as approved during the operation of the authorised development unless otherwise agreed with the relevant planning authority.

### **External lighting**

7.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until a scheme for all external lighting to be installed during construction for that part (with the exception of the aviation warning lighting required by virtue of requirement 30) has been submitted to and approved by the relevant planning authority and shall thereafter be implemented upon commencement of development and maintained during construction and commissioning.

(2) No part of the authorised development may be commissioned until a scheme for all permanent external lighting to be installed (with the exception of the aviation warning lighting required by virtue of requirement 30) has been submitted to and approved by the relevant planning authority.

(3) The schemes submitted and approved pursuant to sub-paragraphs (1) and (2) of this requirement must be substantially in accordance with the outline lighting strategy and include measures to minimise and otherwise mitigate any artificial light emissions during the construction, commissioning and operation of the authorised development.

(4) The scheme approved pursuant to paragraph (2) must be implemented prior to commercial use and thereafter maintained as approved unless otherwise agreed with the relevant planning authority.

### **Means of enclosure**

8.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until details of a programme for the removal of all temporary means of enclosure for any construction areas or sites associated with the authorised development have, for that part, been submitted to and approved by the relevant planning authority.

(2) Any construction areas or sites associated with the authorised development must remain securely fenced at all times during construction and commissioning of the authorised development and such temporary means of enclosure must thereafter be removed in accordance with the details approved pursuant to sub-paragraph (1).

(3) No part of the authorised development may be brought into commercial use until details of any proposed permanent means of enclosure, have, for that part, been submitted to and, after consultation with the Environment Agency in respect of any accesses to main rivers, approved by the relevant planning authority.

(4) No part of the authorised development may be brought into commercial use until the permanent means of enclosure approved pursuant to sub-paragraph (3) have been implemented in full unless otherwise agreed with the relevant planning authority.

(5) The permanent means of enclosure approved pursuant to sub-paragraph (3) must be maintained unless otherwise agreed with the relevant planning authority.

### **Site security**

9.—(1) No part of the authorised development may be brought into use until a written scheme detailing security measures to minimise the risk of crime has, for that part, been submitted to and approved by the relevant planning authority.

(2) The approved scheme must be implemented and maintained throughout the operation of authorised development.

### **Fire prevention**

10.—(1) No part of Work Nos. 1 or 8 may commence until details of the specification and location of accesses for the use of all fire appliances in all of the major building structures and storage areas within the authorised development has, for that part, been submitted to and approved by the relevant planning authority.

(2) The authorised development must be implemented in accordance with the approved details and all relevant accesses must be maintained to the reasonable satisfaction of the relevant planning authority at all times throughout the operation of the authorised development.

### **Surface water drainage**

**11.—**(1) No part of the authorised development may commence, save for the permitted preliminary works, until details of the temporary surface water drainage systems, including means of pollution control substantially in accordance with the outline construction environmental management plan and a management and maintenance plan to ensure that the systems remain fully operational throughout the construction of the relevant part of the authorised development have, for that part, been submitted to and approved by the relevant planning authority in consultation with the Environment Agency.

(2) The temporary surface water drainage systems and management and maintenance plan approved pursuant to sub-paragraph (1) must be implemented as approved and maintained throughout the construction of the authorised development unless otherwise agreed with the relevant planning authority.

(3) Details of the permanent surface water drainage systems, including a timetable for their implementation, must be submitted to, and after consultation with the lead local flood authority, relevant internal drainage board and the Environment Agency, approved by the relevant planning authority prior to the start of construction of any part of those systems.

(4) The details submitted and approved pursuant to sub-paragraph (3) of this requirement must be substantially in accordance with the indicative surface water drainage plan.

(5) The scheme approved pursuant to sub-paragraph (3) must be implemented as approved and maintained throughout the operation of the authorised development unless otherwise agreed with the relevant planning authority.

### **Foul water drainage**

**12.—**(1) No part of the authorised development may commence, save for the permitted preliminary works, until details of the temporary foul water drainage systems, including means of pollution control substantially in accordance with the outline construction environmental management plan and a management and maintenance plan to ensure that the systems remain fully operational throughout the construction of the relevant part of the authorised development have, for that part, been submitted to, and after consultation with the Environment Agency and Severn Trent Water, approved by the relevant planning authority.

(2) The temporary foul water drainage systems and management and maintenance plan approved pursuant to sub-paragraph (1) must be implemented as approved and maintained throughout the construction of the authorised development unless otherwise agreed with the relevant planning authority.

(3) Details of the permanent foul water drainage systems, including a programme for their implementation, must be submitted to, and after consultation with the Environment Agency and Severn Trent Water, approved by the relevant planning authority prior to the start of construction of any part of those systems.

(4) The scheme approved pursuant to sub-paragraph (3) must be implemented as approved and maintained throughout the operation of the authorised development unless otherwise agreed with the relevant planning authority.

### **Flood risk mitigation**

**13.—**(1) No part of the authorised development may be commissioned until a scheme for the mitigation of flood risk during operation has, for that part, been submitted to and, after consultation with the Environment Agency, Canal & River Trust, lead local flood authority, and the relevant internal drainage board, approved by the relevant planning authority.

(2) The scheme submitted and approved pursuant to sub-paragraph (1) must provide a finished ground level of 3.0m AOD for those areas of Work Nos. 1, 2 and 3 which contain critical infrastructure or buildings intended for occupation, and the scheme must be implemented as approved and maintained as such unless otherwise agreed with the relevant planning authority.

(3) The schemes submitted and approved pursuant to paragraph (1) of this requirement must be substantially in accordance with the flood risk assessment.

(4) The scheme submitted and approved under sub-paragraph (1) must provide for all critical operational infrastructure assets to be elevated to an appropriate height.

(5) The scheme approved pursuant to sub-paragraph (1) must be implemented as approved and maintained throughout the operation of the authorised development unless otherwise agreed with the relevant planning authority.

(6) The authorised development must not be commissioned until the flood risk mitigation has been implemented and a flood emergency response and contingency plan has been submitted to, and after consultation with the lead local flood authority, approved by the relevant planning authority.

(7) The plan approved pursuant to sub-paragraph (6) must be implemented throughout the commissioning and operation of the authorised development unless otherwise agreed with the relevant planning authority.

### **Contaminated land and groundwater**

**14.**—(1) No part of the authorised development may commence, save for geotechnical surveys and other investigations for the purpose of assessing ground conditions, until a scheme to deal with the contamination of land, including groundwater, which is likely to cause significant harm to persons or pollution of controlled waters or the environment, has, for that part, been submitted to and, after consultation with the Environment Agency, approved by the relevant planning authority.

(2) The scheme submitted and approved pursuant to sub-paragraph (1) must be substantially in accordance with the environmental statement and must be included in the construction environmental management plan submitted pursuant to requirement 16.

(3) The scheme must include a risk assessment, supported by site investigation data, to identify the extent of any contamination and the remedial measures to be taken to render the land fit for its intended purpose which sets out long-term measures with respect to any contaminants remaining on the site.

(4) The authorised development, including any remediation, must be implemented and maintained in accordance with the approved scheme unless otherwise agreed with the relevant planning authority.

### **Archaeology**

**15.**—(1) No part of the authorised development may commence until a written scheme of investigation for that part has been submitted to and, after consultation with an archaeologist appointed by North Lincolnshire Council, approved by the relevant planning authority.

(2) The scheme submitted and approved pursuant to sub-paragraph (1) must be substantially in accordance with the outline written scheme of investigation.

(3) The scheme must identify any areas where further archaeological investigations are required and the nature and extent of the investigation required in order to preserve by knowledge or in-situ any archaeological features that are identified.

(4) The scheme must provide details of the measures to be taken to protect record or preserve any significant archaeological features that may be found.

(5) Any archaeological investigations implemented and measures taken to protect record or preserve any identified significant archaeological features that may be found must be carried out—

- (a) in accordance with the approved scheme; and
- (b) by a suitably qualified person or organisation approved by the relevant planning authority.

### **Construction environmental management plan**

**16.**—(1) No part of the authorised development may commence, save for the permitted preliminary works, until a construction environmental management plan for that part has been submitted to and, after consultation with Natural England and the Environment Agency, and the Canal & River Trust in relation to any details submitted in relation to Work No. 5, approved by the relevant planning authority.

(2) The plan submitted and approved for that part must be substantially in accordance with the outline construction environmental management plan and incorporate—

- (a) details of and a timetable for implementation of further survey work to establish whether any protected species or non-native invasive species are present on any of the land affected, or likely to be affected, by that part, and, where such a protected species is shown to be present, a scheme of protection and mitigation during construction and where non-native invasive species are shown to be present, an invasive species management plan;
- (b) an arboricultural method statement, detailing–
  - (i) the extent of pruning of, works to and impacts on existing trees;
  - (ii) the phasing of works to trees;
- (iii) the methodology for the carrying out of any utility works within the root protection area of a tree to be retained; and
- (iv) measures to protect existing trees that are to be retained;
- (c) a code of construction practice, specifying measures designed to minimise the impacts of construction works;
- (d) a scheme for the control of any emissions to air;
- (e) a soil resources plan;
- (f) a water management plan;
- (g) a site waste management plan;
- (h) a sediment control plan;
- (i) a scheme for environmental monitoring and reporting during the construction of the authorised development, including measures for undertaking any corrective actions;
- (j) a scheme for the notification of any significant construction impacts on local residents and for handling any complaints received from local residents relating to such impacts during the construction of the authorised development;
- (k) the contaminated land scheme for that part containing the matters under requirement 14;
- (l) a fish management plan in respect of any cofferdam works;
- (m) water vole impact avoidance strategy; and
- (n) a scheme for the mitigation of flood risk during construction including a flood emergency response and contingency plan which must be substantially in accordance with the flood risk assessment.

(3) All construction works associated with the authorised development must be carried out in accordance with the approved construction environmental management plan unless otherwise agreed with the relevant planning authority.

### **Protection of highway surfaces**

**17.—**(1) No part of the authorised development may commence, save for the permitted preliminary works, until details for undertaking condition surveys of the relevant highways which are maintainable at the public expense and which are to be used during construction have been submitted to and, after consultation with the highway authority, approved by the relevant planning authority.

(2) The condition surveys must be undertaken in accordance with the approved details and a schedule of repairs, including a programme for undertaking any such repairs and their inspection, must, following the completion of the post-construction condition surveys, be submitted to, and after consultation with the highway authority, approved by the relevant planning authority.

(3) The schedule of repairs must be carried out as approved unless otherwise agreed with the relevant planning authority.

### **Temporary haul road (traffic management and protection)**

**18.—**(1) The authorised development comprised in Work No. 9D shall be retained and maintained in accordance with the haul road plans.

(2) No part of the authorised development comprised in Work No. 9D shall be brought into use for the purposes of transporting abnormal loads until—

- (a) appropriate traffic management measures have been put in place to allow vehicles to safely access the existing wharf comprised in Work No. 9E and cross Trentside; and
- (b) appropriate protection measures have been put in place to the Trentside access points adjacent to the road crossing.

(3) The traffic management and protection measures in (2) shall be in place at times when loads are utilising the haul road, unless otherwise agreed with the relevant planning authority.

#### **Temporary haul road (removal and restoration)**

**19.**—(1) No later than 36 months following commencement of the construction of Work No. 1, a scheme for the removal of the temporary haul road, temporary road bridges and associated infrastructure and restoration of Work No. 9D and a timetable for implementation, shall be submitted to and approved in writing by the relevant planning authority.

(2) The scheme authorised under (1) must be implemented in full in accordance with the approved timetable for implementation unless otherwise agreed with the relevant planning authority.

#### **Pilfrey laydown area (design)**

**20.** The authorised development comprised in Work No. 9A and located within the area described in the Pilfrey laydown plans shall be retained and maintained in accordance with the Pilfrey laydown plans unless otherwise agreed with the relevant planning authority.

#### **Pilfrey laydown area (removal and restoration)**

**21.**—(1) The authorised development comprised in Work No. 9A and located within the area described in the Pilfrey laydown plans shall be removed and the land restored no later than 3 months following the completion of commissioning in accordance with a scheme of work submitted to and approved by the relevant planning authority.

(2) The scheme authorised under (1) must be implemented in full unless otherwise agreed with the relevant planning authority.

#### **Construction traffic management plan**

**22.**—(1) No part of the authorised development may commence, save for the permitted preliminary works, until a construction traffic management plan has been submitted to and, after consultation with National Highways, the highway authority (and in relation to paragraph (3)(c) below the Canal & River Trust), approved by the relevant planning authority.

(2) The plan submitted and approved must be substantially in accordance with the outline construction traffic management plan.

(3) The plan submitted and approved must include—

- (a) details of the routes to be used for the delivery of construction materials and any temporary signage to identify routes and promote their safe use, including details of the access points to the construction site to be used by light goods vehicles and heavy goods vehicles;
- (b) details of the routing strategy and procedures for the notification and conveyance of abnormal indivisible loads, including measures to be taken to use water transport where feasible, agreed routes, and anticipated numbers of abnormal loads to be delivered on each route;
- (c) a wharf management plan substantially in accordance with the framework wharf management plan which shall include processes for—
  - (i) agreeing in advance the general principles around scheduling of abnormal load deliveries that would temporarily obstruct the entrance to Keadby Lock; and

- (ii) notifying the Canal & River Trust as to the timing of such deliveries and measures that seek to avoid such deliveries occurring outside of the notified timings;
- (d) the construction programme; and
- (e) any necessary measures for the temporary protection of carriageway surfaces, the protection of statutory undertakers' plant and equipment, and any temporary removal of street furniture.

(4) Notices must be erected and maintained throughout the period of construction at every entrance to and exit from the construction site, indicating to drivers the approved routes for traffic entering and leaving the construction site.

(5) The approved plan must be implemented within 3 months of commencement of the authorised development and must be maintained throughout the construction of the authorised development unless otherwise agreed with the relevant planning authority.

### **Construction workers travel plan**

**23.**—(1) No part of the authorised development may commence, save for the permitted preliminary works, until a construction workers travel plan has been submitted to and, after consultation with the highway authority, approved by the relevant planning authority.

(2) The plan submitted and approved must be substantially in accordance with the outline construction workers travel plan.

(3) The plan submitted and approved must include—

- (a) measures to promote the use of sustainable transport modes to and from the authorised development by construction staff;
- (b) provision as to the responsibility for, and timescales of, the implementation of those measures;
- (c) details of parking for construction personnel within the construction sites; and
- (d) a monitoring and review regime.

(4) The approved plan must be implemented within 3 months of commencement of the authorised development and must be maintained throughout the construction of the authorised development unless otherwise agreed with the relevant planning authority.

### **Construction hours**

**24.**—(1) Construction work relating to the authorised development must not take place on bank holidays nor otherwise outside the hours of—

- (a) 0700 to 1900 hours on Monday to Friday; and
- (b) 0800 to 1300 hours on a Saturday.

(2) Delivery or removal of materials, plant and machinery must not take place on bank holidays nor otherwise outside the hours of—

- (a) 0800 to 1800 hours on Monday to Friday; and
- (b) 0800 to 1300 hours on a Saturday.

(3) The restrictions in sub-paragraphs (1) and (2) do not apply to construction work or the delivery or removal of materials, plant and machinery, where these—

- (a) do not exceed a noise limit measured at the Order limits and which must be first agreed with the relevant planning authority in accordance with requirement 25(1);
- (b) are carried out with the prior approval of the relevant planning authority; or
- (c) are associated with an emergency.

(4) The restrictions in sub-paragraph (2) do not apply to the delivery of abnormal indivisible loads, where this is—

- (a) associated with an emergency; or
- (b) carried out with the prior approval of the relevant planning authority.

(5) Sub-paragraph (1) does not preclude—

- (a) a start-up period from 0630 to 0700 and a shut-down period from 1900 to 1930 Monday to Friday and a start-up period from 0630 to 0700 and a shut-down period from 1300 to 1330 on a Saturday; or
- (b) maintenance at any time of plant and machinery engaged in the construction of the authorised development.

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

### **Control of noise and vibration - construction**

**25.**—(1) No part of the authorised development may commence, save for the permitted preliminary works, until a scheme for the monitoring and control of noise and vibration during the construction of that part of the authorised development has been submitted to and approved by the relevant planning authority.

(2) The scheme submitted and approved must specify—

- (a) each location from which noise is to be monitored;
- (b) the method of noise measurement;
- (c) the maximum permitted levels of noise at each monitoring location to be determined with reference to the ABC Assessment Method for the different working time periods, as set out in BS 5228-1:2009+A1:2014, unless otherwise agreed in writing with the relevant planning authority for specific construction activities;
- (d) provision as to the circumstances in which construction activities must cease as a result of a failure to comply with a maximum permitted level of noise; and
- (e) the noise control measures to be employed.

(3) The scheme must be implemented and maintained during the construction of that part of the authorised development as approved unless otherwise agreed with the relevant planning authority.

### **Control of noise - operation**

**26.**—(1) No part of the authorised development may be brought into commercial use until a scheme for management and monitoring of noise during operation of the authorised development has been submitted to and approved by the relevant planning authority.

(2) The scheme submitted pursuant to sub-paragraph (1) must include the results of daytime and night time baseline noise monitoring that has been carried out by the undertaker for the purposes of this requirement as agreed with the relevant planning authority.

(3) Noise (in terms of the BS4142:2014+A1:2019 rating level) from the operation of the authorised development must be no greater than +3dB higher than the defined representative background sound level during each of the daytime and the night time adjacent to the nearest residential properties at such locations as agreed with the relevant planning authority.

(4) The scheme must be implemented and maintained as approved unless in an emergency or otherwise agreed with the relevant planning authority.

(5) Any complaint to the undertaker in relation to operational noise must include contact details for the complainant and the date, time and nature of the noise and must then be—

- (a) acknowledged by the undertaker within 3 working days of receipt of complaint;
- (b) investigated within 7 working days of the date of acknowledgement referred to in sub-paragraph (a); and
- (c) a response provided within 7 working days of the date of completion of the period for the investigations referred to in sub-paragraph (b) by reference to the threshold in paragraph (3) above.

(6) In this requirement—

- (a) “daytime” means the period from 0700 to 2300 and “night time” means the period from 2300 to 0700; and
- (b) “defined representative background sound level” means the sound level measured during the monitoring secured by sub-paragraph (2).

### **Piling and penetrative foundation design**

27.—(1) No part of the authorised development comprised within Work Nos. 1, 2, 3, 5, 8B or 9B may commence, save for the permitted preliminary works, until a written piling and penetrative foundation design method statement, informed by a risk assessment, for that part, has been submitted to and, after consultation with the Environment Agency, approved by the relevant planning authority.

(2) All piling and penetrative foundation works must be carried out in accordance with the approved method statement unless otherwise agreed with the relevant planning authority.

### **Restoration of land used temporarily for construction**

28.—(1) The authorised development must not be brought into commercial use until a scheme for the restoration of any land within the Order limits which has been used temporarily for construction (which for the avoidance of doubt excludes the Pilfrey laydown area and haul road) has been submitted to and approved by the relevant planning authority.

(2) The land must be restored within 36 months of the authorised development being brought into commercial use (or such other period as the relevant planning authority may approve), in accordance with—

- (a) the restoration scheme approved in accordance with sub-paragraph (1); and
- (b) the landscape and biodiversity management and enhancement plan approved in accordance with requirement 6(1).

### **Combined heat and power**

29.—(1) The authorised development must not be brought into commercial use until the relevant planning authority has given notice that it is satisfied that the undertaker has allowed for space and routes within the design of the authorised development for the later provision of heat pass-outs for off-site users of process or space heating and its later connection to such systems, should they be identified and commercially viable.

(2) The undertaker must maintain such space and routes during the operation of the authorised development unless otherwise agreed with the relevant planning authority.

(3) On the date that is 12 months after the authorised development is first brought into commercial use, the undertaker must submit to the relevant planning authority for its approval a report (‘the CHP review’) updating the combined heat and power assessment.

(4) The CHP review submitted and approved must—

- (a) consider the opportunities that reasonably exist for the export of heat from the authorised development at the time of submission; and
- (b) include a list of actions (if any) that the undertaker is reasonably able to take to increase the potential for the export of heat from the authorised development.

(5) The undertaker must take such actions as are included, within the timescales specified, in the approved CHP review unless otherwise agreed with the relevant planning authority.

(6) On each date during the operation of the authorised development that is 5 years after the date on which it last submitted the CHP review or a revised CHP review to the relevant planning authority, the undertaker must submit to the relevant planning authority for its approval a revised CHP review.

(7) Sub-paragraphs (4) and (5) apply in relation to a revised CHP review submitted under sub-paragraph (6) in the same way as they apply in relation to the CHP review submitted under sub-paragraph (3).

### **Aviation warning lighting**

**30.**—(1) No part of the authorised development comprised within Work No. 1 may commence, save for the permitted preliminary works, until details of—

- (a) the timetable for construction and retention of any tall structures or the placement and deployment of any construction equipment or temporary structure; and
- (b) the specification and installation timetable for aviation warning lighting for that part during construction and operation

have been submitted to and, after consultation with the Civil Aviation Authority and Ministry of Defence Safeguarding, approved by the relevant planning authority.

(2) Sub-paragraph (a) applies to any tall structures, construction equipment or temporary equipment which is 50 metres or more in height.

(3) The aviation warning lighting approved pursuant to paragraph (1) must be installed, maintained and operated in accordance with the approved details.

### **Air safety**

**31.**—(1) No part of the authorised development comprised within Work No. 1 may commence, save for the permitted preliminary works, until details of the heights of structures and temporary cranes and other information that is required by Civil Aviation Authority Airspace Regulation and the Defence Geographic Centre of the Ministry of Defence to chart the site for aviation purposes for that part have been submitted to and approved by the relevant planning authority.

(2) The details approved pursuant to paragraph (1) must thereafter be implemented, operated and maintained in accordance with the approved details.

### **Community liaison group**

**32.**—(1) No part of the authorised development may commence, save for the permitted preliminary works and Work No. 9, until the undertaker has amended the terms of reference for the Community Liaison Group to include a commitment to liaise with local residents and organisations to keep them informed on matters relating to the construction and commissioning of the authorised development.

(2) The undertaker must invite the relevant planning authority, all parish councils within close proximity to the authorised development, and other relevant interest groups, as may be agreed with the relevant planning authority, to nominate representatives to join the Community Liaison Group.

(3) The undertaker must provide a full secretariat service and supply an appropriate venue (which may include online conferencing with telephone dial in) for the Community Liaison Group meetings to take place.

(4) The Community Liaison Group must—

- (a) include representatives of the undertaker;
- (b) meet every other month, starting in the month prior to commencement of the authorised development, until the completion of construction, testing and commissioning works unless otherwise agreed by the majority of the members of the Community Liaison Group; and
- (c) during the operation of the authorised development meet once a year unless otherwise agreed by the majority of the members of the Community Liaison Group.

### **Employment, skills and training plan**

**33.**—(1) No part of the authorised development may commence, save for the permitted preliminary works, until a plan detailing arrangements to promote and monitor employment, skills and training development opportunities for residents of the Borough of North Lincolnshire during construction and employment opportunities during operation of the authorised development has been submitted to and approved by the relevant planning authority.

(2) The approved plan must be implemented and maintained during the construction and operation of the authorised development unless otherwise agreed by the relevant planning authority.

### **Decommissioning**

**34.**—(1) Within 12 months of the date that the undertaker decides to decommission the authorised development, the undertaker must submit to the relevant planning authority for its approval a decommissioning environmental management plan.

(2) No decommissioning works must be carried out until the relevant planning authority has approved the plan.

(3) The plan submitted and approved must include measures to address any significant environmental effects.

(4) The undertaker must consult the Environment Agency on measures relating to the water environment prior to submitting the plan to the relevant planning authority pursuant to paragraph (1).

(5) The plan submitted and approved must include details of—

- (a) the buildings to be demolished;
- (b) the means of removal of the materials resulting from the decommissioning works;
- (c) the phasing of the demolition and removal works;
- (d) any restoration works to restore the land to a condition agreed with the relevant planning authority;
- (e) the phasing of any restoration works; and
- (f) a timetable for the implementation of the plan.

(6) No decommissioning work must be carried out until a decommissioning traffic management plan has been submitted to, and after consultation with National Highways, approved by the relevant planning authority.

(7) The plans approved under this paragraph must be implemented and maintained for the duration of the decommissioning of the authorised development as approved unless otherwise agreed with the relevant planning authority.

### **Requirement for written approval**

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

### **Approved details and amendments to them**

**36.**—(1) All details submitted for the approval of the relevant planning authority under these requirements must be in accordance with the parameters of the environmental statement and reflect the principles set out in the documents certified under article 45 (certification of plans etc.).

(2) With respect to any requirement which requires the authorised development to be carried out in accordance with the details approved by the relevant planning authority, the approved details are to be taken to include any amendments that may subsequently be approved by the relevant planning authority.

### **Amendments agreed by the relevant planning authority**

**37.**—(1) Where the words “unless otherwise agreed by the relevant planning authority” appear in the above requirements, any such approval or agreement may only be given in relation to non-material amendments and where it has been demonstrated to the satisfaction of that authority that the subject matter of the approval or agreement sought will not give rise to any materially new or materially different environmental effects than those assessed in the environmental statement.

(2) In cases where the requirement or the relevant sub-paragraph requires consultation with specified persons, any such approval or agreement must not be given without the relevant planning authority having first consulted with those persons.

### SCHEDULE 3

Article 11

#### STREETS SUBJECT TO PERMANENT STREET WORKS

**Table 1**

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Streets subject to alteration of layout</i>	<i>(3)</i> <i>Description of alteration</i>
In the County of Lincolnshire	A18	Improvement works regrading and resurfacing of the carriageway in the locations marked A and B on the access and rights of way plans
In the County of Lincolnshire	Chapel Lane	Improvement works, regrading and resurfacing of the carriageway in the locations marked C, F and I on the access and rights of way plans
In the County of Lincolnshire	Trent Road	Improvement works, regrading and resurfacing of the carriageway in the locations marked G and H on the access and rights of way plans
In the County of Lincolnshire	Ealand Road	Improvement works, regrading and resurfacing of the carriageway in the locations marked D and E on the access and rights of way plans
In the County of Lincolnshire	Trentside	Improvement works, regrading and resurfacing of the carriageway in the locations marked J and K on the access and rights of way plans

### SCHEDULE 4

Article 13

#### ACCESS - THOSE PARTS OF THE ACCESS TO BE MAINTAINED AT THE PUBLIC EXPENSE

*Commencement Information*

**Table 2**

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street</i>	<i>(3)</i> <i>Description of relevant part of access</i>
In the County of Lincolnshire	A18	At the points marked A and B on the access and rights of way plans

NEW RIGHTS AND RESTRICTIVE COVENANTS

**Interpretation**

**1. In this Schedule—**

“Work No. 1C infrastructure” means any work or development comprised within Work No. 1C in Schedule 1 (authorised development), ancillary apparatus and including any other necessary works or development permitted within the area delineated as Work No. 1C on the works plans.

“Work No. 3A infrastructure” means any work or development comprised within Work No. 3A in Schedule 1 (authorised development), ancillary apparatus and including any other necessary works or development permitted within the area delineated as Work No. 3A on the works plans.

“Work No. 4A infrastructure” means any work or development comprised within Work No. 4A in Schedule 1 (authorised development), ancillary apparatus and including any other necessary works or development permitted within the area delineated as Work No. 4A on the works plans.

“Work No. 4B infrastructure” means any work or development comprised within Work No. 4B in Schedule 1 (authorised development), ancillary apparatus and including any other necessary works or development permitted within the area delineated as Work No. 4B on the works plans.

“Work No. 5 infrastructure” means any work or development comprised within Work No. 5 in Schedule 1 (authorised development), ancillary apparatus and including any other necessary works or development permitted within the area delineated as Work No. 5 on the works plans.

“Work No. 6 infrastructure” means any work or development comprised within Work No. 6 in Schedule 1 (authorised development), ancillary apparatus and including any other necessary works or development permitted within the area delineated as Work No. 6 on the works plans.

“Work No. 7 infrastructure” means any work or development comprised within Work No. 7 in Schedule 1 (authorised development), ancillary apparatus and including any other necessary works or development permitted within the area delineated as Work No. 7 on the works plans.

“Work No. 8A infrastructure” means any work or development comprised within Work No. 8A in Schedule 1 (authorised development), ancillary apparatus and including any other necessary works or development permitted within the area delineated as Work No. 8A on the works plans.

“Work No. 8B infrastructure” means any work or development comprised within Work No. 8B in Schedule 1 (authorised development), ancillary apparatus and including any other necessary works or development permitted within the area delineated as Work No. 8B on the works plans.

“Work No. 8C infrastructure” means any work or development comprised within Work No. 8C in Schedule 1 (authorised development), ancillary apparatus and including any other necessary works or development permitted within the area delineated as Work No. 8C on the works plans.

“Work No. 8D infrastructure” means any work or development comprised within Work No. 8D in Schedule 1 (authorised development), ancillary apparatus and including any other necessary works or development permitted within the area delineated as Work No. 8D on the works plans.

“Work No. 10 infrastructure” means any work or development comprised within Work No. 10 in Schedule 1 (authorised development), ancillary apparatus and including any other necessary works or development permitted within the area delineated as Work No. 10 on the works plans.

**Table 3**

<i>(1)</i> <i>Number of plot shown on the land plans</i>	<i>(2)</i> <i>Rights which may be acquired and restrictive covenants which may be imposed</i>
3-113, 3-129	For and in connection with the Work No. 1C the right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery for

2-84	<p>all purposes in connection with and the laying, installation, use and maintenance of Work No 1C infrastructure, and a right of support for it and the right to the free flow of water, along with the right to restrict any works on or uses of the land which may interfere with or damage the Work No 1C infrastructure, or interfere with or obstruct access from and to the Work No. 1C infrastructure, including a restriction to prevent or remove the whole of any fixed or movable structure, tree, shrub, plant or other things and the right to prevent or remove any works or uses which alter the surface level, ground cover, or composition of the land</p>
2-104, 3-141, 3-142, 3-143, 3-144, 3-145, 3-149, 3-150, 3-151, 3-152, 3-153, 3-154, 3-155, 3-156	<p>For and in connection with the Work No. 3A the right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery for all purposes in connection with and the laying, installation, use and maintenance of Work No 3A infrastructure, and a right of support for it and the right to the free flow of water, along with the right to restrict any works on or uses of the land which may interfere with or damage the Work No 3A infrastructure, or interfere with or obstruct access from and to the Work No. 3A infrastructure, including a restriction to prevent or remove the whole of any fixed or movable structure, tree, shrub, plant or other things and the right to prevent or remove any works or uses which alter the surface level, ground cover, or composition of the land</p>
2-104	<p>For and in connection with the Work No. 4A the right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery for all purposes in connection with and the laying, installation, use and maintenance of Work No 4A infrastructure, and a right of support for it and the right to the free flow of water, along with the right to restrict any works on or uses of the land which may interfere with or damage the Work No 4A infrastructure, or interfere with or obstruct access from and to the Work No. 4A infrastructure, including a restriction to prevent or remove the whole of any fixed or movable structure, tree, shrub, plant or other things and the right to prevent or remove any works or uses which alter the surface level, ground cover, or composition of the land</p>
2-104	<p>For and in connection with the Work No. 4B the right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery for all purposes in connection with and the laying, installation, use and maintenance of Work No 4A infrastructure, and a right of support for it and the right to the free flow of water, along with the right to restrict any works on or uses of the land which may interfere with or damage the Work No</p>

<p>2-107, 3-111, 3-113, 3-124, 3-125, 3-126, 3-127, 3-128, 3-129, 3-130, 3-131, 3-132, 3-133, 3-134, 3-157, 3-158, 3-159, 3-160, 3-161, 3-162, 3-165, 3-167, 3-170</p>	<p>4B infrastructure, or interfere with or obstruct access from and to the Work No. 4B infrastructure, including a restriction to prevent or remove the whole of any fixed or movable structure, tree, shrub, plant or other things and the right to prevent or remove any works or uses which alter the surface level, ground cover, or composition of the land</p>
<p>3-135, 3-136, 3-137, 3-138, 3-139, 3-140, 3-141, 3-142, 3-143, 3-146, 3-147, 3-148, 3-149, 3-150, 3-151, 3-153, 3-173, 3-174, 3-175, 3-176, 3-177, 3-178, 3-179, 3-180, 3-182, 3-183, 3-184, 3-185, 3-186, 3-208, 3-209, 3-210, 3-211, 3-212, 3-213, 3-214, 3-215, 3-216, 3-217, 3-218, 3-219, 3-220, 3-221, 3-222, 3-223, 3-224, 3-225, 3-226, 3-227, 3-228, 3-229, 3-230</p>	<p>For and in connection with the Work No. 5 the right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery for all purposes in connection with and the laying, installation, use and maintenance of Work No 5 infrastructure, and a right of support for it and the right to the free flow of water, along with the right to restrict any works on or uses of the land which may interfere with or damage the Work No 5 infrastructure, or interfere with or obstruct access from and to the Work No. 5 infrastructure, including a restriction to prevent or remove the whole of any fixed or movable structure, tree, shrub, plant or other things and the right to prevent or remove any works or uses which alter the surface level, ground cover, or composition of the land</p>
<p>3-135, 3-136, 3-137, 3-138, 3-139, 3-140, 3-141, 3-142, 3-143, 3-147, 3-148, 3-149, 3-150, 3-151, 3-153</p>	<p>For and in connection with the Work No. 6 the right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery for all purposes in connection with and the laying, installation, use and maintenance of Work No 6 infrastructure, and a right of support for it and the right to the free flow of water, along with the right to restrict any works on or uses of the land which may interfere with or damage the Work No 6 infrastructure, or interfere with or obstruct access from and to the Work No. 6 infrastructure, including a restriction to prevent or remove the whole of any fixed or movable structure, tree, shrub, plant or other things and the right to prevent or remove any works or uses which alter the surface level, ground cover, or composition of the land</p>
<p>3-135, 3-136, 3-137, 3-138, 3-139, 3-140, 3-141, 3-142, 3-143, 3-147, 3-148, 3-149, 3-150, 3-151, 3-153</p>	<p>For and in connection with the Work No. 7 the right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery for all purposes in connection with and the laying, installation, use and maintenance of Work No 7 infrastructure, and a right of support for it and the right to the free flow of water, along with the right to restrict any works on or uses of the land which may interfere with or damage the Work No 7 infrastructure, or interfere with or obstruct access from and to the Work No. 7 infrastructure, including a restriction to prevent or remove the whole of any fixed or movable structure, tree, shrub, plant or other things and the right to prevent or remove any works or uses which alter</p>

<p>1-03b, 1-04b, 1-06, 1-07, 1-08, 1-12, 1-13, 1-14, 1-16, 1-17, 1-18, 1-20, 1-23, 1-24, 1-25, 1-28, 2-29, 2-30, 2-31, 2-32, 2-33, 2-34, 2-35, 2-36, 2-37, 2-38, 2-39, 2-84, 2-93, 2-97, 2-107</p>	<p>the surface level, ground cover, or composition of the land</p> <p>For and in connection with the Work No. 8A the right to improve access roads and for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery for all purposes in connection with and the laying, installation, use and maintenance of Work No. 8A infrastructure, and a right of support for it and the right to the free flow of water, along with the right to restrict any works on or uses of the land which may interfere with or damage the Work No. 8A infrastructure, or interfere with or obstruct access from and to the Work No. 8A infrastructure, including the right to prevent or remove the whole of any fixed or movable structure, tree, shrub, plant or other things and the right to prevent or remove any works or uses which alter the surface level, ground cover, or composition of the land.</p>
<p>1-03b, 1-04b, 1-06, 1-07, 1-08</p>	<p>For and in connection with Work No. 8A the acquisition of air and subsoil rights for the installation (including footings), maintenance and use of bridge structure comprised in Work No. 8A infrastructure.</p>
<p>1-20</p>	<p>For and in connection with the Work No. 8B the right to improve access roads and for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery for all purposes in connection with and the laying, installation, use and maintenance of Work No. 8B infrastructure, including the right to erect barriers across the access road, and a right of support for it and the right to the free flow of water, along with the right to restrict any works on or uses of the land which may interfere with or damage the Work No. 8B infrastructure, or interfere with or obstruct access from and to the Work No. 8B infrastructure, including the right to restrict or remove the whole of any fixed or movable structure, tree, shrub, plant or other things and the right to prevent or remove any works or uses which alter the surface level, ground.</p>
<p>1-01, 1-02, 1-03a, 1-03b, 1-03c, 1-04a, 1-04b, 1-05, 1-06, 1-07, 1-08, 1-12, 1-13, 1-14, 1-16, 1-17, 1-18, 1-20</p>	<p>For and in connection with the Work No. 8C the right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery for all purposes in connection with and the laying, installation, use and maintenance of utility works required for Work No 8C infrastructure, and a right of support for it and the right to the free flow of water, along with the right to restrict any works on or uses of the land which may interfere with or damage the Work No 8C infrastructure or interfere with or obstruct access from and to the Work No. 8C infrastructure, including a restriction to prevent or remove the whole of any</p>

2-040, 2-41, 2-42, 2-43, 2-44, 2-48, 2-49, 2-50,  
2-51, 2-52, 2-53, 2-54, 2-56, 2-57, 2-58, 2-59,  
2-60, 2-61, 2-62, 2-65, 2-64, 2-66, 2-67

fixed or movable structure, tree, shrub, plant or other things and the right to prevent or remove any works or uses which alter the surface level, ground cover, or composition of the land.

For and in connection with the Work No. 8D the right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery for all purposes in connection with and the laying, installation, use and maintenance of Work No. 8D infrastructure and to be able to use such route as an emergency access route and erect barriers and/or gates in connection with such emergency access route and a right of support for it and the right to the free flow of water, along with the right to restrict any works on or uses of the land which may interfere with or damage the Work No 8D infrastructure or interfere with or obstruct access from and to the Work No. 8D infrastructure, including a restriction to prevent or remove the whole of any fixed or movable structure, tree, shrub, plant or other things and the right to prevent or remove any works or uses which alter the surface level, ground cover, or composition of the land.

1-12, 1-13, 1-14, 1-15, 1-16, 1-18, 1-23, 1-25,  
1-27, 3-181, 3-182, 3-187, 3-189, 3-190, 3-191,  
3-192

For and in connection with Work No. 10, a right for the undertaker and all persons authorised on its behalf to enter, pass, and repass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the installation and maintenance of the planting and enhancement measures comprised in Work No. 10 together with the right to protect, retain, maintain, inspect and replant Work No. 10 infrastructure along with a restriction to prevent any works on or uses of the land which may interfere with Work 10 infrastructure or obstruct access from and to Work No. 10.

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## SCHEDULE 6

Article 25

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

#### Compensation enactments

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

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

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

- (a) for “land is acquired or taken from” substitute “a right or restrictive covenant over land is purchased from or imposed on”; and
- (b) for “acquired or taken from him” substitute “over which the right is exercisable or the restrictive covenant enforceable”.

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

(2) In section 5A(5A) (relevant valuation date), omit the words after “if—” and substitute—

- (a) the acquiring authority enters on land for the purpose of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act (as modified by paragraph 5(5) of Schedule 6 to The Keadby Next Generation Power Station Order 202[X]);
- (b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A to the 1965 Act (as substituted by paragraph 5(8) of Schedule 6 to The Keadby Next Generation Power Station Order 202[X]); and
- (c) the acquiring authority enters on and takes possession of that land, the authority is deemed for the purposes of subsection (3)(a) to have entered on that land where it entered on that land for the purpose of exercising that right. .

#### **Application of Part 1 of the 1965 Act**

4. Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act, as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act to the acquisition of land under article 22 (compulsory acquisition of land) and as modified by article 29 (modification of Part 1 of the 1965 Act), applies to the compulsory acquisition of a right by the creation of a new right or imposition of a restrictive covenant under article 25 (compulsory acquisition of rights and restrictive covenants) or creation of a new right under article 28 (acquisition of subsoil or airspace only)—

- (a) with the modifications specified in paragraph 5; and
- (b) with such other modifications as may be necessary.

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

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

- (a) the right acquired or to be acquired, or the restriction imposed or to be imposed; or
- (b) the land over which the right is or is to be exercisable, or the restriction is to be enforceable.

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

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

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

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

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(a) 1973 c. 26.

- (b) paragraph 10(3) of Schedule 1 (owners under incapacity);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

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

(5) Section 11 of the 1965 Act (powers of entry) is modified to secure that, where the acquiring authority has served notice to treat in respect of any right or restriction, as well as the notice of entry required by subsection (1) of that section (as it applied to compulsory acquisition under article 18), it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant; and sections 11A(a) (powers of entry: further notices of entry), 11B(b) (counter-notice requiring possession to be taken on specified date), 12 (penalty for unauthorised entry) and 13 (entry on warrant in the event of obstruction) of the 1965 Act are modified correspondingly.

(6) Section 20 of the 1965 Act (protection for interests of tenants at will, etc.) applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right or the enforcement of the restrictive covenant in question.

(7) Section 22 of the 1965 Act (interests omitted from purchase) as modified by article 29(4) (modification of Part 1 of the 1965 Act) is also modified as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, or enforce the restriction imposed, subject to compliance with that section as respects compensation.

(8) For Schedule 2A to the 1965 Act substitute—

## SCHEDULE 2A

### COUNTER-NOTICE REQUIRING PURCHASE OF LAND

#### **Introduction**

**1.**—(1) This Schedule applies where an acquiring authority serve a notice to treat in respect of a right over, or restrictive covenant affecting, the whole or part of a house, building or factory and have not executed a general vesting declaration under section 4 of the 1981 Act as applied by article 27 (application of the 1981 Act and Part 1 of the 1961 Act) of The Keadby Next Generation Power Station Order 202[X].

(2) But see article 28 (acquisition of subsoil or airspace only) of The Keadby Next Generation Power Station Order 202[X] which excludes the acquisition of subsoil or airspace only from this Schedule.

**2.** In this Schedule, “house” includes any park or garden belonging to a house.

#### **Counter-notice requiring purchase of land**

**3.** A person who is able to sell the house, building or factory (“the owner”) may serve a counter-notice requiring the authority to purchase the owner’s interest in the house, building or factory.

**4.** A counter-notice under paragraph 3 must be served within the period of 28 days beginning with the day on which the notice to treat was served.

(a) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016 (c. 22).

(b) Section 11B was inserted by section 187(2) of the above Act.

### **Response to counter-notice**

5. On receiving a counter-notice, the acquiring authority must decide whether to—
  - (a) withdraw the notice to treat;
  - (b) accept the counter-notice; or
  - (c) refer the counter-notice to the Upper Tribunal.
6. The authority must serve notice of their decision on the owner within the period of 3 months beginning with the day on which the counter-notice is served (“the decision period”).
7. If the authority decide to refer the counter-notice to the Upper Tribunal they must do so within the decision period.
8. If the authority do not serve notice of a decision within the decision period they are to be treated as if they had served notice of a decision to withdraw the notice to treat at the end of that period.
9. If the authority serve notice of a decision to accept the counter-notice, the compulsory purchase order and the notice to treat are to have effect as if they included the owner’s interest in the house, building or factory.

### **Determination by Upper Tribunal**

10. On a referral under paragraph 7, the Upper Tribunal must determine whether the acquisition of the right or the imposition of the restrictive covenant would—
  - (a) in the case of a house, building or factory, cause material detriment to the house, building or factory; or
  - (b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.
11. In making its determination, the Upper Tribunal must take into account—
  - (a) the effect of the acquisition of the right or the imposition of the covenant;
  - (b) the use to be made of the right or covenant proposed to be acquired or imposed; and
  - (c) if the right or covenant is proposed to be acquired or imposed for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.
12. If the Upper Tribunal determines that the acquisition of the right or the imposition of the covenant would have either of the consequences described in paragraph 10, it must determine how much of the house, building or factory the authority ought to be required to take.
13. If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the compulsory purchase order and the notice to treat are to have effect as if they included the owner’s interest in that land.
- 14.—(1) If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the authority may at any time within the period of 6 weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.
  - (2) If the acquiring authority withdraws the notice to treat under this paragraph they must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawal of the notice.
  - (3) Any dispute as to the compensation is to be determined by the Upper Tribunal.

## SCHEDULE 7

Article 31

### LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

**Table 4**

<i>(1)</i> <i>Number of plots shown on the land plans</i>	<i>(2)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(3)</i> <i>Relevant part of the authorised development</i>
3-163, 3-164	Worksite including installation of temporary cofferdam structure, plant, buildings, enclosures, intake structures screens and other structures, temporary moorings and temporary repositioning of existing moorings.	Work No. 5
2-55	Works compound and welfare facilities, storage, laydown areas, and re-instatement of laydown areas.	Work No. 8D
1-26, 1-27, 2-100	Access and construction worksite, use of the land for temporary laydown areas including any ancillary works necessary to facilitate the use of that land, storage, placing of mobile cranes and works associated with the reinstatement of the land. Works compound and welfare facilities, storage, laydown areas, and re-instatement of laydown areas.	Work No. 9A
1-06, 1-07, 1-08, 1-10, 1-11, 1-12, 1-13, 1-14, 1-16, 1-17, 1-18, 1-20, 1-22, 1-23, 1-24, 1-25, 1-28, 2-29, 2-30, 2-31, 2-32, 2-33, 2-34, 2-36, 2-37, 2-38, 2-39, 2-84, 2-93	Construction access	Work No. 9B
1-15	Access and construction worksite, use of the land for temporary laydown areas including any ancillary works necessary to facilitate the use of that land, storage, placing of temporary cranes and works associated with the reinstatement of the land. Works compound and welfare facilities, storage, laydown areas, and re-instatement of laydown areas.	Work No. 9C
3-171, 3-172, 3-188, 3-193, 3-195, 3-196, 3-197	Access and construction worksite, including temporary haul road and any ancillary works necessary to facilitate the use of that land as a temporary	Work No. 9D

3-198, 3-199, 3-200, 3-201, 3-202, 3-203, 3-204, 3-205, 3-206, 3-207	haul road and re-instatement of the land. Worksite for waterborne transport offloading including the installation of mobile cranes, mooring, inspection, repair and use of the existing wharf.	Work No. 9E
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## SCHEDULE 8

Article 47

### PROCEDURE FOR DISCHARGE OF REQUIREMENTS

**1. In this Schedule—**

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

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

“start date” means the date of the notification given by the Secretary of State under paragraph 5(2)(b).

**Applications made under requirements**

**2. —(1)** Where an application has been made to the relevant planning authority for any consent, agreement or approval required by a requirement the relevant planning authority must give notice to the undertaker of its decision on the application within a period of 8 weeks beginning with the later of—

- (a) the day immediately following that on which the application is received by the authority; or
- (b) the day immediately following that on which further information has been supplied by the undertaker under paragraph 3,

or such longer period as may be agreed in writing by the undertaker and the relevant planning authority.

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

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

(4) Where an application has been made to the relevant planning authority for any consent, agreement or approval required by a requirement included in this Order and the relevant planning authority does not determine the application within the period set out in sub-paragraph (1)—

- (a) and that application is accompanied by a report pursuant to sub-paragraph (3) which states that the subject matter of such application is likely to give rise to any materially new or materially different environmental effects than those assessed in the environmental statement; or
- (b) the relevant planning authority considers that the subject matter of such application will give rise to any materially new or materially different environmental effects than those

(a) 1971 c. 80.

assessed in the environmental statement and has notified the undertaker of this in writing within 21 business days from receipt of such report,

then the application is deemed to have been refused by the relevant planning authority at the end of that period.

### **Further information and consultation**

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

(2) In the event that the relevant planning authority considers such further information to be necessary and the provision governing or requiring the application does not specify that consultation with a requirement consultee is required, the relevant planning authority must, within 21 business days of receipt of the application, notify the undertaker in writing specifying the further information required.

(3) If the provision governing or requiring the application specifies that consultation with a requirement consultee is required, the relevant planning authority must issue the consultation to the requirement consultee within 5 business days of receipt of the application, and must notify the undertaker in writing specifying any further information requested by the requirement consultee within 5 business days of receipt of such a request and in any event within 21 days of receipt of the application (or such other period as is agreed in writing between the undertaker and the relevant planning authority).

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

### **Fees**

4. —(1) Where an application is made to the relevant planning authority for written consent, agreement or approval in respect of a requirement, the fee prescribed under regulation 16(1)(b) of the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012<sup>(a)</sup> (as may be amended or replaced from time to time) is to apply and must be paid to the relevant planning authority for each application.

(2) Any fee paid under this Schedule must be refunded to the undertaker within 4 weeks of—

- (a) the application being rejected as invalidly made; or
- (b) the relevant planning authority failing to determine the application within nine weeks from the relevant date in paragraph 1 unless—
  - (i) within that period the undertaker agrees, in writing, that the fee is to be retained by the relevant planning authority and credited in respect of a future application; or
  - (ii) a longer period of time for determining the application has been agreed pursuant to paragraph 2 of this Schedule.

### **Appeals**

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

- (a) the relevant planning authority refuses an application for any consent, agreement or approval required by a requirement included in this Order or grants it subject to conditions;
- (b) the relevant planning authority is deemed to have refused an application pursuant to paragraph 2(4);
- (c) on receipt of a request for further information pursuant to paragraph 3 the undertaker considers that either the whole or part of the specified information requested by the relevant planning authority is not necessary for consideration of the application; or

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(a) S.I. 2012/2920.

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

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

- (a) the undertaker must submit the appeal documentation to the Secretary of State and must on the same day provide copies of the appeal documentation to the relevant planning authority and the requirement consultee;
- (b) the Secretary of State must appoint a person to determine the appeal as soon as reasonably practicable after receiving the appeal documentation and must forthwith notify the appeal parties of the identity of the appointed person and the address to which all correspondence for the appointed person's attention should be sent;
- (c) the relevant planning authority and the requirement consultee (if applicable) must submit written representations to the appointed person in respect of the appeal within 10 business days of the start date and must ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;
- (d) the appeal parties must make any counter-submissions to the appointed person within 10 business days of receipt of written representations pursuant to paragraph (c);
- (e) the appointed person must make their decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable and in any event within 30 business days of the deadline for the receipt of counter-submissions pursuant to sub-paragraph (d); and
- (f) the appointment of the person pursuant to paragraph (b) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(3) In the event that the appointed person considers that further information is necessary to enable the appointed person to consider the appeal the appointed person must, within 5 business days of the appointed person's appointment, notify the appeal parties in writing specifying the further information required.

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

(5) The appointed person may—

- (a) allow or dismiss the appeal; or
- (b) reverse or vary any part of the decision of the relevant planning authority (whether the appeal relates to that part of it or not),

and may deal with the application as if it had been made to him in the first instance.

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

(7) The appointed person may proceed to a decision even though no written representations have been made within the relevant time limits, if it appears that there is sufficient material to enable a decision to be made on the merits of the case.

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

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

(10) Save where a direction is given pursuant to sub-paragraph (11) requiring the costs of the appointed person to be paid by the relevant planning authority, the reasonable costs of the appointed person must be met by the undertaker.

(11) On application by the relevant planning authority or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it is to be made, the appointed person must have regard to the advice on planning appeals and the award costs published on 3 March 2014 (as updated) by what was then the Department for Communities and Local Government or any circular or guidance which may from time to time replace it.

## SCHEDULE 9

Article 39

### PROTECTIVE PROVISIONS

#### PART 1

#### FOR THE PROTECTION OF NATIONAL GRID ELECTRICITY TRANSMISSION PLC AS ELECTRICITY UNDERTAKER

##### Application

1. —(1) For the protection of National Grid [Electricity Transmission Plc](#) as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and National Grid [Electricity Transmission Plc](#).

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and National Grid [Electricity Transmission Plc](#), where the benefit of this Order is transferred or granted to another person under article 7 (consent to transfer benefit of the Order)—

- (a) any agreement of the type mentioned in sub-paragraph (1) has effect as if it had been made between National Grid [Electricity Transmission Plc](#) and the transferee or grantee (as the case may be); and
- (b) written notice of the transfer or grant must be given to National Grid [Electricity Transmission Plc](#) on or before the date of that transfer or grant.

(3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to National Grid [\(but without prejudice to sub-paragraph 11\(3\)\(b\)\)](#).

##### Interpretation

2. In this Part of this Schedule—

“1991 Act” means the New Roads and Street Works Act 1991;

“acceptable credit provider” means a bank or financial institution with a credit rating that is not lower than: (i) “A” if the rating is assigned by Standard ~~and~~ Poor’s Ratings Group or Fitch Ratings; and (ii) “A3” if the rating is assigned by Moody’s Investors Services Inc.;

“acceptable insurance” means ~~a~~general third party liability insurance effected and maintained by the undertaker with a combined property damage and bodily injury limit of indemnity of not less than £~~15,000,000 (fifteen~~50,000,000 (fifty million pounds) per occurrence or series of occurrences arising out of one event. Such insurance shall be—

- ~~(a)~~ maintained for the duration of the construction period of the authorised ~~development~~works which constitute specified works; and
- ~~(b)~~ arranged with an insurer whose security/credit rating meets the same requirements as an “acceptable credit provider”, such insurance shall include (without limitation)—

(a) a waiver of subrogation and an indemnity to principal clause in favour of National Grid Electricity Transmission Plc;

- (b) pollution liability for third party property damage and third party bodily damage arising from any sudden and accidental pollution/contamination event with a (sub)limit of indemnity of not less than ~~£5,000,000 (five)~~£10,000,000 (ten) million pounds) per occurrence or series of occurrences arising out of one event or ~~£10,000,000 (ten)~~£20,000,000 (twenty) million pounds) in aggregate;

“acceptable security” means a bank bond or letter of credit from an acceptable credit provider in favour of National Grid Electricity Transmission Plc to cover the undertaker’s liability to National Grid Electricity Transmission Plc for an amount of not less than ~~£3,000,000 (three)~~£10,000,000 (ten) million pounds) per asset per event up to a total liability cap of ~~£15,000,000 (fifteen)~~£50,000,000 (fifty) million pounds) (in a form reasonably satisfactory to National Grid Electricity Transmission Plc);

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of National Grid Electricity Transmission Plc to enable National Grid Electricity Transmission Plc to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means—

- (a) ~~“apparatus” means~~ any electric lines or electrical plant as defined in the Electricity Act 1989~~(a)~~, belonging to or maintained by National Grid Electricity Transmission Plc, together with any replacement apparatus; and
- (b) such other apparatus constructed pursuant to the Order that becomes operational apparatus of National Grid Electricity Transmission Plc for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised works” has the same meaning as is given to the term “authorised development” in article 2(1) of this Order and includes any associated development authorised by this Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

“commence” and “commencement” ~~has the same meaning as in article 2(1) of this Order and commencement is construed to have the same meaning;~~ in this Part of this Schedule shall include any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment;

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by National Grid Electricity Transmission Plc (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for National ~~Grid’s~~Grid Electricity Transmission Plc’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“maintain” and “maintenance” shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of National Grid Electricity Transmission Plc: construct, use, repair, alter, inspect, renew or remove the apparatus;

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(X) 1989 e.29.

~~“National Grid” means (for the purposes of Part 1 of this Schedule 9 only) National Grid Electricity Transmission Plc~~ means National Grid Electricity Transmission Plc (company number 2366977) whose registered office is at 1-3 Strand, London, WC2N 5EH or any successor as a licence holder within the meaning of Part 1 of the Electricity Act 1989;

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

“specified works” means ~~Work Nos. 1, 4, 8A and 8D;~~ any of the authorised works or activities undertaken in association with the authorised works which:

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 7(2) or otherwise; and/or
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 7(2) or otherwise; and/or
- (c) includes any of the activities that are referred to in development near overhead lines EN43-8 and HSE’s guidance note 6 “Avoidance of Danger from Overhead Lines”;

“undertaker” means the undertaker as defined in article 2(1) of this Order.

### **On Street Apparatus**

3. Except for paragraphs 4 (apparatus ~~of statutory undertakers in temporarily restricted~~ in stopped up streets), 9 (retained apparatus: protection ~~of electricity undertakers) and~~, 10 (expenses) and 11 (indemnity) of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of National Grid Electricity Transmission Plc, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Grid Electricity Transmission Plc are regulated by the provisions of Part 3 of the 1991 Act.

### **Apparatus ~~of statutory undertakers in temporarily restricted~~ in stopped up streets**

4. —(1) Where any street is stopped up under article [ ] [(permanent stopping up, restriction of use and construction of streets, public rights of way and private means of access)], if National Grid Electricity Transmission Plc has any apparatus in the street or accessed via that street National Grid Electricity Transmission Plc has the same rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to National Grid Electricity Transmission Plc, or procure the granting to National Grid Electricity Transmission Plc of, legal easements reasonably satisfactory to National Grid Electricity Transmission Plc in respect of such apparatus and access to it prior to the stopping up of any such street or highway but nothing in this paragraph affects any right of the undertaker or National Grid Electricity Transmission Plc to require the removal of that apparatus under paragraph 7 or the power of the undertaker, subject to compliance with this sub-paragraph, to carry out works under paragraph 9.

(2) ~~4-~~Notwithstanding the ~~alteration~~ temporary stopping up or diversion of any highway under the powers of article 11 (power to alter layout, etc. [ ] (temporary stopping up and restriction of use of streets)), National Grid ~~may~~ Electricity Transmission Plc is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the ~~restriction~~ stopping up or diversion was in that highway.

### **Protective works to buildings**

5. The undertaker, in the case of the powers conferred by article 38 (protective works to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Grid Electricity Transmission Plc.

## Acquisition of land

6. — ~~hhh~~(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not—

- (a) appropriate or acquire or take temporary possession of any land or apparatus; or
- (b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of National Grid [Electricity Transmission Plc](#),

otherwise than by agreement (such agreement not to be unreasonably withheld or delayed).

(2) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between National Grid [Electricity Transmission Plc](#) and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of National Grid [Electricity Transmission Plc](#) or affect the provisions of any enactment or agreement regulating the relations between National Grid [Electricity Transmission Plc](#) and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as National Grid [Electricity Transmission Plc](#) reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Grid [Electricity Transmission Plc](#) and the undertaker acting reasonably and which must be no less favourable on the whole to National Grid [Electricity Transmission Plc](#) unless otherwise agreed by National Grid [Electricity Transmission Plc](#), and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) Save where otherwise agreed in writing between National Grid [Electricity Transmission Plc](#) and the undertaker, the undertaker and National Grid [Electricity Transmission Plc](#) agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Grid [Electricity Transmission Plc](#) and/or other enactments relied upon by National Grid [Electricity Transmission Plc](#) as of right or other use in relation to the apparatus, then the provisions in this Schedule shall prevail.

(4) Any agreement or consent granted by National Grid [Electricity Transmission Plc](#) under paragraph 9 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).

## Removal of apparatus

7. — ~~iii~~(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in or possesses temporarily any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of National Grid [Electricity Transmission Plc](#) to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Grid [Electricity Transmission Plc](#) in accordance with sub-paragraphs (2) to (5).

(2) If, for the purpose of executing any ~~authorised~~[specified](#) works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid [Electricity Transmission Plc](#) advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid [Electricity Transmission Plc](#) reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), secure any necessary consents for the alternative apparatus and afford to National Grid [Electricity Transmission Plc](#) to its reasonable satisfaction (taking into account paragraph 8(1) below) the necessary facilities and rights—

- (a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and
- (b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Grid [Electricity Transmission Plc](#) must on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for National Grid [Electricity Transmission Plc](#) to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between National Grid [Electricity Transmission Plc](#) and the undertaker.

(5) National Grid [Electricity Transmission Plc](#) must, after the alternative apparatus to be provided or constructed has been agreed, and subject to a written diversion agreement having been entered into between the parties and the grant to National Grid [Electricity Transmission Plc](#) of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

### Facilities and rights for alternative apparatus

8. — ~~jjj~~(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for National Grid [Electricity Transmission Plc](#) facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and National Grid [Electricity Transmission Plc](#) and must be no less favourable on the whole to National Grid [Electricity Transmission Plc](#) than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by National Grid [Electricity Transmission Plc](#).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid [Electricity Transmission Plc](#) than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject the matter may be referred to arbitration in accordance with paragraph ~~14~~15 (arbitration) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to National Grid [Electricity Transmission Plc](#) as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

### Retained apparatus: protection ~~of electricity undertaker~~

9. — ~~kkk~~(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Grid [Electricity Transmission Plc](#) a plan of the works to be executed and seek from National Grid [Electricity Transmission Plc](#) details of the underground extent of their electricity assets.

(2) In relation to specified works, the plan to be submitted to National Grid [Electricity Transmission Plc](#) under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the specified works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;
- (f) any intended maintenance regimes;
- (g) an assessment of risks of rise of earth issues; and
- (h) a ground monitoring scheme, where required.

(3) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (1) must, in addition to the matters set out in sub-paragraph (2), include a method statement describing—

- (a) details of any cable trench design including route, dimensions, clearance to pylon foundations;
- (b) demonstration that pylon foundations will not be affected prior to, during and post construction;
- (c) details of load bearing capacities of the trenches;
- (d) details of any cable installation methodology including access arrangements, jointing bays and backfill methodology;
- (e) a written management plan for high voltage hazard during construction and ongoing maintenance of any cable route;
- (f) written details of the operations and maintenance regime for any cable, including frequency and method of access;
- (g) assessment of earth rise potential if reasonably required by National ~~Grid's~~Grid Electricity Transmission Plc's engineers; and
- (h) evidence that trench bearing capacity is to be designed to support overhead line construction traffic of up to and including 26 tonnes in weight.

(4) The undertaker must not commence any works to which sub-paragraphs (2) or (3) apply until National Grid Electricity Transmission Plc has given written approval of the plan so submitted.

(5) Any approval of National Grid Electricity Transmission Plc required under sub-paragraph (4)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in subparagraphs (6) or (8); and,
- (b) must not be unreasonably withheld or delayed.

(6) In relation to any work to which sub-paragraphs (2) or (3) apply, National Grid Electricity Transmission Plc may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage, for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(7) Works executed under sub-paragraphs (2) or (3) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (6), as approved or as amended from time to time by agreement between the undertaker and National Grid Electricity Transmission Plc and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (6) or (8) by National Grid Electricity Transmission Plc for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid Electricity Transmission Plc will be entitled to watch and inspect the execution of those works.

(8) Where National Grid Electricity Transmission Plc requires any protective works to be carried out by itself or by the undertaker pursuant to sub-paragraph (6) (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to National ~~Grid's~~Grid Electricity Transmission Plc's reasonable satisfaction, prior to the commencement of any specified works (or any relevant part thereof) for which the protective works in question are required and National Grid Electricity Transmission Plc shall give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(9) If National Grid Electricity Transmission Plc in accordance with sub-paragraphs (6) or (8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 3 and ~~56~~ to ~~78~~ apply as if the removal of the apparatus had been required by the undertaker under paragraph 7(2).

(10) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the ~~specified~~ works authorised development in question, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.

(11) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Grid [Electricity Transmission Plc](#) notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances and comply with sub-paragraph (12) at all times.

(12) At all times when carrying out any works authorised under the Order, the undertaker must comply with National Grid's policies for development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".

## Expenses

10.—~~III~~(1) Save where otherwise agreed in writing between National Grid [Electricity Transmission Plc](#) and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to National Grid [Electricity Transmission Plc](#) within 30 days of receipt of an itemised invoice or claim from National Grid [Electricity Transmission Plc](#) all charges, costs and expenses reasonably and properly incurred by National Grid [Electricity Transmission Plc](#) in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works including without limitation—

- (a) any costs reasonably and properly incurred by or compensation properly paid by National Grid [Electricity Transmission Plc](#) in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Grid [Electricity Transmission Plc](#) as a consequence of National Grid ~~;~~ [Electricity Transmission Plc](#)—
  - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 7(3); or
  - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Grid [Electricity Transmission Plc](#);
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph ~~14~~[15](#) (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this subparagraph would be payable to National Grid [Electricity Transmission Plc](#) by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances to obtain the

existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) Any amount which apart from this sub-paragraph would be payable to National Grid [Electricity Transmission Plc](#) in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on National Grid [Electricity Transmission Plc](#) any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

### Indemnity

11.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, use maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of National Grid Electricity Transmission Plc, or there is any interruption in any service provided, or in the supply of any goods, by National Grid Electricity Transmission Plc, or National Grid Electricity Transmission Plc becomes liable to pay any amount to any third party, the undertaker will—

- (a) bear and pay within 14 days of demand accompanied by an invoice or claim from National Grid Electricity Transmission Plc the cost reasonably and properly incurred by National Grid Electricity Transmission Plc in making good such damage or restoring the supply; and
- (b) indemnify National Grid Electricity Transmission Plc for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Grid Electricity Transmission Plc, by reason or in consequence of any such damage or interruption or National Grid Electricity Transmission Plc becoming liable to any third party other than arising from any default of National Grid Electricity Transmission Plc.

(2) The fact that any act or thing may have been done by National Grid Electricity Transmission Plc on behalf of the undertaker or in accordance with a plan approved by National Grid Electricity Transmission Plc or in accordance with any requirement of National Grid Electricity Transmission Plc or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless National Grid Electricity Transmission Plc fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of—

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of National Grid Electricity Transmission Plc, its officers, servants, contractors or agents;
- (b) any authorised works and/or any other works authorised by this Part of this Schedule carried out by National Grid Electricity Transmission Plc as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article 8 (consent to transfer benefit of the Order) subject to the proviso that once such works become apparatus (“new apparatus”), any authorised works yet to be executed and not falling within this sub-section 3(b) will be subject to the full terms of this Part of this Schedule including this paragraph 11; and/or

- (c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable;

(4) National Grid Electricity Transmission Plc must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

(5) National Grid Electricity Transmission Plc must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(6) National Grid Electricity Transmission Plc must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where it is within National Grid Electricity Transmission Plc's reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of National Grid Electricity Transmission Plc's control and if reasonably requested to do so by the undertaker National Grid Electricity Transmission Plc must provide an explanation of how the claim has been minimised, where relevant, together with reasonable supporting documentation as may be required by the undertaker.

(7) The undertaker must not commence construction (and not to permit the commencement of such construction) of the authorised works on any land owned by National Grid Electricity Transmission Plc or in respect of which National Grid Electricity Transmission Plc has an easement or wayleave for its apparatus or any other interest or to carry out any works within 15 metres of National Grid Electricity Transmission Plc's apparatus until the following conditions are satisfied:

- (a) unless and until National Grid Electricity Transmission Plc is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has first provided the acceptable security (and provided evidence that it shall maintain such acceptable security for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and National Grid Electricity Transmission Plc has confirmed the same to the undertaker in writing; and
- (b) unless and until National Grid Electricity Transmission Plc is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to National Grid Electricity Transmission Plc that it shall maintain such acceptable insurance for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and National Grid Electricity Transmission Plc has confirmed the same in writing to the undertaker.

(8) In the event that the undertaker fails to comply with sub-paragraph (7), nothing in this Part of this Schedule shall prevent National Grid Electricity Transmission Plc from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

### **Enactments and agreements**

**12.11-** Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between National Grid Electricity Transmission Plc and the undertaker, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and National Grid Electricity Transmission Plc in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

### **Co-operation**

~~13.12. mmmm~~ (1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or National Grid Electricity Transmission Plc requires the removal of apparatus under paragraph 7(2) or National Grid Electricity Transmission Plc makes requirements for the protection or alteration of apparatus under paragraph 9 (retained apparatus: protection), the undertaker shall use ~~reasonable~~ its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to

ensure the safe and efficient operation of National ~~Grid's~~ Grid Electricity Transmission Plc's undertaking and National Grid Electricity Transmission Plc must use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever National ~~Grid's~~ Grid Electricity Transmission Plc's consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

#### **Access**

~~14.13-~~ If in consequence of the agreement reached in accordance with paragraph 6(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable National Grid Electricity Transmission Plc to maintain or use the apparatus no less effectively than was possible before such obstruction.

#### **Arbitration**

~~15.14-~~ Save for differences or disputes arising under paragraphs 7(2), 7(4), 8(1) and 9 any difference or dispute arising between the undertaker and National Grid Electricity Transmission Plc under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Grid Electricity Transmission Plc, be determined by arbitration in accordance with article 48 (arbitration).

#### **Notices**

~~16.15-~~ Notwithstanding article 46 (service of notices), any plans submitted to National Grid Electricity Transmission Plc by the undertaker pursuant to ~~this Part~~ paragraph 9 (retained apparatus: protection) must be submitted using the LSBUD system (<https://lsbud.co.uk/>) or to such other address as National Grid Electricity Transmission Plc may from time to time appoint instead for that purpose and notify to the undertaker in writing.

## **PART 2**

### **FOR THE PROTECTION OF NATIONAL GAS TRANSMISSION PLC AS GAS UNDERTAKER**

#### **Application**

~~17.16. — nnnn) (1)~~ For the protection of National Gas as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and National Gas.

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and National Gas, where the benefit of this Order is transferred or granted to another person under article 5 (benefit of the Order)—

- (a) any agreement of the type mentioned in sub-paragraph (1) has effect as if it had been made between National Gas and the transferee or grantee (as the case may be); and
- (b) written notice of the transfer or grant must be given to National Gas on or before the date of that transfer or grant.

(3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to National Gas.

#### **Interpretation**

~~18.17-~~ In this Part of this Schedule—

“1991 Act” means the New Roads and Street Works Act 1991;

“acceptable credit provider” means a bank or financial institution with a credit rating that is not lower than: “A-” if the rating is assigned by Standard and Poor’s Ratings Group or Fitch Ratings; and “A3” if the rating is assigned by Moody’s Investors Services Inc.;

“acceptable insurance” means a third party liability insurance effected and maintained by the undertaker with a combined property damage and bodily injury limit of indemnity of not less than ~~£15,000,000 (fifteen million pounds)~~ £50,000,000 (fifty million pounds) per occurrence or series of occurrences arising out of one event. Such insurance shall be—

- (a) maintained for the duration of the construction period of the authorised works which constitute specified works; and
- (b) arranged with an insurer whose security/credit rating meets the same requirements as an “acceptable credit provider”,

such insurance shall include (without limitation) a waiver of subrogation and an indemnity in principal clause in favour of National Gas, and pollution liability for third party property damage and third party bodily damage arising from any sudden and accidental pollution / contamination event with a limit of indemnity of not less than ~~£5,000,000 (five million pounds)~~ £10,000,000 (ten million pounds) per occurrence or series of occurrences arising out of one event or ~~£10,000,000 (ten million pounds)~~ £20,000,000 (twenty million pounds) in aggregate;

“acceptable security” means a bank bond from an acceptable credit provider in favour of National Gas to cover the undertaker’s liability to National Gas for an amount of not less than ~~£3,000,000 (three million pounds)~~ £10,000,000 (ten million pounds) per asset per event up to a total liability cap of ~~£15,000,000 (fifteen million pounds)~~ £50,000,000 (fifty million pounds) (in a form reasonably satisfactory to National Gas);

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of National Gas to enable National Gas to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means any mains, pipes or other apparatus belonging to or maintained by National Gas for the purposes of gas supply together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of National Gas for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised works” has the same meaning as is given to the term “authorised development” in article 2(1) of this Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and the construction of any works authorised by this Schedule;

“commence” and “commencement” ~~has the same meaning as in article 2(1) of this Order and commencement is construed to have the same meaning;~~ in this Part of this Schedule shall include any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment;

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by National Gas (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for National Gas’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“maintain” and “maintenance” shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of National Gas: construct, use, repair, alter, inspect, renew or remove the apparatus;

“National Gas” means (for the purposes of Part 2 of this Schedule 9 only) National Gas Transmission plc (company number 02006000) whose registered office is at National Gas House, Warwick Technology Park, Gallows Hill, Warwick, CV34 6DA or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986;

“Network Code” means the network code prepared by National Gas pursuant to Standard Special Condition A11(3) of its Gas Transporter’s Licence, which incorporates the Uniform Network Code, as defined in Standard Special Condition A11(6) of National Gas’s Gas Transporters Licence, as both documents are amended from time to time;

“Network Code Claims” means any claim made against National Gas by any person or loss suffered by National Gas under the Network Code arising out of or in connection with any failure by National Gas to make gas available for off take at, or a failure to accept gas tendered for delivery from, any entry point to or exit point from the gas national transmission system as a result of the authorised works or any costs and/or expenses incurred by National Gas as a result of or in connection with, it taking action (including purchase or buy back of capacity) for the purpose of managing constraint or potential constraint on the gas national transmission system which may arise as a result of the authorised works;

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

“specified works” means ~~Work Nos. 1C, 5 and 8A;~~any of the authorised works or activities undertaken in association with the authorised works which—

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 23(2) (removal of apparatus) or otherwise; and/or
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 23(2) (removal of apparatus) or otherwise; and/or
- (c) includes any of the activities that are referred to in paragraph 8 of T/SP/SSW/22 (National Gas’s policies for safe working in proximity to gas apparatus “Specification for safe working in the vicinity of National Gas, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW/22;

“undertaker” means the undertaker as defined in article 2(1) of this Order.

### **On Street Apparatus**

~~19.18.~~ Except for paragraphs ~~1920~~ (apparatus of National Gas in ~~stopped up temporarily restricted~~ streets), ~~2425~~ (retained apparatus: protection) and ~~2526~~ (expenses) of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of National Gas, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Gas are regulated by the provisions of Part 3 of the 1991 Act.

### **Apparatus of National Gas in temporarily restricted streets**

~~20.19.~~ (1) Notwithstanding the alteration of any highway under article 11 (power to alter layout, etc. of streets), National Gas may at all times take all necessary access across any such highway and execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the restriction or diversion was in that highway. Nothing in this paragraph affects any right of the undertaker or National Gas to require the removal of that apparatus under paragraph 23 (removal of apparatus) or the power of the undertaker, subject to compliance with this sub-paragraph, to carry out works under paragraph 25 (retained apparatus: protection).

(2) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 12 (temporary restriction of use of streets), National Gas is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

### Protective works to buildings

~~21.20.~~ The undertaker, in the case of the powers conferred by article 38 (protective works to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Gas.

### Acquisition of land

~~22.21.~~ ~~oooo~~ (1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not (a) appropriate or acquire or take temporary possession of any land or apparatus or (b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of National Gas otherwise than by agreement (such agreement not be unreasonably withheld or delayed).

(2) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between National Gas and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of National Gas or affect the provisions of any enactment or agreement regulating the relations between National Gas and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as National Gas reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Gas and the undertaker acting reasonably and which must be no less favourable on the whole to National Gas unless otherwise agreed by National Gas, and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) Save where otherwise agreed in writing between National Gas and the undertaker, the undertaker and National Gas agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus/ including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Gas and/or other enactments relied upon by National Gas as of right or other use in relation to the apparatus, then the provisions in this Schedule shall prevail.

(4) Any agreement or consent granted by National Gas under paragraph ~~24~~25 (retained apparatus: protection) or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).

### Removal of apparatus

~~23.22.~~ ~~pppp~~ (1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in or possesses temporarily any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of National Gas to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Gas in accordance with sub-paragraphs (2) to (5).

(2) If, for the purpose of executing any authorised works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Gas advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Gas reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), secure any necessary consents for the alternative apparatus and afford to National Gas to its reasonable satisfaction (taking into account paragraph ~~23~~24(1) (facilities and rights for alternative apparatus) below) the necessary facilities and rights—

- (a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and
- (b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Gas must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for National Gas to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between National Gas and the undertaker.

(5) National Gas must, after the alternative apparatus to be provided or constructed has been agreed, and subject to a written diversion agreement having been entered into between the parties and the grant to National Gas of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

### **Facilities and rights for alternative apparatus**

~~24.23. — qqqq~~ (1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for National Gas facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and National Gas and must be no less favourable on the whole to National Gas than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by National Gas.

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Gas than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject the matter may be referred to arbitration in accordance with paragraph ~~29~~31 (arbitration) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to National Gas as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

### **Retained apparatus: protection**

~~25.24. — rrrr~~ (1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Gas a plan and, if reasonably required by National Gas, a ground monitoring scheme in respect of those works.

(2) In relation to specified works the plan to be submitted to National Gas under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and
- (f) any intended maintenance regimes.

(3) ~~The~~ Where reasonably necessary for the purpose of carrying out any specified works National Gas may request that the undertaker ~~must~~ consider the existing pipeline's cathodic protection system and provide an earthing assessment ~~where required by National Gas.~~

(4) The undertaker must not commence any works to which sub-paragraphs (1) and (2) apply until National Gas has given written approval of the plan so submitted.

(5) Any approval of National Gas required under sub-paragraph (4)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in subparagraphs (6) or (7); and,
- (b) must not be unreasonably withheld.

(6) In relation to any work to which sub-paragraphs (1) and/or (2) apply, National Gas may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(7) Works executed under sub-paragraphs (1) or (2) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (6), as approved or as amended from time to time by agreement between the undertaker and National Gas and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (6) or (8) by National Gas for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Gas will be entitled to watch and inspect the execution of those works.

(8) Where National Gas requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to National Gas's satisfaction prior to the commencement of any specified works (or any relevant part thereof) for which protective works are required and National Gas must give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(9) If National Gas in accordance with sub-paragraphs (6) or (8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 16 to 18 and 20 to 22 apply as if the removal of the apparatus had been required by the undertaker under paragraph ~~22(2)~~23(2).

(10) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the specified works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(11) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Gas notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (7), (8) and (9) insofar as is reasonably practicable in the circumstances and comply with sub-paragraph (11) at all times.

(12) At all times when carrying out any works authorised under the Order National Gas must comply with National Gas's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Gas, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22" and HSE's "HS(~G)47 Avoiding Danger from underground services".

(13) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker shall implement an appropriate ground mitigation scheme save that National Gas retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph ~~25~~26 (expenses).

## Expenses

~~26.25~~26.25—~~ssss~~(1) Save where otherwise agreed in writing between National Gas and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to National Gas within 30 days of receipt of an invoice or claim from National Gas all charges, costs and expenses reasonably and properly incurred by National Gas in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works including without limitation-

- (a) any costs reasonably and properly incurred by or compensation properly paid by National Gas in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Gas as a consequence of National Gas; ~~==~~
- (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph ~~22~~23(3); or
- (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Gas;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph ~~29~~31 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Gas by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) Any amount which apart from this sub-paragraph would be payable to National Gas in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on National Gas any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

### Indemnity

27.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, use

maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of National Gas, or there is any interruption in any service provided, or in the supply of any goods or energy, by National Gas, or National Gas becomes liable to pay any amount to any third party, and provided that at all times National Gas will be under an obligation to take reasonable steps to mitigate its loss, the undertaker will—

- (a) bear and pay on demand accompanied by an appropriately detailed invoice or appropriately detailed claim from National Gas the cost reasonably and properly incurred by National Gas in making good such damage or restoring the supply; and
- (b) indemnify National Gas for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Gas, by reason or in consequence of any such damage or interruption or National Gas becoming liable to any third party as aforesaid and including Network Code Claims other than arising from any default of National Gas.

(2) The fact that any act or thing may have been done by National Gas on behalf of the undertaker or in accordance with a plan approved by National Gas or in accordance with any requirement of National Gas or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of sub-paragraph (1) unless National Gas fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of—

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of National Gas, its officers, servants, contractors or agents;
- (b) any authorised works and/or any other works authorised by this Part of this Schedule carried out by National Gas as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article 5 (benefit of the Order) subject to the proviso that once such works become apparatus (“new apparatus”), any authorised works yet to be executed and not falling within this sub-section 3(b) will be subject to the full terms of this Part of this Schedule including this paragraph 27; and/or
- (c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable.

(4) National Gas must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

(5) National Gas must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(6) National Gas must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where it is within National Gas reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of National Gas control and if reasonably requested to do so by the undertaker National Gas must provide an explanation of how the claim has been minimised, where relevant.

(7) Not to commence construction (and not to permit the commencement of such construction) of the authorised works on any land owned by National Gas or in respect of which National Gas has an easement or wayleave for its apparatus or any other interest or to carry out any works within 15 metres of National Gas apparatus until the following conditions are satisfied—

- (a) unless and until National Gas is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has first provided the acceptable security (and provided evidence that it shall maintain such acceptable security for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and National Gas has confirmed the same to the undertaker in writing; and
- (b) unless and until National Gas is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to National Gas that it shall maintain such acceptable insurance for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and National Gas Transmission has confirmed the same in writing to the undertaker.

(8) In the event that the undertaker fails to comply with sub-paragraph (7), nothing in this Part of this Schedule shall prevent National Gas from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

### **Enactments and agreements**

~~28.26.~~ Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between National Gas and the undertaker, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and National Gas in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

### **Co-operation**

~~29.27.~~ ~~ttt~~(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or National Gas requires the removal of apparatus under paragraph ~~22(2)~~23(2) or National Gas makes requirements for the protection or alteration of apparatus under paragraph ~~24, the~~25 (retained apparatus: protection), the undertaker shall use reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of National Gas's undertaking and National Gas shall use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever National Gas's consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

### **Access**

~~30.28.~~ If in consequence of the agreement reached in accordance with paragraph ~~21(1)~~22(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable National Gas to maintain or use the apparatus no less effectively than was possible before such obstruction.

### **Arbitration**

~~31.29.~~ Save for differences or disputes arising under paragraph ~~22~~23(2), ~~22~~23(4), ~~23~~24(1) and ~~24~~25 any difference or dispute arising between the undertaker and National Gas under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Gas, be determined by arbitration in accordance with article 48 (arbitration).

### **Notices**

~~32.30.~~ Notwithstanding article 46 (service of notices), any plans submitted to National Gas by the undertaker pursuant to this Part must be submitted to <https://lsbud.co.uk/> or such other address as National Gas may from time to time appoint instead for that purpose and notify to the undertaker in writing.

## PART 3

### FOR THE PROTECTION OF THE CANAL & RIVER TRUST

#### Interpretation

~~33.31.~~ ~~uuuu~~ (1) For the protection of the Canal & River Trust the following provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and the Canal & River Trust.

(2) In this Part of this Schedule—

“Code of Practice” means the Code of Practice for Works Affecting the Canal & River Trust (April 2025) or any updates or amendments thereto;

“construction”, in relation to any specified work or protective work, includes—

- (a) the execution and placing of that work; and
- (b) any relaying, renewal, or maintenance of that work (save to the extent that such relaying, renewal or maintenance is covered by an agreement between the undertaker and Canal & River Trust in relation to the authorised works in which case these protective provisions shall not apply); and “construct” and “constructed” have corresponding meanings;

“Canal & River Trust’s network” means the Canal & River Trust’s network of waterways;

“detriment” means any damage to the waterway or any other property of the Canal & River Trust caused by the presence of the authorised development and, without prejudice to the generality of that meaning, includes—

- (a) any obstruction of, or interference with, or hindrance or danger to, navigation or to any use of the waterway (including towing paths);
- (b) the erosion of the bed or banks of the waterway, or the impairment of the stability of any works, lands or premises forming part of the waterway;
- (c) the deposit of materials or the siltation of the waterway so as to damage the waterway;
- (d) the pollution of the waterway;
- (e) any significant alteration in the water level of the waterway, or significant interference with the supply of water thereto, or drainage of water therefrom;
- (f) any harm to the ecology of the waterway; and
- (g) any interference with the exercise by any person of any lawful rights over Canal & River Trust’s network;

“the engineer” means an engineer appointed by the Canal & River Trust for the purpose in question;

“plans” includes navigational risk assessments, sections, designs, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction) and programmes;

“practical completion” means practical completion of all of the specified work notwithstanding that items which would ordinarily be considered snagging items remain outstanding, and the expression “practically complete” and “practically completed” is to be construed accordingly;

“protective work” means a work constructed under paragraph ~~33(4)(a)~~35(4)(a) (approval of plans etc.);

“specified work” means so much of the authorised development as is, may be, or takes place in, on, under or over the surface of land below the water level forming part of the waterway; or may affect the waterway or any function of the Canal & River Trust, including any projection over the waterway by any authorised work or any plant or machinery;

“the waterway” means each and every part of the Stainforth and Keadby Canal within the Order limits and includes any works, lands or premises belonging to the Canal & River Trust, or under its management or control, and held or used by the Canal & River Trust in connection with its statutory functions.

(3) Where the Code of Practice applies to any works or matters that are part of the authorised development or that form part of the protective works and there is an inconsistency between these protective provisions and the Code of Practice, the part of the Code of Practice that is inconsistent with these protective provisions will not apply and these protective provisions will apply. The undertaker will identify and agree with the Canal & River Trust those parts of the Code of Practice which are not applicable to the construction of the specified works and for the avoidance of doubt the undertaker will not be required to comply with those agreed parts of the Code of Practice.

#### **Powers requiring the Canal & River Trust's consent**

~~34.32.~~ ~~wwwv)~~ (1) The undertaker must not in the exercise of the powers conferred by this Order obstruct or interfere with pedestrian or vehicular access to the waterway unless such obstruction or interference with such access is with the consent of the Canal & River Trust.

(2) The undertaker must not exercise any power conferred by this Order to discharge water into the waterway under article 17 (discharge of water) or in any way interfere with the supply of water to or the drainage of water from the waterway unless such exercise is with the consent of the Canal & River Trust.

(3) The undertaker must not exercise the powers conferred by article 18 (authority to survey and investigate the land), article 19 (temporary interference with canal and River Trent and public rights of navigation), or section 11(3) of the 1965 Act, in relation to the waterway unless such exercise is with the consent of the Canal & River Trust.

(4) The undertaker must not exercise any power conferred by article 31 (temporary use of land for carrying out the authorised development) or article 32 (temporary use of land for maintaining the authorised development) in respect of the waterway unless such exercise is with the consent of the Canal & River Trust.

(5) The undertaker must not exercise any power conferred by article 22 (compulsory acquisition of land), article 25 (compulsory acquisition of rights and restrictive covenants), 28 (acquisition of subsoil or airspace only) or 33 (statutory undertakers) in respect of the Canal & River Trust's interests in the waterway unless such exercise is with the consent of the Canal & River Trust.

(6) The consent of the Canal & River Trust pursuant to sub-paragraphs (1) to (5) must not be unreasonably withheld or delayed but may be given subject to reasonable terms and conditions provided that it will not be reasonable for the Canal & River Trust to withhold or delay consent or impose terms and conditions that would prevent the undertaker from complying with the protective provisions in this Part of this Schedule or any condition contained in Schedule 2 (requirements) to this Order.

#### **Approval of plans, protective works etc.**

~~35.33.~~ ~~wwwv)~~ (1) The undertaker must before commencing construction of any specified work including any temporary works supply to the Canal & River Trust proper and sufficient plans of that work, on the Canal & River Trust forms, having regard to the Canal & River Trust's Code of Practice and such further particulars available to it as the Canal & River Trust may within 15 working days of the submission of the plans reasonably require for the approval of the engineer and must not commence such construction of a specified work until plans of that work have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld or delayed, and if within 25 working days after such plans (including any other particulars reasonably required under sub-paragraph (1)) have been received by the Canal & River Trust the engineer has not intimated disapproval of those plans and the grounds of disapproval, the engineer is deemed to have approved the plans as submitted.

(3) An approval of the engineer under this paragraph ~~33~~35 is not deemed to have been unreasonably withheld if approval within the time limited by sub-paragraph (2) has not been given pending the outcome of any consultation on the approval in question that the Canal & River Trust is obliged to carry out in the proper exercise of its functions, provided prior written notice of such consultation has been provided by the Canal & River Trust to the undertaker within 20 working days of having received submission of the undertaker's relevant plans for approval.

(4) When signifying approval of the plans the engineer may specify on land held or controlled by the Canal & River Trust or the undertaker and subject to such works being authorised by this Order or being development permitted by an Act of Parliament or general development order made under the 1990 Act—

- (a) any protective work (whether temporary or permanent) which in the reasonable opinion of the engineer should be carried out before the commencement of a specified work to prevent detriment; and
- (b) such other requirements as may be reasonably necessary to prevent detriment; and such protective works must be constructed by the undertaker or by the Canal & River Trust at the undertaker's request with all reasonable dispatch and the undertaker must not commence the construction of a specified work until the engineer has notified the undertaker that the protective works have been completed to the engineer's reasonable satisfaction such consent not to be unreasonably withheld or delayed.

(5) The withholding of an approval of the engineer under this paragraph ~~33~~<sup>35</sup> will be deemed to be unreasonable if it would prevent the undertaker from complying with any condition contained in Schedule 2 (requirements) to this Order.

(6) The undertaker must pay to the Canal & River Trust a capitalised sum representing any reasonably increased and additional cost of maintaining and, when necessary, renewing any works, including any permanent protective works provided under sub-paragraph (4) above, and of carrying out any additional dredging of the waterway reasonably necessitated by the exercise of any of the powers under this Order but if the cost of maintaining the waterway, or of works of renewal of the waterway, is reduced in consequence of any such works, a capitalised sum representing such reasonable saving is to be set off against any sum payable by the undertaker to the Canal & River Trust under this paragraph.

(7) In the event that the undertaker fails to complete the construction of, or part of, the specified works the Canal & River Trust may, if it is reasonably required in order to avoid detriment, serve on the undertaker a notice in writing requesting that construction be completed. Any notice served under this sub-paragraph must state the works that are to be completed by the undertaker and lay out a reasonable timetable for the works' completion. If the undertaker fails to comply with this notice within 35 working days, the Canal & River Trust may construct any of the specified works, or part of such works, (together with any adjoining works) in order to complete the construction of, or part of, the specified works or make such works and the undertaker must reimburse the Canal & River Trust all costs, fees, charges and expenses it has reasonably incurred in carrying out such works.

### **Design of works**

~~36.34.~~ Without prejudice to its obligations under the foregoing provisions of this Part of this Schedule the undertaker must consult, collaborate and respond constructively to any reasonable approach, suggestion, proposal or initiative made by the Canal & River Trust on—

- (a) the design and appearance of the specified works;
- (b) the environmental effects of those works; and must have regard to such views as may be expressed by the Canal & River Trust in response to such consultation pursuant in particular to the requirements imposed on the Canal & River Trust by section 22 (general environmental and recreational duties) of the British Waterways Act 1995<sup>(a)</sup> and to the interest of the Canal & River Trust in preserving and enhancing the environment of its waterways; and
- (c) amendments or alterations to the construction environmental management plan, landscape and biodiversity management and enhancement plan, and decommissioning environmental management plan (as may be approved pursuant to Schedule 2 (requirements)) in respect of a specified work or a protective work or otherwise in connection with the waterway.

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(a) 1995 c. i.

## Fencing

~~37.35.~~ Where so required by the engineer acting reasonably the undertaker must, to the reasonable satisfaction of the engineer, fence off a specified work or a protective work or take such other steps as the engineer may require to be taken for the purpose of separating a specified work or a protective work from the waterway, whether on a temporary or permanent basis or both.

## Notice of works

~~38.36.~~ The undertaker must give to the engineer 30 days' notice of its intention to commence the construction of any of the specified works or protective works, or, in the case of repair carried out in an emergency, such notice as may be reasonably practicable so that, in particular, the Canal & River Trust may where appropriate arrange for the publication of notices bringing those works to the attention of users of the Canal & River Trust's network.

## Lighting

~~39.37.~~ The undertaker must provide and maintain at its own expense in the vicinity of the specified or protective works such temporary lighting and such signal lights for the control of navigation as the engineer may reasonably require during the construction or failure of the specified or protective works.

## Survey of waterway

~~40.38.~~ ~~xxxxx~~(1) Before the commencement of any part of the specified works and again following practical completion of the specified works the undertaker must bear the reasonable and proper cost of the carrying out by a qualified engineer (the "surveyor"), to be approved by the Canal & River Trust and the undertaker, of a survey to measure the navigational depth of the waterway and profile of the canal bed ("the survey") of so much of the waterway and of any land which may provide support for the waterway as will or may be affected by the specified works.

(2) The design of, and methods proposed to be used for, the survey, are to be approved by the Canal & River Trust and the undertaker.

(3) For the purposes of the survey the undertaker must—

- (a) on being given reasonable notice (save in case of emergency, when immediate access must be afforded) afford reasonable facilities to the surveyor for access to the site of the specified works and to any land of the undertaker which may provide support for the waterway as will or may be affected by the specified works; and
- (b) supply the surveyor as soon as reasonably practicable with all such information as they may reasonably require and which the undertaker holds with regard to the specified works or the method of their construction.

(4) Copies of the survey results must be provided to both the Canal & River Trust and the undertaker at no cost to the Canal & River Trust.

## Construction of specified works

~~41.39.~~ ~~yyyyy~~(1) Any specified works or protective works must, when commenced, be constructed—

- (a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled as aforesaid and with any specifications made under paragraph ~~3335~~ (approval of plans, protective works etc.) and paragraph ~~3436~~ (design of works) of this Part;
- (b) under the supervision (if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little detriment as is reasonably practicable;
- (d) in such manner as to cause as little inconvenience as is reasonably practicable to the Canal & River Trust, its officers and agents and all other persons lawfully using the waterways, except to the extent that temporary obstruction has otherwise been agreed by the Canal & River Trust;

- (e) in such a manner as to ensure that no materials are discharged or deposited into the waterway otherwise than in accordance with article 17 (discharge of water); and
- (f) in compliance with the Code of Practice (where appropriate and where consistent with the exercise of powers pursuant to this Order and for the timely, safe, economic and efficient delivery of the authorised works).

(2) Nothing in this Order authorises the undertaker to make or maintain any permanent works in or over the waterway so as to impede or prevent (whether by reducing the width of the waterway or otherwise) the passage of any vessel which is of a kind (as to its dimensions) for which the Canal & River Trust is required by section 105(1)(b) and (2) of the Transport Act 1968(a) to maintain the waterway.

(3) Following the completion of the construction of the specified works the undertaker must restore the waterway to a condition no less satisfactory than its condition immediately prior to the commencement of those works unless otherwise agreed between the undertaker and the Canal & River Trust and save to the extent that any deterioration to the condition of the waterway is not caused by the construction of the specified works.

(4) In assessing whether the condition of the waterway is no less satisfactory than immediately prior to the works pursuant to sub-paragraph (3), the Canal & River Trust and the undertaker must take account of any survey issued pursuant to paragraph ~~38~~40 (survey of waterway) and any other information agreed between them pursuant to this Part.

### **Prevention of pollution**

~~42.40.~~ The undertaker must not in the course of constructing a specified work or a protective work or otherwise in connection therewith do or permit anything which may result in the pollution of the waterway or the deposit of materials therein (unless otherwise permitted by the Order or the protective provisions in this Part of this Schedule) and must take such steps as the engineer may reasonably require to avoid or make good any breach of its obligations under this paragraph.

### **Access to work – provision of information**

~~43.41.~~ ~~zzzzz~~(1) The undertaker on being given reasonable notice must—

- (a) at all reasonable times allow reasonable facilities to the engineer for access to a specified work during its construction; and
- (b) supply the engineer with all such information as the engineer may reasonably require with regard to a specified work or the method of constructing it.

(2) The Canal & River Trust on being given reasonable notice must—

- (a) at all reasonable times afford reasonable facilities to the undertaker and its agents for access to any works carried out by the Canal & River Trust under this Part during their construction; and
- (b) supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them and the undertaker must reimburse the Canal & River Trust's reasonable costs in relation to the supply of such information.

### **Alterations to the waterway**

~~44.42.~~ ~~aaaaa~~(1) If during the construction of a specified work or a protective work or during a period of 24 months after the completion of those works any alterations or additions, either permanent or temporary, to the waterway are reasonably necessary in consequence of the construction of the specified work or the protective work in order to avoid detriment, and the Canal & River Trust gives to the undertaker reasonable notice of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to the Canal & River Trust the reasonable costs of those alterations or additions including, in respect of any such alterations or additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by

(a) 1968 c. 73. Sections 105(1) and (2) were amended by paragraph 39 of Schedule 2 to S.I. 2012/1659.

the Canal & River Trust in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If the cost of maintaining, working or renewing the waterway is reduced in consequence of any such alterations or additions a capitalised sum representing such saving is to be set off against any sum payable by the undertaker to the Canal & River Trust under this paragraph.

#### **Repayment of the Canal & River Trust's fees, etc.**

~~45.43.~~ ~~bbbb)~~ (1) The undertaker must repay to the Canal & River Trust in accordance with the Code of Practice all fees, costs, charges and expenses reasonably incurred by the Canal & River Trust—

- (a) in constructing any protective works under the provisions of paragraph ~~3335~~(4)(a) (approval of plans, protective works etc);
- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction or repair of a specified work and any protective works;
- (c) in respect of the employment during the construction of the specified works or any protective works of any inspectors, watchmen and other persons whom it is reasonably necessary to appoint for inspecting, watching and lighting any waterway and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of the specified works or any protective works;
- (d) in bringing the specified works or any protective works to the notice of users of the Canal & River Trust's network; and
- (e) in constructing and/or carrying out any measures related to any specified works or protective works which are reasonably required by the Canal & River Trust to ensure the safe navigation of the waterway save that nothing is to require the Canal & River Trust to construct and/or carry out any measures.

(2) If the Canal & River Trust considers that a fee, charge, cost or expense will be payable by the undertaker pursuant to sub-paragraph (1), the Canal & River Trust will first provide an estimate of that fee, charge, cost or expense and supporting information in relation to the estimate to the undertaker along with a proposed timescale for payment for consideration and the undertaker may, within a period of 15 working days—

- (a) provide confirmation to the Canal & River Trust that the estimate is agreed and pay to the Canal & River Trust, by the date stipulated, that fee, charge, cost or expense; or
- (b) provide confirmation to the Canal & River Trust that the estimate is not accepted along with a revised estimate and a proposal as to how or why the undertaker considers that the estimate can be reduced and or paid at a later date.

(3) The Canal & River Trust must take in to account any representations made by the undertaker in accordance with this paragraph ~~4345~~ and must, within 15 working days of receipt of the information pursuant to sub-paragraph (1), confirm the amount of the fee, charge, cost or expense to be paid by the undertaker (if any) and the date by which this is to be paid.

(4) The Canal & River Trust must, when estimating and incurring any charge, cost or expense pursuant this paragraph ~~4345~~, do so with a view to being reasonably economic and acting as if the Canal & River Trust were itself to fund the relevant fee, charge, cost or expense.

#### **Making good of detriment, compensation and indemnity, etc.**

~~46.44.~~ ~~eeee)~~ (1) If any detriment is caused by the construction or failure of the specified works or the protective works if carried out by the undertaker, the undertaker (if so required by the Canal & River Trust) must make good such detriment and must pay to the Canal & River Trust all reasonable expenses incurred by the Canal & River Trust, and compensation for any loss sustained by the Canal & River Trust in making good or otherwise by reason of the detriment.

(2) The undertaker must be responsible for and make good to the Canal & River Trust all costs, charges, damages, expenses and losses not otherwise provided for in this Part which may be occasioned to and reasonably incurred by the Canal & River Trust—

- (a) by reason of the construction of a specified work or a protective work or the failure of such a work; or
- (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon the construction of a specified work or protective work, and subject to sub-paragraph (4), the undertaker must effectively indemnify and hold harmless the Canal & River Trust from and against all claims and demands arising out of or in connection with any of the matters referred to in sub-paragraphs (a) and (b) (provided that the Canal & River Trust is not entitled to recover from the undertaker any consequential losses which are not reasonably foreseeable).

(3) The fact that any act or thing may have been done by the Canal & River Trust on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision or in accordance with any directions or awards of an arbitrator is not to (if it was done without negligence on the part of the Canal & River Trust or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this paragraph.

(4) Nothing in sub-paragraph (2) imposes any liability on the undertaker with respect to any detriment, loss or interruption to the extent that it is attributable to the act, neglect or default of the Canal & River Trust, its officers, servants, contractors or agents.

(5) The Canal & River Trust must give the undertaker reasonable notice of any such claim or demand as aforesaid and no settlement or compromise of such a claim or demand is to be made without the prior consent of the undertaker.

(6) The Canal & River Trust must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph [4446](#) applies. If requested to do so by the undertaker, the Canal & River Trust must provide an explanation of how the claim has been minimised.

(7) The aggregate cap of the undertaker's gross liability for consequential losses shall be limited to £15,000,000 (fifteen million pounds) for any one occurrence or all occurrences of a series arising out of the one original cause.

### **Arbitration**

~~[47.45](#)~~ Any difference arising between the undertaker and the Canal & River Trust under this Part (other than a difference as to the meaning or construction of this Part) must be referred to and settled by arbitration in accordance with article 48 (arbitration) of this Order.

### **Capitalised sums**

~~[48.46](#)~~ Any capitalised sum which is required to be paid under this Part must be calculated by multiplying the cost of the maintenance or renewal works to the waterway necessitated as a result of the operation of the authorised development by the number of times that the maintenance or renewal works will be required during the operation of the authorised development.

### **As built drawings**

~~[49.47](#)~~ As soon as reasonably practicable following the completion of the construction of the authorised development, the undertaker must provide to the Canal & River Trust as built drawings of any specified works in a form and scale to be agreed between the undertaker and the Canal & River Trust to show the position of those works in relation to the waterway.

### **Decommissioning**

~~[50.48](#)~~ Where the decommissioning environmental management plan identifies activities which may impact the waterway, the protective provisions in this Part 3 of Schedule 9 will, so far as appropriate, apply to those activities as if they were a specified work.

**PART 4**  
**FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE**  
**UNDERTAKERS**

~~51.49~~— For the protection of the utility undertakers referred to in this part of this Schedule, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the utility undertakers concerned.

~~52.50~~— In this Part of this Schedule—

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

“apparatus” means—

- (a) in the case of a utility undertaker within sub-paragraph (a) of the definition of that term, electric lines or electrical plant (as defined in the Electricity Act 1989), belonging to or maintained by that utility undertaker;
- (b) in the case of a utility undertaker within sub-paragraph (b) of the definition of that term, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;
- (c) in the case of a utility undertaker within sub-paragraph (c) of the definition of that term—
  - (i) mains, pipes or other apparatus belonging to or maintained by that utility undertaker for the purposes of water supply; and
  - (ii) any water mains or service pipes (or part of a water main or service pipe) that is the subject of an agreement to adopt made under section 51A of the Water Industry Act 1991(a);
- (d) in the case of a utility undertaker within sub-paragraph (d) of the definition of that term—
  - (i) any drain or works vested in the utility undertaker under the Water Industry Act 1991; and
  - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,

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

“functions” includes powers and duties;

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

“utility undertaker” means—

- (a) any licence holder within the meaning of Part 1 of the Electricity Act 1989;
- (b) a gas transporter within the meaning of Part 1 of the Gas Act 1986(b);
- (c) water undertaker within the meaning of the Water Industry Act 1991; and
- (d) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991,

for the area of the authorised development, and in relation to any apparatus, means the utility undertaker to whom it belongs or by whom it is maintained.

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(a) 1991 c. 56.

(b) 1986 c. 44. Part 1 was amended by the Gas Act 1995 (c. 45) and was further amended by the Utilities Act 2000 (c. 27).

~~53.51~~ This Part does not apply to apparatus in respect of which the relations between the undertaker and the utility undertaker are regulated by the provisions of Part 3 of the 1991 Act.

~~54.52~~ Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

~~55.53~~— ~~dddd~~ (1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that the utility undertaker's apparatus is relocated or diverted, that apparatus must not be removed under this Part, and any right of a utility undertaker to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided, to the reasonable satisfaction of the utility undertaker in question in accordance with sub-paragraphs (2) to (7).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to the utility undertaker in question written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order a utility undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the utility undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, the utility undertaker in question must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 48 (arbitration).

(5) The utility undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 48 (arbitration), and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the utility undertaker in question that it desires itself to execute any work, or part of any work, in connection with the construction or removal of apparatus in any land controlled by the undertaker, that work, instead of being executed by the utility undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker.

(7) Nothing in sub-paragraph (6) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

~~56.54~~— ~~eeee~~ (1) Where, in accordance with the provisions of this Part, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 48 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the utility undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for

the payment of compensation by the undertaker to that utility undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

~~57.55. — ffff)~~ (1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under sub-paragraph ~~5055~~(2), the undertaker must submit to the utility undertaker in question a plan, section and description of the works to be executed.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the utility undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the utility undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by a utility undertaker under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If a utility undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs ~~4951~~ to ~~5456~~ apply as if the removal of the apparatus had been required by the undertaker under paragraph ~~5055~~(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the utility undertaker in question notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

~~58.56. — gggg)~~ (1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker the reasonable expenses incurred by that utility undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph ~~5055~~(2).

(2) There is to be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part, that value being calculated after removal.

(3) If in accordance with the provisions of this Part—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 48 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the utility undertaker in question by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the execution of any such works as are referred to in paragraph ~~5055~~(2); and

- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a utility undertaker in respect of works by virtue of sub-paragraph (1), if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

(6) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph ~~59.55~~(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any utility undertaker, the undertaker must—

- (a) bear and pay the cost reasonably incurred by that utility undertaker in making good such damage or restoring the supply; and
- (b) (b) make reasonable compensation to that utility undertaker for any other expenses, loss, damages, penalty or costs incurred by the utility undertaker, by reason or in consequence of any such damage or interruption.

(7) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of a utility undertaker, its officers, servants, contractors or agents.

(8) A utility undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(9) Nothing in this Part affects the provisions of any enactment or agreement regulating the relations between the undertaker and a utility undertaking in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

## PART 5

### FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

~~59.57. hhhh~~(1) For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the operator.

(2) In this Part—

“the 2003 Act” means the Communications Act 2003(a);

“electronic communications apparatus” has the same meaning as set out in paragraph 5 of the electronic communications code;

“the electronic communications code” has the same meaning as set out in sections 106 to 119 and Schedule 3A of the 2003 Act(b);

“infrastructure system” has the same meaning as in the electronic communications code and references to providing an infrastructure system are to be construed in accordance with paragraph 7 of that code;

“network” means—

- (a) so much of a network or infrastructure system provided by an operator as is not excluded from the application of the electronic communications code by a direction under section 106(5) of the 2003 Act; and
- (b) a network which the Secretary of State is providing or proposing to provide;

(a) 2003 c. 21 as amended by the Digital Economy Act 2017 (c. 30).

(b) Added by Schedule 1 of the Digital Economy Act 2017 (c. 30).

“operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act and who is an operator of a network.

~~60.58-~~ The exercise of the powers of article 33 (statutory undertakers) is subject to Part 10 of Schedule 3A of the 2003 Act.

~~61.59-~~ ~~iiii)~~ (1) Subject to sub-paragraphs (2) to (4), if as the result of the construction of authorised development, or of any subsidence resulting from any of those works—

- (a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works), or other property of an operator; or
- (b) there is any interruption in the supply of the service provided by an operator,

the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and make reasonable compensation to that operator for any other expenses, loss, damages, penalty or costs incurred by it, by reason, or in consequence of, any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.

(3) The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Any difference arising between the undertaker and the operator under this part of this Schedule must be referred to and settled by arbitration under article 48 (arbitration).

~~62.60-~~ This Part of this Schedule does not apply to—

- (a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 of the 1991 Act; or
- (b) any damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised development.

~~63.61-~~ Nothing in this Part affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

## PART 6

### FOR THE PROTECTION OF RAILWAY INTERESTS

~~64.62-~~ The provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph ~~76~~<sup>80</sup> of this Part of this Schedule any other person on whom rights or obligations are conferred by that paragraph.

~~65.63-~~ In this Part of this Schedule—

“asset protection agreement” means an agreement to regulate the construction and maintenance of the specified work in a form prescribed from time to time by Network Rail;

“construction” includes execution, placing, alteration and reconstruction and “construct” and “constructed” have corresponding meanings;

“the engineer” means an engineer appointed by Network Rail for the purposes of this Order;

“network licence” means the network licence, as the same is amended from time to time, granted to Network Rail Infrastructure Limited by the Secretary of State in exercise of their powers under section 8 (licences) of the Railways Act 1993(a);

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(a) 1993 c. 43.

“Network Rail” means Network Rail Infrastructure Limited (company number 02904587, whose registered office is at Waterloo General Office, London SE1 8SW) and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition “associated company” means any company which is (within the meaning of section 1159 of the Companies Act 2006) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited and any successor to Network Rail Infrastructure Limited’s railway undertaking;

“plans” includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

“railway operational procedures” means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

“railway property” means Plots 2-34, 3-159, 3-161, 3-168, 3-193, 3-194 and 3-195 as identified in the book of reference and any other railway belonging to Network Rail comprising—

- (a) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and
- (b) any easement or other property interest held or used by Network Rail or a tenant or licensee of Network Rail for the purposes of such railway or works, apparatus or equipment;

“regulatory consents” means any consent or approval required under—

- (a) the Railways Act 1993;
- (b) the network licence; and/or
- (c) any other relevant statutory or regulatory provisions;

by either the Office of Rail and Road or the Secretary of State for Transport or any other competent body including change procedures and any other consents, approvals of any access or beneficiary that may be required in relation to the authorised development;

“specified work” means the carrying out of any physical works comprised in the construction of the authorised development as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property and for the avoidance of doubt, includes the maintenance of such works under the powers conferred by article 6 (maintenance of authorised development) in respect of such works;

“undertaker” has the same meaning as in article 2(1) (interpretation) of this Order.

~~66.64.~~ ~~jjjjj~~(1) Where under this Part of this Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail must—

- (a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and
- (b) use their reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development pursuant to this Order.

67.—(1) The undertaker must not exercise the powers conferred by—

- (a) article 3 (development consent etc. granted by the Order);
- (b) article 6 (maintenance of authorised development);
- (c) article 17 (discharge of water);
- (d) article 18 (authority to survey and investigate the land);

- (e) article 22 (compulsory acquisition of land);
- (f) article 23 (power to override easements and other rights);
- (g) article 25 (compulsory acquisition of rights and restrictive covenants);
- (h) article 26 (private rights);
- (i) article 28 (acquisition of subsoil or airspace only);
- (j) article 31 (temporary use of land for carrying out the authorised development);
- (k) article 32 (temporary use of land for maintaining the authorised development);
- (l) article 33 (statutory undertakers);
- (m) article 37 (felling or lopping of trees and removal of hedgerows);
- (n) the powers conferred by section 11(3) (power of entry) of the 1965 Act;
- (o) the powers conferred by section 203 (power to override easements and rights) of the Housing and Planning Act 2016;
- (p) the powers conferred by section 172 (right to enter and survey land) of the Housing and Planning Act 2016;
- (q) any powers under in respect of the temporary possession of land under the Neighbourhood Planning Act 2017,

in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(3) The undertaker must not exercise the powers conferred by ~~section 271~~sections 271 or 272 of the 1990 Act, article 23 (power to override easements and other rights), article 26 (private rights) or article 33 (statutory undertakers), in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

(4) The undertaker must not under the powers of this Order do anything which would result in railway property being incapable of being used or maintained or which would affect the safe running of trains on the railway.

(5) The undertaker must not under the powers of this Order acquire or use or acquire new rights over, or seek to impose any restrictive covenants over, any railway property, or extinguish any existing rights of Network Rail in respect of any third party property, except with the consent of Network Rail.

(6) ~~(5)~~ Where Network Rail is asked to give its consent pursuant to this paragraph, such consent must not be unreasonably withheld but may be given subject to reasonable conditions, with due regard given to Network Rail's functions in relation to the safe operation of the railway.

(7) ~~(6)~~ If requested by Network Rail following submission of details to Network Rail pursuant to paragraph ~~62~~68, the undertaker must enter into an asset protection agreement prior to the commencement of the construction of any part of a specified work and Network Rail shall enter into such asset protection agreement with the undertaker within 56 days of such request unless otherwise agreed between the parties.

~~68.65. — kkkk~~(1) The undertaker must, before commencing construction of any specified work, supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced, except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated their disapproval of those plans and the grounds of such disapproval the undertaker may serve upon the engineer written notice requiring the engineer to intimate approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further 28 days the engineer has not intimated approval or disapproval, the engineer shall be deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail must construct it without unnecessary delay on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.

(4) When signifying their approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes must be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works must be carried out at the expense of the undertaker in either case without unnecessary delay and the undertaker must not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to their reasonable satisfaction.

~~69.66. — IIII~~ (1) Any specified work and any protective works to be constructed by virtue of paragraph ~~62(4)~~68(4) must, when commenced, be constructed—

- (a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph ~~62~~68;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage as is possible to railway property; and
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction shall be caused by the carrying out of, or in consequence of the construction of a specified work, the undertaker must, notwithstanding any such approval, make good such damage and must pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Part of this Schedule imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents or any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

~~70.67.~~ The undertaker must—

- (a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and
- (b) supply the engineer with all such information as they may reasonably require with regard to a specified work or the method of constructing it.

~~71.68.~~ Network Rail must at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by Network Rail under this Part of this Schedule during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

~~72.69. — mmmmm~~ (1) If any permanent or temporary alterations or additions to railway property are reasonably necessary in consequence of the construction of a specified work, or during a period of 24 months after the completion of that specified work, in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the undertaker 56 days written notice.

(2) If during the construction of a specified work by the undertaker, Network Rail gives written notice to the undertaker that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work is to be constructed, Network Rail must assume construction of that part of the specified work and the undertaker must, notwithstanding any such approval of a specified work under paragraph ~~62~~68(3), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph ~~74~~73(a) provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

(4) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving must be set off against any sum payable by the undertaker to Network Rail under this paragraph.

~~73.70.~~ The undertaker must repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

- (a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph ~~62~~68(3) or in constructing any protective works under the provisions of paragraph ~~62~~68(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work;
- (c) in respect of the employment or procurement of the services of any inspectors, signallers, watch-persons and other persons whom it shall be reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;
- (d) in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and
- (e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

~~74.~~—(1) In this paragraph—

“EMI” means, subject to sub-paragraph (2), electromagnetic interference with Network Rail apparatus generated by the operation of the authorised development where such interference is of a level which adversely affects the safe operation of Network Rail’s apparatus; and

“Network Rail’s apparatus” means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised development) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail’s apparatus carried out after approval of plans under paragraph 68(1) for the relevant part of the authorised development giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the undertaker must in the design and construction of the authorised development take all measures necessary to prevent EMI and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) In order to facilitate the undertaker’s compliance with sub-paragraph (3)—

- (a) the undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail’s apparatus which may be at risk of EMI, and thereafter must continue to consult with Network Rail (both before and after formal submission of plans

under paragraph 68(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;

- (b) Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail's apparatus identified pursuant to sub-paragraph (a); and
- (c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail's apparatus identified pursuant to sub-paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail's apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail's apparatus, but the means of prevention and the method of their execution must be selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 68(1) has effect subject to the sub-paragraph.

(6) Prior to the commencement of operation of the authorised development the undertaker shall test the use of the authorised development in a manner that shall first have been agreed with Network Rail and if, notwithstanding any measures adopted pursuant to sub-paragraph (3), the testing of the authorised development causes EMI then the undertaker must immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) the undertaker's apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail's apparatus.

(7) In the event of EMI having occurred—

- (a) the undertaker must afford reasonable facilities to Network Rail for access to the undertaker's apparatus in the investigation of such EMI;
- (b) Network Rail must afford reasonable facilities to the undertaker for access to Network Rail's apparatus in the investigation of such EMI;
- (c) Network Rail must make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail's apparatus or such EMI; and
- (d) the undertaker shall not allow the use or operation of the authorised development in a manner that has caused or will cause EMI until measures have been taken in accordance with this paragraph to prevent EMI occurring.

(8) Where Network Rail approves modifications to Network Rail's apparatus pursuant to sub-paragraphs (5) or (6)—

- (a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus; and
- (b) any modifications to Network Rail's apparatus approved pursuant to those sub-paragraphs must be carried out and completed by the undertaker in accordance with paragraph 69.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 78(1) applies to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.

(10) For the purpose of paragraph 73(a) any modifications to Network Rail's apparatus under this paragraph shall be deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph any reference in article 48 (arbitration) to the Institution of Civil Engineers shall be read as a reference to the Institution of Engineering and Technology.

~~75.71-~~ If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, the undertaker

must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.

~~76.72.~~ The undertaker must not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail unless it has first consulted Network Rail and it must comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

~~77.73.~~ Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work must, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to Network Rail.

~~78.74.~~ ~~nnnnn~~ (1) The undertaker must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule (but always excluding any consequential or indirect loss) (subject to article ~~35~~ (50 (no double recovery of costs of new connections))) which may be occasioned to or reasonably incurred by Network Rail—

- (a) by reason of the construction ~~or~~ maintenance or operation of a specified work or the failure thereof;
- (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work;
- (c) by reason of any act or omission of the undertaker or any person in its employ or of its contractors or others whilst accessing to or egressing from the authorised development ~~during the construction of the authorised works~~;
- (d) in respect of any damage caused to or additional maintenance required to, railway property or any such interference or obstruction or delay to the operation of the railway as a result of access to or egress from the authorised development ~~during the construction of the authorised works~~ by the undertaker or any person in its employ or of its contractors or others; or
- (e) in respect of costs incurred by Network Rail in complying with any railway operational procedures or obtaining any regulatory consents which procedures are required to be followed or consents obtained to facilitate the carrying out or operation of the authorised development.

and the undertaker must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission: and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision shall not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(2) Network Rail must—

- (a) give the undertaker reasonable written notice of any such claims or demands as soon as reasonably practicable after Network Rail becomes aware of any such claims or demands;
- (b) not make any settlement or compromise of such a claim or demand without the prior consent of the undertaker; ~~and~~
- (c) take all reasonable steps to mitigate any liabilities relating to such claims or demands ~~;~~ and
- (d) keep the undertaker informed in relation to the progress of any such claims and demands and have due regard to the undertaker's representations in relation to them.

(3) The sums payable by the undertaker under sub-paragraph (1) shall if relevant include a sum equivalent to the relevant costs.

(4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must

promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(5) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs shall, in the event of default, be enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-paragraph (4).

(6) In this paragraph—

"the relevant costs" means the costs, losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any specified work including but not limited to any restriction of the use of Network Rail's railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in sub-paragraph (1); and

"train operator" means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

(7) ~~(3)~~ Network Rail must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part of this Schedule (including the amount of the relevant costs mentioned in paragraph 78) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Part of this Schedule (including any claim relating to those relevant costs).

~~79.75-~~ In the assessment of any sums payable to Network Rail under this Part of this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part of this Schedule or increasing the sums so payable.

~~80.76-~~ The undertaker and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the undertaker of—

- (a) any railway property shown on the works and land plans and described in the book of reference;
- (b) any lands, works or other property held in connection with any such railway property; and
- (c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

~~81.77-~~ Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part I of the Railways Act 1993.

~~82.78-~~ The undertaker must give written notice to Network Rail if any application is proposed to be made by the undertaker for the Secretary of State's consent under article 5 (benefit of the Order) of this Order and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

- (a) the nature of the application to be made;
- (b) the extent of the geographical area to which the application relates; and
- (c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

~~83.79-~~ The undertaker must no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 45 (certification of plans etc.) are certified by the Secretary of State, provide a set of those plans to Network Rail.

~~84.80-~~ In relation to any dispute arising under this part of this Part of this Schedule (except for those disputes referred to in paragraph 74(11)), the provisions of article 48 (arbitration) shall not apply; and any such dispute, unless otherwise provided for, must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) to the President of the Institution of Civil Engineers.

## PART 7

### FOR THE PROTECTION OF NORTHERN POWERGRID (YORKSHIRE) PLC

85. For the protection of Northern Powergrid the following provisions have effect, unless otherwise agreed in writing between the undertaker and Northern Powergrid.

86. In this Part of this Schedule—

“alternative apparatus” means alternative and / or replacement apparatus adequate to enable Northern Powergrid to fulfil its statutory functions in a manner not less efficient than previously;

“apparatus” means electric lines or electrical plant (as defined in the Electricity Act 1989) belonging to or maintained by Northern Powergrid and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“authorised works” means so much of the works authorised by this Order which affect existing Northern Powergrid apparatus within the Order limits;

“functions” includes powers and duties;

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

“Northern Powergrid” means Northern Powergrid (Yorkshire) PLC (company number 04112320) whose registered address is Lloyds Court, 78 Grey Street, Newcastle upon Tyne, NE1 6AF;

“Order” means the Keadby Next Generation Power Station Development Consent Order 202[X]; and

“plan” includes all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed and shall include measures proposed by the undertaker to ensure the grant of sufficient land or rights in land necessary to mitigate the impacts of the works on Northern Powergrid’s undertaking.

87. This Part of this Schedule does not apply to apparatus and / or alternative apparatus in respect of which the relations between the undertaker and Northern Powergrid are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

88. Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 12 of this Order (temporary restriction of use of streets), Northern Powergrid is at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

89. Regardless of any provision in this Order or anything shown on the land plans, or contained in the book of reference, the undertaker shall not acquire any apparatus, or override any easement or other interest of Northern Powergrid otherwise than by agreement with Northern Powergrid such agreement not to be unreasonably withheld or delayed.

90.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed in or over which access to any apparatus is enjoyed or requires that Northern Powergrid’s apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of Northern Powergrid to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided pursuant to a completed easement which shall include rights to retain and subsequently maintain the apparatus being relocated or diverted for the lifetime of that alternative apparatus, all to the reasonable satisfaction of Northern Powergrid in accordance with sub-paragraphs (2) to (7).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must, unless otherwise agreed between the parties, give to Northern Powergrid 42 days’ advance written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or

if in consequence of the exercise of any of the powers conferred by this Order Northern Powergrid reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to Northern Powergrid the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed—

- (a) the undertaker must in the first instance use reasonable endeavours to acquire all necessary land interests or rights as Northern Powergrid may reasonably require for the relocation and construction of alternative apparatus and must use reasonable endeavours to procure all necessary rights to access and maintain Northern Powergrid’s apparatus and alternative apparatus thereafter the terms of such access and maintenance to be agreed by Northern Powergrid (acting reasonably);
- (b) in the event that the undertaker is not able to procure the necessary land interest or rights referred to in sub-paragraph (3)(a) Northern Powergrid must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably practicable and at the cost of the undertaker (subject to prior approval by the undertaker of its estimate of costs of doing so) use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for Northern Powergrid to use its compulsory purchase powers to this end;
- (c) in the event that neither the undertaker nor Northern Powergrid can acquire all necessary land interests or rights which Northern Powergrid may reasonably require for the relocation and construction of alternative apparatus pursuant to sub-paragraphs (3)(a) and/or (b), the undertaker shall use its compulsory purchase powers under this Order (where available) for the acquisition of any such land or land rights unless otherwise agreed by arbitration under article 48 (arbitration).

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between Northern Powergrid and the undertaker or in default of agreement settled by arbitration in accordance with article 48 (arbitration).

(5) Northern Powergrid must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 48, and after the grant to Northern Powergrid of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

91.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to Northern Powergrid facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and Northern Powergrid or in default of agreement settled by arbitration in accordance with article 48 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to Northern Powergrid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to Northern Powergrid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

92.—(1) Unless otherwise agreed between the parties, not less than 48 days before starting the execution of any authorised works in, on or under any land purchased, held, appropriated or used under this Order that are near to (including conducting any activities whether intentionally or unintentionally, through for example ground or machinery collapse, which may affect Northern Powergrid’s apparatus or encroach on safety distances to live equipment) or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 90(2), the undertaker must submit to Northern

Powergrid a plan, section and description of the works to be executed and any such information as Northern Powergrid reasonably requires relating to those works.

(2) Those authorised works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by Northern Powergrid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and Northern Powergrid is entitled to watch and inspect the execution of those works.

(3) Any requirements made by Northern Powergrid under sub-paragraph (2) must be made within a period of 42 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If Northern Powergrid in accordance with sub-paragraph (3) and in consequence of the authorised works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 85 to 90 apply as if the removal of the apparatus had been required by the undertaker under paragraph 90(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 35 days before commencing the execution of any authorised works (unless otherwise agreed between the parties), a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to Northern Powergrid notice as soon as is reasonably practicable and a plan, section and description of those authorised works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

93.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to Northern Powergrid within fifty-one (51) days of receipt of an itemised invoice or claim all reasonable and proper expenses costs or charges incurred by Northern Powergrid—

- (a) in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 90(2) including without limitation—
  - (i) any costs reasonably incurred or compensation properly paid by Northern Powergrid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation in the event that Northern Powergrid acquires any necessary land and/or rights for alternative apparatus by voluntary negotiation or elects to use its compulsory purchase powers to acquire any necessary rights under paragraph 90(2)(c) all costs reasonably incurred as a result of such action;
  - (ii) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
  - (iii) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
  - (iv) the approval of plans;
  - (v) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
  - (vi) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule); and
- (b) in assessing and preparing a design for its apparatus including alternative apparatus to address and accommodate the proposals of the undertaker whether or not the undertaker proceeds to implement those proposals or alternative or none at all, provided that if it so prefers Northern Powergrid may abandon apparatus that the undertaker does not seek to remove in accordance with paragraph 90(1) having first decommissioned such apparatus.

(2) Where any payment falls due pursuant to sub-paragraph (1), Northern Powergrid shall—

- (a) provide an itemised invoice or reasonable expenses claim to the undertaker;

- (b) provide 'reminder letters' to the undertaker for payment to be made within the fifty days on the following days after the invoice or reasonable expenses claim to the undertaker—
  - (i) 15 days ('reminder letter 1');
  - (ii) 29 days ('reminder letter 2');
  - (iii) 43 days ('reminder letter 3'); and
- (c) be entitled to commence debt proceedings to recover any unpaid itemised invoice or reasonable expenses claim after fifty-one days of receipt of the same where payment has not been made.

(3) There is to be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal and for the avoidance of doubt, if the apparatus removed under the provisions of this Part of this Schedule has nil value, no sum will be deducted from the amount payable under sub-paragraph (1) if in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 48 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to Northern Powergrid by virtue of sub-paragraph (1) is to be reduced by the amount of that excess save where it is not possible on account of project time limits and/or supply issues to obtain the existing type of apparatus at the same capacity dimensions or place at the existing depth in which case full costs shall be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the execution of any such works as are referred to in paragraph 90(2); and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

94.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the authorised works referred to in paragraph 90(2), or in consequence of the, maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by it) in the course of carrying out such authorised works, including without limitation authorised works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of Northern Powergrid, or there is any interruption in any service provided by Northern Powergrid, or Northern Powergrid becomes liable to pay any amount to a third party as a consequence of any default, negligence or omission by the undertaker in carrying out the authorised works, the undertaker must—

- (a) bear and pay the cost reasonably incurred by Northern Powergrid in making good such damage or restoring the supply; and
- (b) indemnify Northern Powergrid for any other expenses, loss, damages, penalty, proceedings, claims or costs incurred by or recovered from Northern Powergrid by reason or in consequence of any such damage or interruption or Northern Powergrid becoming liable to any third party.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker in respect of—

- (a) any damage or interruption to the extent that it is attributable to the neglect or negligence of Northern Powergrid, its officers, employees, servants, contractors or agents; or
- (b) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable.

(3) Northern Powergrid must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Northern Powergrid must, in respect of any matter covered by the indemnity given by the Undertaker in this paragraph, at all times act reasonably as it would as if settling third party claims on its own behalf from its own funds.

(5) Northern Powergrid must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies. If requested to do so by the undertaker, Northern Powergrid must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1). The undertaker shall only be liable under this paragraph for claims reasonably incurred by Northern Powergrid.

(6) Subject to sub-paragraphs (4) and (5), the fact that any act or thing may have been done by Northern Powergrid on behalf of the undertaker or in accordance with a plan approved by Northern Powergrid or in accordance with any requirement of Northern Powergrid as a consequence of the authorised development or under its supervision will not (unless sub-paragraph (2) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (6) where the undertaker fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not materially accord with the approved plan or as otherwise agreed between the undertaker and the Northern Powergrid.

95. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Northern Powergrid in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

96. Any difference under the provisions of this Part of this Schedule, unless otherwise agreed, is to be referred to and settled by arbitration in accordance with article 48 (arbitration).

97. Where in consequence of the proposed construction of any of the authorised works, the undertaker or Northern Powergrid requires the removal of apparatus under paragraph 90 or otherwise or Northern Powergrid makes requirements for the protection or alteration of apparatus under paragraph 92, the undertaker shall use its reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the need to ensure the safe and efficient operation of Northern Powergrid's undertaking taking into account the undertaker's desire for the efficient and economic execution of the authorised development and the undertaker and Northern Powergrid shall use reasonable endeavours to co-operate with each other for those purposes.

98. If in consequence of an agreement reached in accordance with paragraph 89 or the powers granted under this Order the access to any apparatus or alternative apparatus is materially obstructed, the undertaker shall provide such alternative means of access to such apparatus or alternative apparatus as will enable Northern Powergrid to maintain or use the said apparatus no less effectively than was possible before such obstruction.

99. The plans submitted to Northern Powergrid by the undertaker pursuant to this Part of this Schedule must be sent to Northern Powergrid at [property@northernpowergrid.com](mailto:property@northernpowergrid.com) or such other address as Northern Powergrid may from time to time appoint instead for that purpose and notify to the undertaker in writing.

100. Prior to carrying out any authorised works within the Order limits Northern Powergrid must give written notice of the proposed works to the undertaker, such notice to include full details of the location

of the proposed works, their anticipated duration, access arrangements, depths of the works, and any other information that may impact upon the works consented by this Order.

101. Where practicable the undertaker and Northern Powergrid will make reasonable efforts to liaise and co-operate in respect of information that is relevant to the safe and efficient construction operation and maintenance of the authorised development. Such liaison shall be carried out where any authorised works are—

- (a) within 15m of any above ground apparatus; and/or
- (b) within 15m of any apparatus and to a depth of between 0–4m below ground level under any apparatus.

## SCHEDULE 10

Requirement 5

### DESIGN PARAMETERS

1. Maximum parameters for buildings and structures are set out at table 5.
2. The finished ground level in respect of Work Nos. 1A and 1B at the components listed in table 5 is anticipated to be 3.0 metres AOD and in all cases the maximum heights measured AOD shall not exceed the measurement in column 4 of table 5.
3. Maximum parameters for length (m), width (m) or diameter (m) exclude external support structures such as (but not limited to) ladders, platforms, external piping and structural supports.

**Table 5**

<i>(1)</i> <i>Component</i>	<i>(2)</i> <i>Length (m)</i>	<i>(3)</i> <i>Width (m) or diameter (m)</i>	<i>(4)</i> <i>Height (m) AOD in all cases</i>
Gas Turbine Hall (Work No. 1A)	23	53	35.0
Gas Turbine Generator Hall (Work No. 1A)	28	22	27.0
Steam Turbine Hall (Work No. 1A)	58	61	42.0
Heat recovery steam generator hall (Work No. 1A)	33	74	61.0
Stack (Work No. 1A)	n/a	9	88.0
Hybrid cooling towers (Work No. 1B)	170	38	28.0

## SCHEDULE 11

Article 45

### DOCUMENTS AND PLANS TO BE CERTIFIED

**Table 6**

<i>(1)</i> <i>Document Name</i>	<i>(2)</i> <i>Document Reference</i>
Access and rights of way plans	2.4
Application guide	1.3
Book of reference	4.3
Combined heat and power assessment	5.8
Crown land plans	2.5
Design principles statement (appendix 1 of the design and access statement)	5.6, appendix 1

Environmental statement	6.2, 6.3, 6.4
Flood risk assessment	6.3.16
Haul road plans	2.16
Indicative landscape and biodiversity plan	2.18
Indicative surface water drainage plan	2.12
Land plans	2.2
Outline construction environmental management plan	7.4
Outline construction traffic management plan	7.5
Outline construction workers travel plan	7.6
Outline landscape and biodiversity management and enhancement plan report	5.10
Outline lighting strategy	5.11
Outline written scheme of investigation	7.7
Pilfrey laydown plans	2.17
Schedule of commitments	6.3, appendix 22A
Works plans	2.3

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### **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order authorises the undertaker (referred to in this Order as the undertaker) to construct, operate and maintain a [A high efficiency electricity generating station with a net output capacity of up to 910 megawatts (MWe) designed to run on hydrogen, natural gas or a blend of hydrogen and natural gas and associated development.] The Order permits the undertaker to acquire, compulsorily or by agreement, land and rights in land and to use land for this purpose.

A copy of the Order plans and the book of reference mentioned in this Order and certified in accordance with article 45 (certification of plans etc.) may be inspected free of charge during working hours at Crowle Library, The Market Hall, Market Place, Crowle, North Lincolnshire, DN17 4LA.

<b>Summary report:</b>	
<b>Litera Compare for Word 11.16.0.74 Document comparison done on 05/06/2026 15:24:29</b>	
<b>Style name:</b> Default Style	
<b>Intelligent Table Comparison:</b> Active	
<b>Original filename:</b> 1. dDCO - D4 Clean.doc	
<b>Modified filename:</b> 1. KNGPS - D5 - Draft Development Consent Order (05.06.2026).doc	
<b>Changes:</b>	
<a href="#">Add</a>	695
<del>Delete</del>	222
<del>Move From</del>	0
<del>Move To</del>	0
<del>Table Insert</del>	0
<del>Table Delete</del>	0
<del>Table moves to</del>	0
<del>Table moves from</del>	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
<b>Total Changes:</b>	<b>917</b>