THE DROVES
SOLAR FARM

The Droves Solar Farm

draft Development Consent Order (Clean)

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S T A T U T O R Y I N S T R U M E N T S

202* No. ****

INFRASTRUCTURE PLANNING

The Droves Solar Farm Order 202*

Made - - - - ***

Coming into force - - ***

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

The application has been examined by the Examining Authority appointed by the Secretary of State pursuant to Chapter 2 of Part 6 of the 2008 Act and 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, having considered the application together with the documents that accompanied it, and the representations made and not withdrawn, has, in accordance with section 74(2)(**d**) of the 2008 Act made a report and recommendation to the Secretary of State.

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

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

The Secretary of State, in exercise of the powers conferred by sections 114(**g**), 115(**h**), 117(**i**), 120(**j**), 122(**k**), 123(**l**) of the 2008 Act, makes the following Order—

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as The Droves Solar Farm Order 202[ ] and comes into force on [ ] 202[ ].

Interpretation

2.—(1) In this Order—

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

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

(**a**) 2008 c. 29. Section 37 was amended by section 137(5) of, and paragraph 5 of Schedule 13 to, the Localism Act 2011 (c. 20).
(**b**) S.I. 2009/2264.
(**c**) S.I. 2010/103.
(**d**) As amended by paragraph 29(1) and (3) of Part 1 of Schedule 13 to the Localism Act 2011 (c. 20).
(**e**) S.I. 2017/572.
(**f**) Section 104 was amended by section 58(5) of the Marine and Coastal Access Act 2009 (c. 23) and by section 128(2) of the and Schedule 13, paragraphs 1 and 49(1) to (6) of the Localism Act 2011 (c. 20).
(**g**) Section 114 was amended by paragraph 55 of Part 1 of Schedule 13 to the Localism Act 2011.
(**h**) Section 115 was amended by paragraph 56 of Part 1 of Schedule 13 and Part 20 of Schedule 25 to the Localism Act 2011, section 160 of the Housing and Planning Act 2016 (c. 22) and section 43 of the Wales Act 2017 (c. 4).
(**i**) Section 117 was amended by paragraph 58 of Part 1 of Schedule 13 and Part 20 of Schedule 25 to the Localism Act 2011.
(**j**) Section 120 was amended by section 140 and paragraph 60 of Part 1 of Schedule 13 to the Localism Act 2011.
(**k**) Section 122 was amended by paragraph 62 of Part 1 of Schedule 13 to the Localism Act 2011.
(**l**) Section 123 was amended by paragraph 62 of Part 1 of Schedule 13 to the Localism Act 2011.
(**m**) 1961 c. 33.
(**n**) 1965 c. 56.

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

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

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

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

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

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

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

"access and rights of way plan" means the plan of that name identified in the table at Schedule 13 (documents and plans to be certified) and which is certified by the Secretary of State as the access and rights of way plan for the purposes of this Order;

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

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

"applicable period" means the period of five years beginning on the day on which this Order comes into force and includes any extension applied by section 4A (extension of time limit during challenge) of the 1965 Act or section 5B (extension of time limit during challenge) of the 1981 Act;

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

"book of reference" means the document of that name identified in the table at Schedule 13 and which is certified by the Secretary of State as the book of reference for the purposes of this Order;

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

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

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

"commercial use" means the export of electricity from any part, and the import of electricity to any part, by the authorised development on a commercial basis, following the date of final commissioning of any part of the authorised development;

"date of decommissioning" means in respect of each part of the authorised development, the date notified under requirement 20 that the commercial use of that part of the authorised development has permanently ceased;

"date of final commissioning" means the date on which the authorised development commences operation by generating electricity on a commercial basis but excluding the generation of electricity during commissioning and testing;

"definitive map and statement" has the same meaning as in Part 3 of the Wildlife and Countryside Act 1981(**h**);

(**a**) 1980 c. 66.
(**b**) 1981 c. 66.
(**c**) 1984 c. 27.
(**d**) 1989 c. 29.
(**e**) 1990 c. 8.
(**f**) 1991 c. 22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c. 26). Sections 78(4), 80(4) and 83(4) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).
(**g**) 2008 c. 29.
(**h**) 1981 c. 69.

"design principles, parameters and commitments" means the document of that name identified in the table of Schedule 13 and which is certified by the Secretary of State as the design principles, parameters and commitments for the purposes of this Order;

"electronic transmission" means a communication transmitted—

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

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

"environmental statement" means the document of that name identified in the table at Schedule 13 and which is certified by the Secretary of State as the environmental statement for the purposes of this Order;

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

"hedgerow plan" means the plan of that name identified in the table at Schedule 13 and which is certified by the Secretary of State as the tree protection order and hedgerow plan for the purposes of this Order;

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

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

"land plan" means the plan of that name identified in the table at Schedule 13 and which is certified by the Secretary of State as the land plan for the purposes of this Order;

"maintain" includes inspect, repair, adjust, alter, remove, refurbish, reconstruct, replace (including scheduled replacement) and improve any part of the authorised development and "maintenance" and "maintaining" are to be construed accordingly;

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

"Order land" means the land shown coloured pink or blue on the land plan which is required for or is required to facilitate or is incidental to the authorised development and which is within the limits of land to be acquired or used and described in the book of reference;

"Order limits" means the limits shown on the works plan within which the authorised development may be carried out and land acquired or used;

"outline archaeological mitigation strategy" means the document of that name identified in the table at Schedule 13 and which is certified by the Secretary of State as the outline archaeological mitigation strategy for the purposes of this Order;

"outline battery safety management plan" means the document of that name identified in the table at Schedule 13 and which is certified by the Secretary of State as the battery safety management plan for the purposes of this Order;

"outline construction environmental management plan" means the document of that name identified in the table at Schedule 13 and which is certified by the Secretary of State as the outline construction environmental management plan for the purposes of this Order;

"outline construction traffic management plan" means the document of that name identified in the table at Schedule 13 and which is certified by the Secretary of State as the outline construction traffic management plan for the purposes of this Order;

"outline decommissioning strategy" means the document of that name identified in the table at Schedule 13 and which is certified by the Secretary of State as the outline decommissioning strategy for the purposes of this Order;

"outline landscape and ecological management plan" means the document of that name identified in the table at Schedule 13 and which is certified by the Secretary of State as the outline landscape and ecological management plan for the purposes of this Order;

(**a**) "highway" is defined in section 328(1). For "highway authority" see section 1.
(**b**) 2006 c. 46.

"outline operational environmental management plan" means the document of that name identified in the table at Schedule 13 and which is certified by the Secretary of State as the outline operational environmental management plan for the purposes of this Order;

"outline operational traffic management plan" means the document of that name identified in the table at Schedule 13 and which is certified by the Secretary of State as the outline operational traffic management plan for the purposes of this Order;

"outline public right of way and permissive path management plan" means the document of that name identified in the table at Schedule 13 and which is certified by the Secretary of State as the outline public right of way and permissive path management plan for the purposes of this Order;

"outline employment, skills and supply chain strategy" means the plan of that name identified in the table at Schedule 13 and which is certified by the Secretary of State as the outline employment, skills and supply chain strategy for the purposes of this Order;

"outline soil management plan" means the document of that name identified in the table at Schedule 13 and which is certified by the Secretary of State as the outline soil management plan for the purposes of this Order;

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

"permit scheme" means the Norfolk Permit Scheme for Road Works and Street Works made by the Traffic Management (Norfolk County Council) Permit Scheme Order 2015 which is a scheme made under Part 3 of the Traffic Management Act 2004;

"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 and machinery;

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

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

(e) protection, diversion and laying of apparatus;

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

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

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

"permitted preliminary works environmental management plan" means the document of that name identified in the table at Schedule 13 and which is certified by the Secretary of State as the permitted preliminary works environmental management plan for the purposes of this Order;

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

"public right of way" includes any public right of way that is added to the definitive map and statement after the making of this Order;

"RAF Marham mitigation areas plan" means the document of that name identified in the table at Schedule 13 and which is certified by the Secretary of State as the RAF Marham mitigation areas plan (drawing number DIO10067597-20260903-V5.) for the purposes of this Order;

"relevant planning authority" means the local planning authority for the area in which the land to which the provisions of this Order apply is situated;

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

"requirements" means those matters set out at Schedule 2 (requirements) and "requirement" means any one of the requirements and any reference to a numbered requirement is to be construed accordingly;

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

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

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

"streets plan" means the plan of that name identified in the table at Schedule 13 and which is certified by the Secretary of State as the streets plan for the purposes of this Order;

"street works" means the works listed in article 8(1) (street works);

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

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

"undertaker" means The Droves Solar Farm Limited (company number 14684480) and any other person who for the time being has the benefit of this Order in accordance with article 36 (benefit of the Order) or article 37 (consent to transfer the benefit of the Order);

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

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

"working day" means any day other than a Saturday, Sunday or English bank or public holiday; and

"works plan" means the plan of that name identified in the table at Schedule 13 and which is certified by the Secretary of State as the works plan for the purposes of this Order.

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

(3) In this Order, references to the purposes of the authorised development include the construction, maintenance, operation, use and decommissioning of the authorised development.

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

(5) References in this Order to numbered works are references to the works comprising the authorised development as numbered in Schedule 1 and shown on the works plan and a reference in this Order to a work designated by a number, or by a combination of letters and numbers, is a reference to the work so designated in that Schedule and a reference to "Work No. 3" or "numbered work 3" means numbered works 3A and 3B inclusive and the same principle applies to such numbered works that contain letters.

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

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

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

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

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

(8) In this Order, all references to the singular is a reference to the plural, and vice versa, except where explicitly stated.

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

(10) In this Order, references to materially new or materially different environmental effects in comparison with those reported in the environmental statement are not to be construed so as to include the avoidance, removal or reduction of an assessed adverse environmental effect or a positive environmental effect, or the increase of an assessed positive environmental effect or creation of a new positive environmental effect. A matter will be within scope of the environmental statement if it does not give rise to materially new or materially different environmental effects to those reported in the environmental statement.

PART 2

PRINCIPAL POWERS

Development consent etc. granted by this Order

3.—(1) Subject to the provisions of this Order and the requirements in Schedule 2 (requirements), the undertaker is granted development consent for the authorised development to be carried out within the Order limits.

(2) Each numbered work must be situated within the corresponding numbered area shown on the works plan.

Operation of generating station

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 requirement to obtain any permit or licence under any other legislation that may be required from time to time to authorise the operation of an electricity generating station.

Power to maintain the authorised development

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

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

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

Disapplication and modification of legislation, etc.

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

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

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

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

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

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

(d) the provisions of any byelaws made under, or having effect as if made under, paragraphs 5, 6 or 6A of Schedule 25 (byelaw making powers of the appropriate agency) to the Water Resources Act 1991(**b**);

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

(f) the legislation listed in Schedule 3 (legislation to be disapplied) in so far as the provisions still in force are incompatible with the powers contained within this Order; and

(g) the provisions of the Neighbourhood Planning Act 2017(**d**) insofar as they relate to the temporary possession of land under articles 31 (temporary use of land for constructing the authorised development) and 32 (temporary use of land for maintaining the authorised development) of this Order.

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

(3) Regulation 6(1) of the Hedgerows Regulations 1997 has effect as though after sub-paragraph (e) there were added—

"(ea) for carrying out any development or in the exercise of any functions that are authorised by The Droves Solar Farm Order 202[ ];".

(4) Regulation 3(2) of The Environmental Impact Assessment (Agriculture) (England) (No.2) Regulations 2006(**f**) has effect as though after sub-paragraph (b) there were added—

"(ba) constitutes development to which the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017;".

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

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

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

Defence to proceedings in respect of statutory nuisance

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

(**a**) Section 66 was amended by paragraphs 25 and 38 of Schedule 2 to the Flood and Water Management Act 2010 and section 86 of the Water Act 2014 (c. 21).

(**b**) 1991 c. 57. Paragraph 5 was amended by section 100 of the Natural Environment and Rural Communities Act 2006 (c. 16), section 84 of, and paragraph 3 of Schedule 11 to the Marine and Coastal Access Act 2009 (c. 23) and S.I. 2013/775. Paragraph 6 was amended by section 105 of, and paragraph 26 of Schedule 15 to, the Environment Act 1995, sections 224, 233 and 321 of and paragraphs 20 and 24 of Schedule 16 and Part 5(B) of Schedule 22 to the Marine and Coastal Access Act 2009 and S.I. 2013/755. Paragraph 6A was inserted by section 103(3) of the Environment Act 1995.

(**c**) S.I. 2016/1154. Regulation 12 was amended by S.I. 2018/110.

(**d**) 2017 c. 20.

(**e**) 1967 c. 10. Section 9 was amended by section 4 of, and paragraph 141 of, Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11) and S.I. 2013/755. There are other amendments to section 9 that are not relevant to this Order.

(**f**) S.I. 2006/2522.

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

(**h**) 1990 c. 43.

(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 construction or maintenance of the authorised development in accordance with a notice served under section 60 (control of noise on construction site) of the Control of Pollution Act 1974(**a**), or a consent given under section 61 (prior consent for work on construction site) of that Act; or

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

(c) is a consequence of the use of the authorised development and that it cannot be reasonably avoided.

(2) Section 61(9) (Prior consent for work on construction sites to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974, does not apply where the consent relates to the use of the premises by the undertaker for the purposes of, or in connection with, the construction or maintenance or decommissioning of the authorised development.

PART 3

STREETS

Street works

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

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

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

(c) place and keep apparatus in or under the street;

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

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

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

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

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

Application of the permit scheme

9.—(1) The permit scheme applies with the modifications set out in this article to street works carried out under the power conferred by article 8 (street works) of this Order.

(2) For the purposes of this Order—

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

(**a**) 1974 c. 40. Section 61(9) was amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990 (c. 25). There are other amendments to the 1974 Act which are not relevant to the Order.

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

(3) Without restricting the undertaker's recourse to any alternative appeal mechanism which may be available under the permit scheme or otherwise, the undertaker may appeal any decision to refuse to grant a permit or to grant a permit subject to conditions pursuant to the permit scheme in accordance with the mechanism set out in Schedule 16 (procedure for discharge of requirements) of this Order.

(4) References to moratoria in paragraph (2) mean restrictions imposed under section 58 (restrictions on works following substantial road works) or section 58A (restrictions on works following substantial street works) of the 1991 Act.

Power to alter layout, etc., of streets

10.—(1) The undertaker may for the purposes of the authorised development alter the layout of, and carry out the works to, the streets—

(a) specified in column 2 of the table in Part 1 (permanent alteration of layout) of Schedule 5 (alteration of streets) permanently in the manner specified in relation to that street in column 3; and

(b) specified in column 2 of the table in Part 2 (temporary alteration of layout) of Schedule 5 temporarily in the manner specified in relation to that street in column 3.

(2) Without prejudice to the specific powers conferred by paragraph (1), but subject to paragraphs (3) and (4), the undertaker may, for the purposes of constructing, operating or maintaining, or decommissioning the authorised development, alter the layout of any street and, without limitation on the scope of this paragraph, the undertaker may—

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

(b) make and maintain passing places; and

(c) alter, remove, replace or relocate any street furniture, including but without limitation any bollards, lighting columns or street signs.

(3) The undertaker must restore any street that has been temporarily altered under this Order to the reasonable satisfaction of the street authority.

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

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

Construction and maintenance of altered streets

11.—(1) Each of the streets altered by the undertaker under the powers conferred by article 10 (power to alter layout, etc., of streets) must—

(a) be completed to the reasonable satisfaction of the street authority; and

(b) unless otherwise agreed with the street authority, be maintained by and at the expense of—

(i) the undertaker, for a period of 12 months from the date the alteration of that street is completed; and

(ii) by the street authority, from the expiry of that 12 month period.

(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.

Temporary closure, restriction or prohibition of use of streets and public rights of way

12.—(1) The undertaker, during and for the purposes of constructing, maintaining or decommissioning the authorised development, may temporarily close, prohibit the use of, restrict the use of, alter or divert any street or public right of way and may for any reasonable time—

(a) divert the traffic or a class of traffic from the street or public right of way;

(b) authorise the use of motor vehicles on classes of public rights of way where, notwithstanding the provisions of this article, there is otherwise no public right to use motor vehicles; and

(c) subject to paragraph (2), prevent all persons from passing along the street or public right of way.

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

(3) Without prejudice to the generality of paragraph (1), the undertaker may temporarily close, prohibit the use of, restrict the use of, authorise the use of, alter or divert—

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

(b) the public rights of way specified in column 2 of the table in Part 2 (public rights of way to be temporarily closed) of Schedule 6 to the extent specified in column 3 of that table; and

(c) the public rights of way specified in column 2 of the table in Part 3 (temporary use of motor vehicles on public rights of way) of Schedule 6 to the extent specified in column 3 of that table.

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

(a) any street or public right of way specified in paragraph (3) without first consulting the street authority; and

(b) any other street or public right of way without the consent of the street authority, and the street authority may attach reasonable conditions to any such consent.

(5) Any person who suffers loss by the suspension of any street or private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

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

(7) If the undertaker uses any street or public right of way as a temporary working site under this article the undertaker must restore the street or public right of way to the reasonable satisfaction of the street authority.

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

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

Use of private roads

13.—(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 or maintenance or decommissioning 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.

Access to works

14. The undertaker may, for the purposes of the authorised development—

(a) form and lay out the permanent means of access, or improve existing means of access, in the locations specified in Part 1 (permanent means of access to works) of Schedule 7 (access to works);

(b) form and lay out the temporary means of access in the location specified in Part 2 (temporary means of access) of Schedule 7; and

(c) 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.

Agreements with street authorities

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

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

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

(c) the undertaking in the street of any of the works referred to in article 8 (street works), article 10 (power to alter layout, etc., of streets), article 11 (construction and maintenance of altered streets) and article 14 (access to works); or

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

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

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

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

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

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

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

Traffic regulation measures

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

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

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

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

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

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

(2) Subject to the provisions of this article the undertaker may at any time, in the interests of safety and for the purposes of, or in connection with, the construction of the authorised development, temporarily place traffic signs and signals in the extents specified in column 3 of road specified in column 2 of the table in Schedule 8 (traffic regulation measures) and over which temporary provision has been made under paragraph (1) and the placing of those traffic signs and signals is deemed to have been permitted by the traffic authority for the purposes of section 65 of the 1984 Act and the Traffic Signs Regulations and General Directions 2016(**a**).

(3) No speed limit imposed by or under this Order applies to vehicles falling within regulation 3(4) of the Road Traffic Exemptions (Special Forces) (Variation and Amendment) Regulations 2011(**b**) when in accordance with regulation 3(5) of those regulations.

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

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

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

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

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

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

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

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

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

(7) Any provision made by the undertaker under article 12 (temporary closure, restriction or prohibition of use of streets and public rights of way) or paragraph (1) or (2) of this article—

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

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

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

PART 4

SUPPLEMENTAL POWERS

Discharge of water

17.—(1) Subject to paragraphs (3), (4) and (8) the undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the construction or maintenance or decommissioning 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 under paragraph (1) is to be determined as if it were a dispute under section 106 (right to communicate with public sewers) of the Water Industry Act 1991(**b**).

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

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

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

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

(5) Where the undertaker discharges water into, or makes any opening into, a watercourse, public sewer or drain belonging to or under the control of a drainage authority, the provisions of Part 7 of Schedule 15 (protective provisions) apply in substitution for the provisions of paragraphs (3) and (4).

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

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

(8) In this article—

(a) "drainage authority" means the drainage board concerned within the meaning of section 23 of the Land Drainage Act 1991;

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

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

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

Removal of human remains

18.—(1) Before the undertaker constructs any part of the authorised development or carries out works which will or may disturb any human remains in the Order limits it must remove those human remains from the Order limits, or cause them to be removed, in accordance with the following provisions of this article.

(2) Subject to paragraph (11), before any such remains are removed from the Order limits the undertaker must give notice of the intended removal, describing the Order limits and stating the general effect of the following provisions of this article, by—

(a) publishing a notice once in each of two successive weeks in a newspaper circulating in the area of the authorised development; and

(b) displaying a notice in a conspicuous place on or near the Order limits.

(3) As soon as reasonably practicable after the first publication of a notice under paragraph (2) the undertaker must send a copy of the notice to the relevant planning authority.

(4) At any time within 56 days after the first publication of a notice under paragraph (2) any person who is a personal representative or relative of any deceased person whose remains are interred in the Order limits may give notice in writing to the undertaker of that person's intention to undertake the removal of the remains.

(5) Where a person has given notice under paragraph (4), and the remains in question can be identified, that person may cause such remains to be—

(a) removed and reinterred in any burial ground or cemetery in which burials may legally take place; or

(b) removed to, and cremated in, any crematorium,

and that person must, as soon as reasonably practicable after such reinterment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (10).

(6) If the undertaker is not satisfied that any person giving notice under paragraph (4) is the personal representative or relative as that person claims to be, or that the remains in question cannot be identified, the question is to be determined on the application of either party in a summary manner by the county court, and the court may make an order specifying who is to remove the remains and as to the payment of the costs of the application.

(7) The undertaker must pay the reasonable expenses of removing and reinterring or cremating the remains of any deceased person under this article.

(8) If—

(a) within the period of 56 days referred to in paragraph (4) no notice under that paragraph has been given to the undertaker in respect of any remains in the Order limits; or

(b) such notice is given and no application is made under paragraph (6) within 56 days after the giving of the notice but the person who gave the notice fails to remove the remains within a further period of 56 days; or

(c) within 56 days after any order is made by the county court under paragraph (6) any person, other than the undertaker, specified in the order fails to remove the remains; or

(d) it is determined that the remains to which any such notice relates cannot be identified,

subject to paragraph (9) the undertaker must remove the remains and cause them to be reinterred in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose; and, so far as possible, remains from individual graves must be reinterred in individual containers which must be identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

(9) If the undertaker is satisfied that any person giving notice under paragraph (4) is the personal representative or relative as that person claims to be and that the remains in question can be identified, but that person does not remove the remains, the undertaker must comply with any reasonable request that person may make in relation to the removal and reinterment or cremation of the remains.

(10) On the reinterment or cremation of any remains under this article—

(a) a certificate of reinterment or cremation must be sent by the undertaker to the Registrar General by the undertaker giving the date of reinterment or cremation and identifying the place from which the remains were removed and the place in which they were reinterred or cremated; and

(b) a copy of the certificate of reinterment or cremation and the record mentioned in paragraph (8) must be sent by the undertaker to the relevant planning authority mentioned in paragraph (3).

(11) No notice is required under paragraph (2) before the removal of any human remains where the undertaker is satisfied—

(a) that the remains were interred more than 100 years ago; and

(b) that no personal representative or relative of the deceased is likely to object to the remains being removed in accordance with this article.

(12) In the case of human remains to which paragraph (11) applies, the undertaker—

(a) may remove the remains;

(b) must apply for direction from the Secretary of State under paragraph (14) as to their subsequent treatment; and

(c) must deal with the remains in such manner and subject to such conditions as the Secretary of State directs.

(13) In this article—

(a) references to a relative of the deceased are to a person who—

(i) is a husband, wife, civil partner, parent, grandparent, child or grandchild of the deceased; or

(ii) is, or is a child of, a brother, sister, uncle or aunt of the deceased; and

(b) references to a personal representative of the deceased are to a person or persons who—

(i) is the lawful executor of the estate of the deceased; or

(ii) is the lawful administrator of the estate of the deceased.

(14) The removal and subsequent treatment of the remains of any deceased person under this article must be carried out in accordance with any directions which may be given by the Secretary of State.

(15) Any jurisdiction or function conferred on the county court by this article may be exercised by the district judge of the court.

(16) Section 25 (offence of removal of body from burial ground) of the Burial Act 1857(**a**) is not applied to a removal carried out in accordance with this article.

(17) Section 239 (use and development of burial grounds) of the 1990 Act applies—

(a) in relation to land, other than a right over land, acquired for the purposes of the authorised development (whether or not by agreement), so as to permit use by the undertaker in accordance with the provisions of this Order; and

(b) in relation to a right over land so acquired (whether or not by agreement), or the temporary use of land pursuant to article 31 (temporary use of land for constructing the authorised development) or 32 (temporary use of land for maintaining the authorised development), so as to permit the exercise of that right or the temporary use of land by the undertaker in accordance with the provisions of this Order,

and in section 240(1) (provisions supplemental to ss. 238 and 239) of the 1990 Act reference to "regulations made for the purposes of section 238(3) and (4) and 239(2)" means, so far as

(**a**) 1857 c. 81. Substituted by Church of England (Miscellaneous Provisions) Measure 2014 No., 1 s.2 (January 1, 2015: substitution has effect subject to transitional and saving provisions specified in S.I. 2014/2077 Schedule 1 paragraphs 1 and 2.

applicable to land or a right over land acquired under this Order, paragraphs (2) to (16) of this article and section 240(3) of the 1990 Act reference to a "statutory undertaker" includes the undertaker and reference to "any other enactment" includes this Order.

(18) The Town and Country Planning (Churches, Places of Religious Worship and Burial Ground) Regulations 1950(**a**) do not apply to the authorised development.

Protective works to buildings

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

(2) Protective works may be carried out—

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

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

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

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

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

(b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building but outside its curtilage, enter the adjacent land (whether or not such adjacent land is inside or outside the Order limits) 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;

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

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

(6) Where a notice is served under paragraph (5)(a), (5)(c) or (5)(d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 44 (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

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(**a**) S.I. 1950/792.

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

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

(9) Subject to article 43 (no double recovery) nothing in this article relieves the undertaker from any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance)(**a**) of the 2008 Act.

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

(11) Section 13 (refusal to give possession to acquiring authority)(**b**) 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)(**c**) of the 2008 Act.

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

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

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

Authority to survey and investigate the land

20.—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or enter on any land which may be affected by the authorised development or enter on any land upon which entry is required in order to carry out monitoring or surveys 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 or boreholes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and groundwater and remove soil and groundwater samples;

(c) without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on such land, including the digging of trenches; 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, boreholes or trenches.

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

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

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

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

(4) No trial holes, boreholes or trenches are to be made under this article—

(**a**) Section 152 was amended by S.I. 2009/1307.
(**b**) Section 13 was amended by sections 62(3), 139(4) to (9) and 146 of, and paragraphs 27 and 28 of Schedule 13, and Part 3 of Schedule 23 to the Tribunals, Courts and Enforcement Act 2007 (c. 15).
(**c**) Section 125 was amended by section 190 of, and paragraph 17 of Schedule 16 to, the Housing and Planning Act 2016 (c. 22).

(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, as if it were a 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 land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

PART 5

POWERS OF ACQUISITION

Compulsory acquisition of land

21.—(1) The undertaker may—

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

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

(2) This article is subject to article 22 (time limit for exercise of authority to possess land temporarily or to acquire land compulsorily), article 24 (compulsory acquisition of rights) and article 31 (temporary use of land for constructing the authorised development).

Time limit for exercise of authority to possess land temporarily or to acquire land compulsorily

22.—(1) No notice to treat is to be served under Part 1 (compulsory purchase under Acquisition of Land Act 1981) of the 1965 Act and no declaration is to be executed under section 4 (execution of declaration) of the 1981 Act after the end of the applicable period.

(2) The authority conferred by article 31 (temporary use of land for constructing the authorised development) must not be used after the end of the applicable period.

(3) For the purposes of section 4 of the 1965 Act (time limit for giving notice to treat) and section 5A of the 1981 Act (time limit for general vesting declaration), as modified and applied by this Order, the definition of "applicable period" is to be construed as having the same meaning as in this Order.

(4) In this article—

(a) references to the 1965 Act include the modifications in article 28 (modification of Part 1 of the Compulsory Purchase Act 1965); and

(b) references to the 1981 Act are as applied by article 26 (application of the 1981 Act).

(5) Nothing in paragraph (2) prevents the undertaker remaining in possession of land after the end of the applicable period, if the land was entered and possession was taken before the end of that period.

Compulsory acquisition of land – incorporation of the mineral code

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

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

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

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

Compulsory acquisition of rights

24.—(1) Subject to paragraph (2) and article 31 (temporary use of land for constructing the authorised development), the undertaker may acquire compulsorily such rights over the Order land or impose such restrictive covenants over the Order land as may be required for any purpose for which that land may be acquired under article 21 (compulsory acquisition of land), by creating them as well as by acquiring rights already in existence.

(2) Subject to the provisions of this paragraph, article 25 (private rights) and article 33 (statutory undertakers), in the case of the Order land specified in column 1 of the table in Schedule 9 (land in which only new rights etc. may be acquired) the undertaker’s powers of compulsory acquisition are limited to the acquisition of existing rights and benefit of restrictive covenants over that land and the creation and acquisition of such new rights and the imposition of restrictive covenants for the purpose specified in relation to that land in column 2 of the table in that Schedule.

(3) Subject to section 8 (other provisions as to divided land) and Schedule 2A (counter-notice requiring purchase of land) of the 1965 Act (as substituted by paragraph 5(8) of Schedule 10 (modification of compensation and compulsory purchase enactments for the creation of new rights and imposition of new restrictive covenants)), where the undertaker creates or acquires an existing right over land or the benefit of a restrictive covenant under paragraph (1) or (2), the undertaker is not required to acquire a greater interest in that land.

(4) Schedule 10 has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of restrictive covenants.

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

(6) The exercise by a statutory undertaker of any power in accordance with a transfer under paragraph (5) is subject to the same restrictions, liabilities and obligations as would apply under this Order if that power were exercised by the undertaker.

(7) Nothing in this article prevents the undertaker from acquiring rights or imposing restrictions more than once in relation to any land that the undertaker acquires rights or imposes restrictions in under this article.

Private rights

25.—(1) Subject to the provisions of this article, all private rights and restrictive covenants over land subject to compulsory acquisition under this Order cease to have effect insofar as their continuance would be inconsistent with the exercise of the powers under article 21 (compulsory acquisition of land) on the earliest of—

(a) the date of acquisition of the land by the undertaker, whether compulsorily or by agreement; or

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

(2) Subject to the provisions of this article, all private rights or restrictive covenants over land subject to the compulsory acquisition of rights or the imposition of restrictive covenants under article 24 (compulsory acquisition of rights) cease to have effect in so far as their continuance would be inconsistent with the exercise of the right or compliance with the restrictive covenant on the earliest of—

(a) the date of the acquisition of the right or imposition of the restrictive covenant by the undertaker (whether the right is acquired compulsorily or by agreement); or

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

(3) Subject to the provisions of this article, all private rights or restrictive covenants over land of which the undertaker takes temporary possession under article 31 or article 32 are suspended and unenforceable, in so far as their continuance would be inconsistent with the purpose for which temporary possession is taken, for as long as the undertaker remains in lawful possession of the land.

(4) The undertaker may by notice extinguish private rights and restrictive covenants over land subject to compulsory acquisition under this Order—

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

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

(5) Any person who suffers loss by the extinguishment, cessation of effect or suspension of any private right or restrictive covenant under this article is entitled to compensation in accordance with the terms of section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act to be determined, in case of dispute, under Part 1 of the 1961 Act.

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

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

(a) any notice given by the undertaker before—

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

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

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

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

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

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

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

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

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

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

(9) References in this article to the acquisition of land or rights include the grant to the undertaker of a lease of the land or rights by agreement.

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

Application of the 1981 Act

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

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

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

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

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

(5) In section 5B(1) (extension of time limit during challenge) for "section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order)" substitute "section 118 of the 2008 Act (legal challenges relating to applications for orders granting development consent)".

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

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

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

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

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

Power to override easements and other rights

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

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

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

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

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

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

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

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

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

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

(a) is liable to pay compensation by virtue of paragraph (3); and

(b) fails to discharge that liability,

the liability is enforceable against the undertaker.

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

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

(a) the erection, construction, maintenance or decommissioning of any part of the authorised development;

(b) the exercise of any power authorised by the Order; or

(c) the use of any land within the Order limits (including the temporary use of land).

Modification of Part 1 of the Compulsory Purchase Act 1965

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

(2) In section 4A(1) (extension of time limit during challenge) for "section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order)" substitute "section 118 (legal challenges relating to applications for orders granting development consent) of the Planning Act 2008".

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

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

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

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

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

"(2) But see article 29(3) (acquisition of subsoil only) of The Droves Solar Farm Order 202[ ], which excludes the acquisition of subsoil only from this Schedule"; and

(b) after paragraph 29 insert—

"PART 4

INTERPRETATION

30. In this Schedule, references to entering on and taking possession of land do not include doing so under article 19 (protective works to buildings), article 31 (temporary use of land for constructing the authorised development) or article 32 (temporary use of land for maintaining the authorised development) of The Droves Solar Farm Order 202[ ].".

Acquisition of subsoil only

29.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of the Order land as may be required for any purpose for which that land or rights in that land may be acquired instead of acquiring or acquiring rights in the whole of the land.

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

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

(a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act as modified by Schedule 10 (modification of compensation and compulsory purchase enactments for the creation of new rights and imposition of new restrictive covenants);

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

(c) section 153(4A) (blighted land: proposed acquisition of part interest; material detriment test)(**a**) 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 factory.

(**a**) Section 153(4A) was inserted by section 200(1) and (2) of the Housing and Planning Act 2016.

Rights under or over streets

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

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

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

(a) any subway or underground building; or

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

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

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

Temporary use of land for constructing the authorised development

31.—(1) The undertaker may, in connection with the construction of the authorised development but subject to article 22 (time limit for exercise of authority to possess land temporarily or to acquire land compulsorily)—

(a) enter on and take temporary possession of—

(i) so much of the land specified in column (1) of the table in Schedule 11 (land of which temporary possession may be taken) for the purpose specified in relation to the 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)(**a**) of the 1965 Act and no declaration has been made under section 4 (execution of declaration)(**b**) of the 1981 Act;

(b) remove any buildings, structures, agricultural plant and apparatus, electric lines, drainage, fences, debris and vegetation from that land;

(c) construct temporary works (including means of access), haul roads, security fencing, bridges, structures and buildings on that land;

(d) use the land for the purposes of a temporary working site with access to the working site in connection with the authorised development;

(e) construct any works on that land as are mentioned in Schedule 1 (authorised development); and

(f) carry out mitigation works on that land required under the requirements in Schedule 2 (requirements).

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

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

(**a**) Section 11 was amended by section 34(1) of, and paragraph 14(3) of Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1), sections 186, 187 and 188 of, and paragraph 6 of Schedule 14 and paragraph 3 of Schedule 16 to, the Housing and Planning Act 2016 and S.I. 2009/1307.

(**b**) Section 4 as amended by section 184 and 185 of, and paragraphs 1 and 2 of Schedule 18 to, the Housing and Planning Act 2016.

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

(3) Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

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

(a) in the case of the land referred to in paragraph (1)(a)(i) after the end of the period of one year beginning with the date of final commissioning of the part of the authorised development for which temporary possession of the land was taken; or

(b) in the case of land referred to in paragraph (1)(a)(ii) after the end of the period of one year beginning with the date of final commissioning of the part of the authorised development for which temporary possession of the land was taken unless the undertaker has, before the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act in relation to that land.

(5) Unless the undertaker has served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act or otherwise acquired the land or rights over land subject to temporary possession the undertaker must, before giving up possession of land of which temporary possession has been taken under this article, remove all 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 any building, structure, agricultural plant or apparatus, electric line, debris, drain or vegetation removed under this article;

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

(c) remove any new road surface or other improvements carried out under this article to any street specified in Schedule 4 (streets subject to street works), Schedule 5 (alteration of streets) or Schedule 7 (access to works);

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

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

(f) remove any protective works which have been placed on the land under article 19 (protective works to buildings); or

(g) 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 the provisions of any power conferred by this article.

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

(8) Subject to article 43 (no double recovery), nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (6).

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

(10) The undertaker must not compulsorily acquire, acquire new rights over or impose restrictive covenants over, the land referred to in paragraph (1)(a)(i) under this Order.

(11) Nothing in this article prevents the undertaker from—

(a) creating and acquiring new rights or imposing restrictions over any part of the Order land identified in Schedule 9 (land in which only new rights etc. may be acquired); or

(b) acquiring any part of the subsoil of (or rights in the subsoil of) that land under article 29 (acquisition of subsoil only) or any part of the subsoil of that land under article 30 (rights under or over streets).

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

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

Temporary use of land for maintaining the authorised development

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

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

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

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

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

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

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

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

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

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

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

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

(8) Subject to article 43 (no double recovery), nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the maintenance of the authorised development, other than loss or damage for which compensation is payable under paragraph (6).

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

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

(11) In this article "the maintenance period" means—

(a) the period of five years beginning with the date of final commissioning of the part of the authorised development for which temporary possession is required under this article; or

(b) in relation to landscaping, such period as is set out in the landscape and ecological management plan which is approved by the relevant planning authority pursuant to requirement 7, beginning with the date on which that part of the landscaping is completed.

Statutory undertakers

33. Subject to the provisions of Schedule 15 (protective provisions) the undertaker may—

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

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

Apparatus and rights of statutory undertakers in closed or restricted streets

34. Where a street is closed, altered or diverted or its use is temporarily prohibited or restricted under article 8 (street works), article 10 (power to alter layout, etc., of streets), article 11 (construction and maintenance of altered streets) or article 12 (temporary closure, restriction or prohibition of use of streets and public rights of way) any statutory undertaker whose apparatus is under, in, on, along or across the street has the same powers and rights in respect of that apparatus, subject to Schedule 15 (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, any person who is—

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

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

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

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

(4) In this article—

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

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

PART 6

MISCELLANEOUS AND GENERAL

Benefit of the Order

36.—(1) Subject to paragraph (2) and article 37 (consent to transfer the benefit of the Order), the provisions of this Order have effect solely for the benefit of the undertaker.

(2) Paragraph (1) does not apply to Work No. 4 and Work No. 5 in respect of which the provisions of this Order are for the benefit of the undertaker and National Grid.

Consent to transfer the benefit of the Order

37.—(1) Subject to the powers of this Order, the undertaker may—

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

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

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

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

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

(b) in respect of Work No. 9, the transferee or lessee is a holding company or subsidiary of the undertaker; or

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

(i) no such claims have been made;

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

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

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

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

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

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

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

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

(c) the powers to be transferred or granted;

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

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

(6) The date specified under paragraph (5)(b) must not be earlier than the expiry of 10 working days from the date of the receipt of the notification.

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

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

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

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

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

Application of landlord and tenant law

38.—(1) This article applies to—

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

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

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

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

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

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

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

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

Planning permission, etc.

39.—(1) Following the coming into force of this Order, if planning permission is granted under the powers conferred by the 1990 Act for development any part of which is within the Order limits and which does not constitute any part of the authorised development then the carrying out of development pursuant to that planning permission does not constitute a breach of the terms of this Order.

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

(3) To the extent any development carried out or used pursuant to a planning permission granted under section 57 (requirement of planning permission) of the 1990 Act or compliance with any conditions of that permission is inconsistent with the exercise of any power, right or obligation under this Order or the authorised development—

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

(b) in respect of that inconsistency, no enforcement action under the 1990 Act may be taken in relation to development carried out or used pursuant to that planning permission, or compliance with any conditions of that planning permission, whether inside or outside the Order limits.

(4) Any development or any part of a development within the Order limits which is constructed or used under the authority of a permission granted under section 57 of the 1990 Act, including permissions falling under paragraph (1) or (3), is deemed not to be a breach of, or inconsistent with this Order and does not prevent the authorised development being carried out or used or any other function under this Order being exercised.

(5) In paragraph (3), "enforcement action" means any enforcement action provided for under Part 7 of the 1990 Act.

Felling or lopping of trees and removal of hedgerows

40.—(1) Subject to article 41 (trees subject to tree preservation orders), the undertaker may fell or lop any tree or shrub near any part of the authorised development or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub from—

(a) obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development;

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

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

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

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

(4) The undertaker may, for the purposes of the authorised development or in connection with the authorised development and subject to paragraph (2), remove the hedgerows specified in the table in Part 1 and the table in Part 2 of Schedule 12 (hedgerows to be removed) to the extent set out in the landscape and ecological management plan approved pursuant to requirement 7 in Schedule 2 (requirements).

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

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

Trees subject to tree preservation orders

41.—(1) The undertaker may, if it reasonably believes it to be necessary to do so in order to prevent the tree from obstructing or interfering with the construction, maintenance, operation or decommissioning of the authorised development or any apparatus used in connection with the authorised development, fell or lop or cut back the roots of any tree that is subject to a tree preservation order that is within or overhanging land within the Order limits and the relevant tree preservation order was made after the date of this Order.

(2) In carrying out any activity authorised by paragraph (1)—

(a) the undertaker must do no unnecessary damage to any tree and must pay compensation to any person for any loss or damage arising from such activity; and

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

(b) the duty contained in section 206(1) (replacement of trees) of the 1990 Act does not apply.

(3) The authority given by paragraph (1) constitutes a deemed consent under the relevant tree preservation order.

(4) Notice in writing of the proposed activities authorised by paragraph (1) must be given to the relevant planning authority—

(a) in the case of activities urgently necessary to remove an immediate risk of serious harm, as soon as practicable after the activities become necessary; and

(b) in any other case at least five working days prior to the date on which the activities are to be commenced.

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

Certification of plans and documents, etc.

42.—(1) The undertaker must, as soon as practicable after the making of this Order, submit copies of all documents and plans listed in the table in Part 1 of Schedule 13 (documents and plans to be certified) to the Secretary of State for certification that they are true copies of the documents referred to in this Order.

(2) Before submitting the documents and plans in accordance with paragraph (1), the undertaker must substitute or supplement, as the case may be, the documents listed in column 1 of the table in Part 2 of Schedule 13 with the documents listed in column 2 of that table.

(3) Before submitting the environmental statement in accordance with paragraph (1), the undertaker must substitute any figures or appendices contained therein with the final revision of that figure or appendix that was submitted by the undertaker to the Planning Inspectorate or the Secretary of State prior to the making of this Order.

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

No double recovery

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

Arbitration

44.—(1) Subject to paragraph (2), any difference under any provision of this Order must, unless otherwise expressly provided for or agreed in writing between the undertaker and the party in question, be referred to and settled by arbitration in accordance with the rules set out in Schedule 14 (arbitration rules) of this Order.

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

Protective provisions

45. Schedule 15 (protective provisions) has effect.

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.

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

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

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

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

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

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

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

(a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;

(b) the notice or document is capable of being accessed by the recipient;

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

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

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

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

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

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

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

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

(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.

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

Procedure in relation to certain approvals etc.

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

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

(3) Schedule 16 (procedure for discharge of requirements) has effect in relation to all consents, agreements or approvals required, granted, refused or withheld in relation to the requirements.

(4) Save for applications made pursuant to Schedule 16 and where stated to the contrary if, within six weeks (or such longer period as may be agreed between the undertaker and the relevant consenting authority in writing) after the application or request has been submitted to a consenting authority it has not notified the undertaker of its disapproval and the grounds of disapproval, it is deemed to have approved the application or request.

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

(6) Schedule 16 does not apply in respect of any consents, agreements or approvals contemplated by the provisions of Schedule 15 (protective provisions) or any dispute under article 19(6) (protective works to buildings).

(7) In this article "consenting authority" means the relevant planning authority, highway authority, traffic authority, street authority, the owner of a watercourse, sewer or drain or the beneficiary of any of the protective provisions contained in Schedule 15.

Guarantees in respect of payment of compensation

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

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

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

(2) The provisions are—

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

(b) article 24 (compulsory acquisition of rights);

(c) article 25 (private rights);

(d) article 31 (temporary use of land for constructing the authorised development);

(e) article 32 (temporary use of land for maintaining the authorised development); and

(f) 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.

Maintenance of drainage works

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

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

Signed by authority of the Secretary of State

Signature
Address Title
Date Department

(**a**) 1991 c. 59. The definition was substituted by section 100(2) of the Environment Act 1995 (c. 25).

SCHEDULES

SCHEDULE 1

Article 3

AUTHORISED DEVELOPMENT

1. In this Schedule—

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

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

"mounting structure" means a frame or rack made of galvanised steel, anodised aluminium or other material designed to support the solar modules;

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

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

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

"transformer" means a structure serving to transform electricity to a different voltage.

Authorised development

2. In the District of Breckland and in the County Norfolk a nationally significant infrastructure project as defined in sections 14 and 15 of the 2008 Act and associated development under section 115(1)(b) of the 2008 Act.

The nationally significant infrastructure project comprises all or any of the work numbers in this Schedule or any part of any work number in this Schedule—

Work No. 1— a ground mounted solar photovoltaic generating station with a gross electrical output capacity of over 100 megawatts including—

(a) solar modules fitted to mounting structures;

(b) DC electrical cabling and combiner DC boxes;

(c) 33 kV sub-distribution switch rooms, conversion units including foundations, inverters, transformers, switchgear, and monitoring and control systems; and

(d) electrical and communications cabling connecting Work No. 1(c) to Work No. 3A,

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

Work No. 2— an energy storage facility comprising—

(a) battery energy storage system units each containing fire protection systems and components;

(b) a structure protecting the battery energy storage cells comprised in Work No. 2(a) and ancillary equipment, being either one container or multiple containers joined to each other, mounted on foundations or on piles;

(c) interconnection units including heating, ventilation and air conditioning, liquid cooling systems and temperature management either housed within the containers comprised in Work No. 2(b), attached to the side or top of each of the containers, or located separate from but near to each of the containers;

(d) conversion units including inverters, transformers, switchgear and energy management system;

(e) monitoring and control systems housed within a container with Work No. 2(c) or located separately in its own container or control room;

(f) electrical cabling including electrical cables connecting Work No. 2 to Work No. 3A;

(g) bunded impermeable surface or other form of containment system to manage surface water drainage;

(h) water storage facility for the purposes of firefighting water supply; and

(i) bunded impermeable surface or other form of containment system and associated infrastructure to contain used firewater.

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

(a) **Work No. 3A**— a substation with works comprising—

(i) an up to 400 kV substation, with associated transformer bays, feeder bays, transformers, switchgear, buildings, and ancillary equipment including power quality and reactive power compensation units;

(ii) control building or container relay rooms with associated offices, storage and welfare facilities;

(iii) monitoring and control systems for Work Nos. 1 and 3A;

(iv) maintenance compound;

(v) electrical cabling;

(vi) earthworks, including soil stripping and site levelling; and

(vii) foundations.

(b) **Work No. 3B**— works to lay electrical cables up to 400 kV including—

(i) high voltage electrical cables connecting Work Nos. 3A and 4A;

(ii) laying down of access tracks, ramps, footpaths, roads, including the laying and construction of drainage infrastructure, signage and information boards;

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

(iv) tunnelling, boring and drilling works; and

(v) temporary construction and decommissioning laydown areas comprising—

(aa) areas of hardstanding, compacted ground or track matting;

(bb) car parking;

(cc) area to store materials and equipment;

(dd) site and welfare offices and workshops;

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

(ff) safety infrastructure to manage traffic when crossing roads or other obstacles;

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

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

Work No. 4— works in connection with a new National Grid substation including—

(a) **Work No. 4A**— a new National Grid substation with works comprising—

(i) an up to 400 kV double buss bar substation, with associated feeder bays, switchgear, buildings and ancillary equipment;

(ii) control building or container relay rooms with associated offices, storage and welfare facilities;

(iii) monitoring and control systems for Work Nos. 1, 2 and 3B;

(iv) electrical cabling;

(v) 400 kV 3-phase 4000 A circuit breakers for control and protection of the outgoing circuits serving the authorised development;

(vi) 3-phase sets of current transformers for protection of the new outgoing 400 kV feeder circuits and the overlap with the National Grid system;

(vii) 3-phase high accuracy metering current and voltage transformer assemblies for commercial metering of the connections;

(viii) 3-phase 400 kV line disconnector/earth switches for isolation and earthing of the outgoing 400 kV feeder circuits;

(ix) 3-phase sets of 400 kV high voltage cable sealing ends and cables connecting the National Grid substation with Work No. 5;

(x) 3-phase power quality ready capacitor voltage transformers;

(xi) provision of stand-alone buildings to house duplicate feeder protection systems, commercial metering systems, protection and control equipment and user remote control and data acquisition apparatus; and

(xii) foundations.

(b) **Work No. 4B**—works in connection with the new National Grid substation including—

(i) maintenance compound;

(ii) electrical cabling;

(iii) earthworks, including soil stripping and site levelling;

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

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

(vi) landscaping and biodiversity mitigation and enhancement measures including planting;

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

(viii) laying down of internal access tracks, ramps, bridges, means of access and footpaths;

(ix) temporary footpath diversions, signage and information boards;

(x) sustainable drainage system ponds, runoff outfalls, general drainage and irrigation infrastructure and improvements or extensions to existing drainage and irrigation systems;

(xi) acoustic barriers;

(xii) electricity and telecommunications connections; and

(xiii) temporary construction laydown areas comprising—

(aa) areas of hardstanding;

(bb) car parking;

(cc) site and welfare offices and workshops;

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

(ee) area to store materials and equipment;

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

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

(c) **Work No. 4C**—works to facilitate temporary construction access and permanent access to Work Nos. 4A and 4B including—

(i) creation of accesses from the public highway;

(ii) creation of visibility splays;

(iii) works to alter the layout of any street or highway temporarily; and

(iv) offsite works adjacent to highways land including those to structures, boundary features, drainage features on private land, in connection with the movement of abnormal indivisible loads.

Work No. 5— works in connection with a connection to the existing overhead transmission electric line including—

(a) **Work No. 5A**— works to modify, reconfigure, construct and install a new overhead transmission electric line including—

(i) the installation of new gantries;

(ii) the foundations and steelwork to construct new pylons;

(iii) the installation of overhead transmission electric line;

(iv) the installation of conductors, busbars, switchgear and fittings, including downleads and downdroppers at each realigned and new gantry, to facilitate connection from the equipment within Work No. 4A; and

(v) the installation of fibre optic earthwire conductors, with optical fibres terminated in joint boxes.

(b) **Work No. 5B**—

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

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

(iii) landscaping and biodiversity mitigation and enhancement measures including planting;

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

(v) laying down of internal access tracks, ramps, bridges, means of access and footpaths;

(vi) temporary footpath diversions, signage and information boards;

(vii) creation of accesses from the public highway;

(viii) creation of visibility splays;

(ix) earthworks;

(x) sustainable drainage system ponds, runoff outfalls, general drainage and irrigation infrastructure and improvements or extensions to existing drainage and irrigation systems;

(xi) acoustic barriers; and

(xii) electricity and telecommunications connections.

(c) **Work No. 5C**—

(i) works in relation to the existing overhead transmission electric line including—

(aa) the realignment of the existing gantries;

(bb) the modification of existing pylons;

(cc) modifications to the existing overhead transmission electric line; and

(dd) the temporary diversion of the existing overhead transmission electric line to facilitate the works.

(ii) temporary construction laydown areas comprising—

(aa) areas of hardstanding;

(bb) car parking;

(cc) site and welfare offices and workshops;

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

(ee) area to store materials and equipment;

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

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

(d) **Work No. 5D**— works including—

(i) the dismantling and removal of all existing overhead transmission electric line and pylons including foundations;

(ii) maintenance and use of existing private tracks;

(iii) laying down of internal access tracks, ramps, bridges, means of access and footpaths; and

(iv) temporary footpath diversions, signage and information boards.

Work No. 6— works including—

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

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

(c) landscaping and biodiversity mitigation and enhancement measures including planting;

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

(e) laying down of internal access tracks, ramps, bridges, means of access and footpaths;

(f) temporary footpath diversions, signage and information boards;

(g) earthworks;

(h) sustainable drainage system ponds, runoff outfalls, general drainage and irrigation infrastructure and improvements or extensions to existing drainage and irrigation systems;

(i) acoustic barriers;

(j) electricity and telecommunications connections; and

(k) secondary temporary construction and decommissioning laydown areas.

Work No. 7— temporary construction and decommissioning laydown areas comprising—

(a) areas of hardstanding;

(b) car parking;

(c) site and welfare offices and workshops;

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

(e) area to store materials and equipment;

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

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

Work No. 8— works to facilitate access to Work Nos. 1, 2, 3, 6, 7, 9, 10 and 11 including—

(a) **Work No. 8A**— works to facilitate temporary construction, maintenance and decommissioning access to Work Nos. 1, 2, 3, 6, 7, 9, 10 and 11 including—

(i) creation of accesses from the public highway;

(ii) creation of visibility splays;

(iii) works to alter the layout of any street or highway temporarily; and

(iv) offsite works adjacent to highways land including those to structures, boundary features, drainage features on private land, in connection with the movement of abnormal indivisible loads.

(b) **Work No. 8B**— works to facilitate permanent access to Work Nos. 1, 2, 3, 6, 9, 10 and 11 including—

(i) creation of accesses from the public highway;

(ii) creation of visibility splays;

(iii) works to alter the layout of any street or highway permanently; and

(iv) offsite works adjacent to highways land including those to structures, boundary features, drainage features on private land, in connection with the movement of abnormal indivisible loads.

Work No. 9— works to create and maintain habitat management areas, including—

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

(b) signs, interpretation boards or any other information display board;

(c) earth works including bunds, embankments, ponds, trenching and swales;

(d) landscaping and biodiversity mitigation and enhancement measures including planting;

(e) means of access; and

(f) drainage.

Work No. 10— creation of permissive paths for the exclusive use of pedestrian users comprising—

(a) ramps, bridges and other means of access;

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

(c) signs, interpretation boards or any other information display board; and

(d) landscaping and biodiversity mitigation and enhancement measures including planting.

Work No. 11— works to create and maintain ecological mitigation measures, including—

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

(b) earth works including bunds, embankments, ponds, trenching and swales;

(c) landscaping and biodiversity mitigation and enhancement measures including planting;

(d) signage and information boards;

(e) means of access; and

(f) drainage.

In connection with and in addition to Work Nos. 1 to 11 further associated development within the Order limits including—

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

(b) bunds, embankments, trenching and swales;

(c) works to the existing irrigation system and works to alter the position and extent of such irrigation system;

(d) surface water drainage systems, storm water attenuation systems including storage basins, oil water separators, including channelling and culverting and works to existing drainage networks;

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

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

(g) ramps, bridges and other means of access;

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

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

(j) temporary footpath diversions and footpath enhancement;

(k) signs, interpretation boards or any other information display board;

(l) landscaping and biodiversity mitigation and enhancement measures and related works;

(m) habitat creation and enhancement;

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

(o) works to maintain and repair streets and access roads;

(p) tunnelling, boring and drilling works; and

(q) other works to mitigate any adverse effects of the construction, maintenance, operation or decommissioning of the authorised development,

and further comprising such other works or operations for the purposes of or in connection with the construction, operation and maintenance of the authorised development and which fall within the scope of the environmental impact assessment recorded in the environmental statement.

SCHEDULE 2

Article 3

REQUIREMENTS

Interpretation

1. In this Schedule, "relevant planning authority" means Breckland District Council.

Commencement of the authorised development

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

(2) The undertaker must notify the relevant planning authority within fourteen days of the date of final commissioning for a part or parts of the authorised development that the final commissioning of that part or parts has taken place.

Approved details and amendments to them

3.—(1) The undertaker may submit any amendments to any approved document to the relevant planning authority for approval and, following approval, the relevant approved document is to be taken to include the amendments approved under this paragraph.

(2) The relevant planning authority must not approve any amendments under sub-paragraph (1) to any approved document unless it has been demonstrated to the satisfaction of the relevant planning authority that the subject matter of the approval sought is unlikely to give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.

(3) In this paragraph, "approved document" means any document certified under article 42 (certification of plans and documents, etc.) and any plans, details or schemes which have been approved pursuant to any requirement.

Community liaison group

4.—(1) Prior to the commencement of the authorised development the undertaker must submit to the relevant planning authority for approval the terms of reference for a community liaison group whose aim is to facilitate liaison between representatives of people living in the vicinity of the Order limits and other relevant organisations in relation to the construction of the authorised development.

(2) The community liaison group must be established prior to commencement of the authorised development and must be administered by the undertaker and operated in accordance with the approved terms of reference.

(3) The community liaison group is to continue to meet until the first anniversary of the date of final commissioning of the authorised development unless otherwise agreed with the relevant planning authority.

Detailed design approval

5.—(1) No part of Work Nos. 1, 2 or 3A may commence until details of—

(a) the layout;

(b) scale;

(c) proposed finished ground levels;

(d) external appearance;

(e) hard surfacing materials; and

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

relating to that part have been submitted to and approved by the relevant planning authority for that part.

(2) The details submitted must accord with Table 3-1, 3-2 and 3-3 (as applicable) of the design principles, parameters and commitments.

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

(4) Work No. 3B must be carried out in accordance with Table 3-3 of the design principles, parameters and commitments.

Battery safety management

6.—(1) Work No. 2 must not commence until a battery safety management plan has been submitted to and approved by the relevant planning authority.

(2) The battery safety management plan must be substantially in accordance with the outline battery safety management plan.

(3) The relevant planning authority must consult with Norfolk Fire and Rescue Service and the Environment Agency before determining an application for approval of the battery safety management plan.

(4) The battery safety management plan must be implemented as approved.

Landscape and ecological management plan

7.—(1) No part of the authorised development may commence until a written landscape and ecological management plan has been submitted to and approved by the relevant planning authority for that part in consultation with the relevant statutory nature conservation body.

(2) The landscape and ecological management plan must be substantially in accordance with the outline landscape and ecological management plan.

(3) The landscape and ecological management plan must be implemented as approved.

Operational traffic management plan

8.—(1) Prior to the date of final commissioning for any part of the authorised development, an operational traffic management plan for that part must be submitted to and approved by the relevant planning authority.

(2) The operational traffic management plan must be substantially in accordance with the outline operational traffic management plan.

(3) Before approving the operational traffic management plan the relevant planning authority must consult with the relevant highway authority.

(4) The operational traffic management plan must be implemented as approved.

Biodiversity net gain

9.—(1) No part of the authorised development may commence until a biodiversity net gain strategy for that part has been submitted to and approved by the relevant planning authority for that part in consultation with the relevant statutory nature conservation body.

(2) The biodiversity net gain strategy must include details of how the strategy will secure a minimum of 10% biodiversity net gain in habitat units and a minimum of 10% biodiversity net gain in hedgerow units for the authorised development during the operation of the authorised development, and the metric that has been used to calculate that those percentages will be reached.

(3) The biodiversity net gain strategy must be substantially in accordance with the outline landscape and ecological management plan and must be implemented as approved.

Fencing and other means of enclosure

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

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

(3) Sub-paragraph (1) does not apply to temporary fences, walls or other means of enclosure required as a result of permitted preliminary works.

(4) The written details provided under sub-paragraph (2) must be substantially in accordance with the relevant design principles, parameters and commitments.

(5) Any construction site must remain securely fenced in accordance with the approved details under sub-paragraph (1) or (2) at all times during construction of the authorised development.

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

(7) Any approved permanent fencing for a part of the authorised development must be completed before the date of final commissioning in respect of that part.

Surface and foul water drainage

11.—(1) No part of the authorised development may commence until written details of the surface water drainage scheme and (if any) foul water drainage system for that part have been submitted to and approved by the relevant planning authority in consultation with the Environment Agency and Anglian Water Services Limited or its successor in function as the relevant water undertaker.

(2) Any approved scheme must be implemented as approved.

Archaeology

12.—(1) The authorised development must not be commenced until a programme of archaeological investigation has been carried out in accordance with the outline archaeological mitigation strategy.

(2) No part of the authorised development may be commenced until a written scheme of investigation for that part has been submitted to and approved by the relevant planning authority.

(3) The written scheme of investigation must be substantially in accordance with the outline archaeological mitigation strategy.

(4) The written scheme of investigation must be implemented as approved.

Construction environmental management plan

13.—(1) The permitted preliminary works must be carried out in accordance with the permitted preliminary works environmental management plan.

(2) No part of the authorised development may commence until a construction environmental management plan for that part has been submitted to and approved by the relevant planning authority.

(3) The construction environmental management plan must be substantially in accordance with the outline construction environmental management plan.

(4) Before approving the construction environmental management plan the relevant planning authority must consult with the Environment Agency.

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

Operational environmental management plan

14.—(1) Prior to the date of final commissioning for any part of the authorised development, an operational environmental management plan for that part must be submitted to and approved by the relevant planning authority.

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

(3) Before approving the operational environmental management plan the relevant planning authority must consult with the Environment Agency.

(4) The operational environmental management plan must be implemented as approved.

Construction traffic management plan

15.—(1) No part of the authorised development may commence until a construction traffic management plan for that part has been submitted to and approved by the relevant planning authority.

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

(3) Before approving the construction traffic management plan the relevant planning authority must consult with the relevant highway authority.

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

Public rights of way and permissive paths

16.—(1) No part of the authorised development may commence until a public right of way and permissive path management plan for that part has been submitted to and approved by the relevant planning authority.

(2) The public right of way and permissive path management plan must be substantially in accordance with the outline public right of way and permissive path management plan.

(3) Before approving the public right of way and permissive path management plan the relevant planning authority must consult with the relevant highway authority.

(4) The public right of way and permissive path management plan must be implemented as approved.

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

Soil management

17.—(1) No part of the authorised development may commence until a soil management plan for that part has been submitted to and approved by the relevant planning authority.

(2) Any soil management plan submitted in accordance with this paragraph must be substantially in accordance with the outline soil management plan as relevant to the activities to which it relates.

(3) The soil management plan must be implemented as approved.

Skills, supply chain and employment

18.—(1) No part of the authorised development may commence until an employment, skills and supply chain strategy in relation to that part has been submitted to and approved by the relevant planning authority in consultation with Norfolk County Council.

(2) The employment, skills and supply chain strategy must be substantially in accordance with the outline employment, skills and supply chain strategy.

(3) Any plan under this paragraph must identify opportunities for individuals and businesses to access employment and supply chain opportunities associated with that part of the authorised development and the means for publicising such opportunities.

(4) The employment, skills and supply chain strategy must be implemented as approved.

Site waste management

19.—(1) No part of the authorised development may commence until a site waste management plan for that part has been submitted to and approved by the relevant planning authority in consultation with Norfolk County Council as the waste planning authority.

(2) The site waste management plan must be implemented as approved.

Decommissioning and restoration

20.—(1) The date of decommissioning:

(a) with respect to each part of Work No. 1 must be no later than 60 years following the initial date of final commissioning; and

(b) with respect to the associated development in Work Nos. 2, 3, 6, 7, 8, 9, 10 and 11 must be no later than the date of decommissioning for the part of Work No. 1 to which such associated development relates, and where such associated development relates to more than one part of Work No. 1 must be no later than the latest date of decommissioning of the parts of Work No. 1 to which such associated development relates.

(2) Unless otherwise agreed with the relevant planning authority, no later than 12 months prior to the date the undertaker intends to decommission any part of the authorised development, the undertaker must notify the relevant planning authority of the intended date of decommissioning for that part of the authorised development.

(3) Unless otherwise agreed with the relevant planning authority, no later than ten weeks prior to the intended date of decommissioning of any part of the authorised development notified pursuant to sub-paragraph (2), the undertaker must submit to the relevant planning authority for that part a decommissioning strategy for approval in consultation with Norfolk County Council.

(4) The decommissioning strategy must be substantially in accordance with the outline decommissioning strategy and must include a timetable for its implementation.

(5) No decommissioning works must be carried out until the relevant planning authority has approved the decommissioning strategy submitted in relation to those works, in consultation with the Environment Agency and the relevant highway authority.

(6) The decommissioning strategy must be implemented as approved.

(7) Within 28 days of any part of the authorised development permanently ceasing to be in commercial use, the undertaker must notify the relevant planning authority.

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

(9) In this requirement, “initial date of final commissioning” means the earliest date of final commissioning of any part of Work No. 1.

Mitigation at RAF Marham

21.—(1) Unless otherwise agreed in writing with the Ministry of Defence and approved by the relevant planning authority:

(a) no part of Work No. 1(a) within the areas shown as Mitigation Area 1, Mitigation Area 2 and Mitigation Area 3 on the RAF Marham mitigation areas plan (drawing number DIO10067597-20260903-V5.) may commence until a detailed plan has been submitted to

and approved by the relevant planning authority in consultation with the Ministry of Defence;

(b) the detailed plan must include details of the dimensions, layout and material composition of the shielding structures to be installed to ensure that any part of Work No. 1(a) within the areas shown as Mitigation Area 1, Mitigation Area 2 and Mitigation Area 3 on the RAF Marham mitigation areas plan (drawing number DIO10067597-20260903-V5.) will not be in radar line of sight of the precision approach radar at RAF Marham;

(c) the shielding structures approved under the detailed plan must be implemented by the undertaker prior to the construction of any part of Work No. 1(a) within the areas shown as Mitigation Area 1, Mitigation Area 2 and Mitigation Area 3 on the RAF Marham mitigation areas plan (drawing number DIO10067597-20260903-V5.); and

(d) the shielding structures approved under the detailed plan must be maintained in accordance with the approved detailed plan until the completion of decommissioning of all parts of Work No. 1(a) within the areas shown as Mitigation Area 1, Mitigation Area 2 and Mitigation Area 3 on the RAF Marham mitigation areas plan (drawing number DIO10067597-20260903-V5.).

Glint and glare management plan

22.—(1) Unless otherwise agreed in writing with the Ministry of Defence and approved by the relevant planning authority, no part of Work No. 1(a) may commence until a glint and glare management plan has been submitted to and approved by the relevant planning authority in consultation with the Ministry of Defence.

(2) The glint and glare management plan must include details of:

(a) specifications (including surface types and anti-reflective coating) of the solar modules and mounting structures comprising Work No. 1(a), illustrated with sectional plans as appropriate to show the angle of elevation and angle of azimuth of the solar modules comprising Work No. 1(a);

(b) a schedule of monitoring and maintenance of the alignment of the solar modules within Work No. 1(a);

(c) a protocol through which glint and glare complaints can be submitted by the Ministry of Defence, investigated by the undertaker, and any issues resolved via procedures that ensure the required mitigation is implemented following consultation and approval by the relevant planning authority in consultation with the Ministry of Defence;

(d) a procedure through which such complaints and associated resolutions will be recorded and made available to the Ministry of Defence on request;

(e) a protocol for the undertaker and the Ministry of Defence to urgently address incidents of any glint or glare impact that materially restrict aviation operations at RAF Marham, including the provision of air traffic control services from the air traffic control tower. The protocol must include the application of agreed interim mitigation measures that will stop the source of glint or glare impact until permanent mitigation measures are implemented; and

(f) timescales for:

(i) completing investigations;

(ii) implementing remedial works; and

(iii) the provision of interim and/or permanent mitigation measures.

(3) The provisions set out in the glint and glare management plan and any modifications/mitigation, as agreed in writing with the relevant planning authority, must be maintained until the completion of decommissioning of Work No. 1(a).

Aviation safety management plan

23.—(1) Unless otherwise agreed in writing with the Ministry of Defence and approved by the relevant planning authority, no part of the authorised development may commence until an aviation safety management plan has been submitted to and approved by the relevant planning authority in consultation with the Ministry of Defence.

(2) The aviation safety management plan must include details of:

(a) the locations and maximum dimensions of any cranes, high reaching plant equipment and temporal tower type structures that will be deployed within Ministry of Defence statutory aerodrome safeguarding zones surrounding RAF Marham, to construct and later decommission the solar modules comprising Work No. 1(a); and

(b) communication protocols to be established between the undertaker and the Ministry of Defence to ensure that the undertaker provides notification of its programme of works to construct and later decommission the authorised development.

(3) The undertaker must notify the Ministry of Defence in writing, at least 14 days prior to the commencement of the authorised development, of its intention to deploy cranes, high reaching plant equipment or temporal tower type structures that will be located within Ministry of Defence statutory aerodrome safeguarding zones surrounding RAF Marham. The undertaker must also notify the Ministry of Defence of any changes to the information supplied in accordance with this requirement.

Aviation safety – waterbodies and wetland design approval

24.—(1) Unless otherwise agreed in writing with the Ministry of Defence and approved by the relevant planning authority, no part of the authorised development may commence until details of the siting, design, any associated planting and management of any ponds, swales, surface water drainage systems, storm water attenuation systems including storage basins and channels or other wetland features that are to be created for that part have been submitted to and approved by the relevant planning authority in consultation with the Ministry of Defence.

(2) The authorised development must be constructed and maintained strictly in accordance with those approved details and the undertaker must not vary or depart from those details without the express written consent of the relevant planning authority in consultation with the Ministry of Defence.

Aviation charting and safety

25.—(1) Unless otherwise agreed in writing with the Ministry of Defence and approved by the relevant planning authority, the undertaker must notify the Ministry of Defence of the precise latitude and longitude and maximum height of each new or modified pylon above ordnance datum (including temporal pylons), as built, within 5 days of the completion of construction of each such pylon.

(2) The undertaker must notify the Ministry of Defence of the removal of any existing pylons within 5 days of the completion of removal works for each such pylon.

(3) The Ministry of Defence must be notified of any changes to the information supplied in accordance with this requirement.

SCHEDULE 3

Article 6

LEGISLATION TO BE DISAPPLIED

1. The following provisions do not apply insofar as they relate to the construction of any numbered work or the carrying out of any operation required for the purpose of, or in connection with, the construction, operation, maintenance or decommissioning of the authorised development and so far as the provisions still in force are incompatible with the powers contained within this Order—

(a) Norfolk Drainage Act 1815(**a**); and

(b) Outwell, Stow Bardolph, Wimbotsham and Downham Drainage Act 1798(**b**).

(**a**) 1815 c. xcii.
(**b**) 1798 c. 70.

SCHEDULE 4

Article 8

STREETS SUBJECT TO STREET WORKS

(1) *Area*	*(2)* *Street*	*(3)* *Extent of the street works*
Breckland District Council	Washpit Drove	Between reference points 1a and 2b and shaded blue on sheets 1 and 2 of the streets plan
Breckland District Council	Washpit Drove	Between reference points 1b and 2h and shaded blue on sheets 1 and 2 of the streets plan
Breckland District Council	Low Rd	Between reference points 2a and 2c and shaded green on sheet 2 of the streets plan
Breckland District Council	Petticoat Drove	Between reference points 2i and 2j and shaded blue on sheet 2 of the streets plan
Breckland District Council	Petticoat Drove	Between reference points 2f and 2g and shaded blue on sheet 2 of the streets plan
Breckland District Council	Fincham Drove	Between reference points 2k and 2l and shaded blue on sheet 2 of the streets plan
Breckland District Council	Between South Acre Road and Fincham Drove	Between reference points 2p and 2q and shaded orange on sheet 2 of the streets plan
Breckland District Council	Fincham Drove	Between reference points 2m and 2n and shaded blue on sheet 2 of the streets plan
Breckland District Council	Fincham Drove	Between reference points 2o and 2r and shaded orange dashed on sheet 2 of the streets plan
Breckland District Council	A1065	Between reference points 2s and 4f and shaded green on sheets 2 and 4 of the streets plan
Breckland District Council	South Acre Road	Between reference points 2t and 4g and shaded green on sheets 2 and 4 of the streets plan
Breckland District Council	A1065	Between reference points 2u and 4e and shaded green on sheets 2 and 4 of the streets plan
Breckland District Council	River Road	Between reference points 3a and 3b and shaded green on sheet 3 of the streets plan
Breckland District Council	Petticoat Drove	Between reference points 4a and 4b and shaded blue on

		sheet 4 of the streets plan
Breckland District Council	Fincham Drove	Between reference points 4c and 4d and shaded blue on sheets 4 of the streets plan
Breckland District Council	Castle Acre Road	Between reference points 5a and 5c and shaded green on sheet 5 of the streets plan
Breckland District Council	A47 - Slip Road	Between reference points 5b and 5d and shaded green on sheet 5 of the streets plan
Breckland District Council	A47 - Slip Road	Between reference points 5e and 5g and shaded green on sheet 5 of the streets plan
Breckland District Council	Castle Acre Road	Between reference points 5f and 5h and shaded green on sheet 5 of the streets plan

SCHEDULE 5

Articles 10 and 11

ALTERATION OF STREETS

PART 1

PERMANENT ALTERATION OF LAYOUT

(1) *Area*	*(2)* *Street*	*(3)* *Description of alteration*
Breckland District Council	Petticoat Drove	Permanent alteration of layout between reference points 2i and 2j and shaded blue on sheet 2 of the streets plan
Breckland District Council	Fincham Drove	Permanent alteration of layout between reference points 2k and 2l and shaded blue on sheet 2 of the streets plan
Breckland District Council	Fincham Drove	Permanent alteration of layout between reference points 2m and 2n and shaded blue on sheet 2 of the streets plan
Breckland District Council	A1065	Permanent alteration of layout between reference points 2s and 4f and shaded green on sheets 2 and 4 of the streets plan
Breckland District Council	River Road	Permanent alteration of layout between reference points 3a and 3b and shaded green on sheet 3 of the streets plan
Breckland District Council	Petticoat Drove	Permanent alteration of layout between reference points 4a and 4b and shaded blue on sheet 4 of the streets plan
Breckland District Council	Fincham Drove	Permanent alteration of layout between reference points 4c and 4d and shaded blue on sheets 4 of the streets plan

PART 2

TEMPORARY ALTERATION OF LAYOUT

(1) *Area*	*(2)* *Street*	*(3)* *Description of alteration*
Breckland District Council	Petticoat Drove	Temporary alteration of layout between reference points 2f and 2g and shaded blue on sheet 2 of the streets plan
Breckland District Council	A1065	Temporary alteration of layout

		between reference points 2u and 4e and shaded pink on sheets 2 and 4 of the streets plan
Breckland District Council	Road that runs from the north of Fincham Drove to the south of South Acre Road	Temporary alteration of layout between reference points 2d and 2e and shared orange on sheet 2 of the streets plan
Breckland District Council	Petticoat Drove	Temporary alteration of layout between reference points 2p and 2q and shaded orange on sheet 2 of the streets plan
Breckland District Council	Washpit Drove	Temporary alteration of layout between reference points 1b and 2h and shaded blue on sheets 1 and 2 of the streets plan
Breckland District Council	Washpit Drove	Temporary alteration of layout between reference points 1a and 2b and shaded blue on sheets 1 and 2 of the streets plan
Breckland District Council	Castle Acre Road	Temporary alteration of layout between reference points 5a and 5c and shaded green on sheet 5 of the streets plan
Breckland District Council	Low Rd	Temporary alteration of layout between reference points 2a and 2c and shaded green on sheet 2 of the streets plan
Breckland District Council	A47 - Slip Road	Temporary alteration of layout between reference points 5b and 5d and shaded green on sheet 5 of the streets plan
Breckland District Council	A47 - Slip Road	Temporary alteration of layout between reference points 5e and 5g and shaded green on sheet 5 of the streets plan
Breckland District Council	Castle Acre Road	Temporary alteration of layout between reference points 5f and 5h and shaded green on sheet 5 of the streets plan
Breckland District Council	South Acre Road	Temporary alteration of layout between reference points 2t and 4g and shaded green on sheets 2 and 4 of the streets plan

SCHEDULE 6

Article 12

STREETS AND PUBLIC RIGHTS OF WAY

PART 1

STREETS TO BE TEMPORARILY CLOSED

(1) *Area*	*(2)* *Street*	*(3)* *Measures*
Breckland District Council	Approximately 632m of the A1065 as shown between reference points 2u and 4e and shaded pink as shown on sheets 2 and 4 of the streets plan	Temporarily closed to all traffic save for traffic under the direction of the undertaker
Breckland District Council	Approximately 853m of the road that runs from the north of Fincham Drove to the south of South Acre Road as shown between reference points 2q and 2p and shared orange as shown on sheet 2 of the streets plan	Temporarily closed to all traffic save for traffic under the direction of the undertaker
Breckland District Council	Approximately 511m of Petticoat Drove between reference points 2d and 2e and shaded orange as shown on sheet 2 of the streets plan	Temporarily closed to all traffic save for traffic under the direction of the undertaker

PART 2

PUBLIC RIGHTS OF WAY TO BE TEMPORARILY CLOSED

(1) *Area*	*(2)* *Public right of way*	*(3)* *Measures*
Breckland District Council	Approximately 703m of restricted byway South Acre RB6 between points marked 2e/i and 2e/ii on sheet 2 of the access and rights of way plan	Temporarily closed along the route shown in brown to facilitate the construction and maintenance of the authorised development
Breckland District Council	Approximately 109m of restricted byway South Acre RB6 between points marked 2d/i and 2d/ii on sheet 2 of the access and rights of way plan	Temporarily closed along the route shown in brown to facilitate the construction and maintenance of the authorised development
Breckland District Council	Approximately 112m of restricted byway South Acre RB2 between points marked 2c/i and 2c/ii on sheet 2 of the access and rights of way plan	Temporarily closed along the route shown in brown to facilitate the construction and maintenance of the authorised development

Breckland District Council	Approximately 105m of restricted byway South Acre RB1 between points marked 2a/i and 2a/ii on sheet 2 of the access and rights of way plan	Temporarily closed along the route shown in brown to facilitate the construction and maintenance of the authorised development
Breckland District Council	Approximately 1017m of restricted byway South Acre RB2 and South Acre RB 1 between points marked 1a/i and 1a/ii on sheet 1 and sheet 2 of the access and rights of way plan	Temporarily closed along the route shown in brown to facilitate the construction and maintenance of the authorised development
Breckland District Council	Approximately 525m of restricted byway South Acre RB1 between points marked 2b/i and 2b/ii on sheet 2 of the access and rights of way plan	Temporarily closed along the route shown in brown to facilitate the construction and maintenance of the authorised development
Breckland District Council	Approximately 179m of restricted byway South Acre RB1 between points marked 4a/i and 4a/ii on sheet 4 of the access and rights of way plan	Temporarily closed along the route shown in brown to facilitate the construction and maintenance of the authorised development
Breckland District Council	Approximately 106m of restricted byway South Acre RB1 between points marked 4b/i and 4b/ii on sheet 4 of the access and rights of way plan	Temporarily closed along the route shown in brown to facilitate the construction and maintenance of the authorised development
Breckland District Council	Approximately 860m of restricted byway South Acre RB6 between points marked 2f/i and 2f/ii on sheet 2 of the access and rights of way plan	Temporarily closed along the route shown in brown to facilitate the construction and maintenance of the authorised development

PART 3

TEMPORARY USE OF MOTOR VEHICLES ON PUBLIC RIGHTS OF WAY

(1) *Area*	*(2)* *Public right of way*	*(3)* *Measures*
Breckland District Council	Approximately 525m of restricted byway South Acre RB1 between points marked 2b/i and 2b/ii on sheet 2 of the access and rights of way plan	Motor vehicles under the direction of the undertaker may cross the public right of way
Breckland District Council	Approximately 1017m of restricted byway South Acre RB2 and South Acre RB 1 between points marked 1a/i and 1a/ii on sheet 1 and sheet 2 of the access and rights of way plan	Motor vehicles under the direction of the undertaker may cross the public right of way
Breckland District Council	Approximately 112m of restricted byway South Acre RB1 between points marked 2c/i and 2c/ii on sheet 2 of the	Motor vehicles under the direction of the undertaker may cross the public right of way

	access and rights of way plan	
Breckland District Council	Approximately 703m of restricted byway South Acre RB6 between points marked 2e/i and 2e/ii on sheet 2 of the access and rights of way plan	Motor vehicles under the direction of the undertaker may cross the public right of way
Breckland District Council	Approximately 109m of restricted byway South Acre RB6 between points marked 2d/i and 2d/ii on sheet 2 of the access and rights of way plan	Motor vehicles under the direction of the undertaker may cross the public right of way
Breckland District Council	Approximately 179m of restricted byway South Acre RB1 between points marked 4a/i and 4a/ii on sheet 4 of the access and rights of way plan	Motor vehicles under the direction of the undertaker may cross the public right of way
Breckland District Council	Approximately 106m of restricted byway South Acre RB1 between points marked 4b/i and 4b/ii on sheet 4 of the access and rights of way plan	Motor vehicles under the direction of the undertaker may cross the public right of way
Breckland District Council	Approximately 105m of restricted byway South Acre RB1 between points marked 2a/i and 2a/ii on sheet 2 of the access and rights of way plan	Motor vehicles under the direction of the undertaker may cross the public right of way
Breckland District Council	Approximately 860m of restricted byway South Acre RB6 between points marked 2f/i and 2f/ii on sheet 2 of the access and rights of way plan	Motor vehicles under the direction of the undertaker may cross the public right of way

SCHEDULE 7

Article 14

ACCESS TO WORKS

PART 1

PERMANENT MEANS OF ACCESS TO WORKS

(1) *Area*	*(2)* *Street*	*(3)* *Description of means of access*
Breckland District Council	A1065	The provision of a permanent means of access to the authorised development from the point marked Access A on sheet 3 of the access and rights of way plan
Breckland District Council	A1065	The provision of a permanent means of access to the authorised development from the point marked Access C on sheet 4 of the access and rights of way plan
Breckland District Council	A1065	The provision of a permanent means of access to the authorised development from the point marked Access B on sheet 3 of the access and rights of way plan
Breckland District Council	Fincham Drove	The provision of a permanent means of access to the authorised development from the point marked Access D-1 on sheet 2 of the access and rights of way plan
Breckland District Council	Fincham Drove	The provision of a permanent means of access to the authorised development from the point marked Access D-2 on sheet 2 of the access and rights of way plan
Breckland District Council	Washpit Drove	The provision of a permanent means of access to the authorised development from the point marked Access E-1 on sheet 2 of the access and rights of way plan
Breckland District Council	Washpit Drove	The provision of a permanent means of access to the authorised development from the point marked Access E-2 on sheet 2 of the access and rights of way plan
Breckland District Council	Petticoat Drove	The provision of a permanent

		means of access to the authorised development from the point marked Access F-1 on sheet 2 of the access and rights of way plan
Breckland District Council	Petticoat Drove	The provision of a permanent means of access to the authorised development from the point marked Access F-2 on sheet 2 of the access and rights of way plan
Breckland District Council	Petticoat Drove	The provision of a permanent means of access to the authorised development from the point marked Access G-1 on sheet 4 of the access and rights of way plan
Breckland District Council	Petticoat Drove	The provision of a permanent means of access to the authorised development from the point marked Access G-2 on sheet 4 of the access and rights of way plan
Breckland District Council	Fincham Drove	The provision of a permanent means of access to the authorised development from the point marked Access H-1 on sheet 4 of the access and rights of way plan
Breckland District Council	Fincham Drove	The provision of a permanent means of access to the authorised development from the point marked Access H-2 on sheet 4 of the access and rights of way plan
Breckland District Council	River Road	The provision of a permanent means of access to the authorised development from the point marked Access I-1 on sheet 3 of the access and rights of way plan
Breckland District Council	River Road	The provision of a permanent means of access to the authorised development from the point marked Access I-2 on sheet 3 of the access and rights of way plan

PART 2

TEMPORARY MEANS OF ACCESS

(1) *Area*	*(2)* *Street*	*(3)* *Description of means of access*
Breckland District Council	A1065	The provision of a temporary means of access to the authorised development from the point marked Access C on sheet 2 of the access and rights of way plan

SCHEDULE 8

Article 16

TRAFFIC REGULATION MEASURES

(1) *Area*	*(2)* *Street*	*(3)* *Extent of the street works*
Breckland District Council	Low Road	Between reference points 2a and 2c and shaded green on sheet 2 of the streets plan
Breckland District Council	A1065	Between reference points 2u and 4e and shaded pink on sheets 2 and 4 of the streets plan
Breckland District Council	A1065	Between reference points 2s and 4f and shaded green on sheets 2 and 4 of the streets plan
Breckland District Council	Southacre Road	Between reference points 2t and 4g and shaded green on sheets 2 and 4 of the streets plan
Breckland District Council	River Road	Between reference points 3a and 3b and shaded green on sheet 3 of the streets plan
Breckland District Council	Castle Acre Road	Between reference points 5a and 5c and shaded green on sheet 5 of the streets plan
Breckland District Council	A47 - Slip road	Between reference points 5b and 5d and shaded green on sheet 5 of the streets plan
Breckland District Council	Castle Acre Road	Between reference points 5f and 5h and shaded green on sheet 5 of the streets plan
Breckland District Council	A47 - Slip road	Between reference points 5e and 5g and shaded green on sheet 5 of the streets plan
Breckland District Council	Washpit Drove	Between reference points 1a and 2b and shaded blue on sheets 1 and 2 of the streets plan
Breckland District Council	Petticoat Drove	Between reference points 2f and 2g shaded blue on sheet 2 of the streets plan
Breckland District Council	Petticoat Drove	Between reference points 2i and 2j shaded blue on sheet 2 of the streets plan
Breckland District Council	300m east of North to South and east to west arm of Fincham Drove	Between reference points 2k and 2l shaded blue on sheet 2 of the streets plan
Breckland District Council	Fincham Drove	Between reference points 2m and 2n shaded blue on sheet 2 of the streets plan

Breckland District Council	Petticoat Drove	Between reference points 4a and 4b shaded blue on sheet 4 of the streets plan
Breckland District Council	Fincham Drove	Between reference points 4c and 4d shaded blue on sheet 4 of the streets plan

SCHEDULE 9

Article 24

LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED

(1) *Plot reference number shown on the Land Plan*	*(2)* *Purposes for which rights over land may be required and restrictive covenants imposed*
1-03, 1-04, 1-05, 1-09, 1-10, 2-13a, 2-15, 2-16, 2-19, 2-21, 2-22, 2-23, 2-28, 2-31, 3-40, 3-42, 4-44	Alter, improve, form, maintain, retain, use (with or without vehicles, plant and machinery), remove, reinstate means of access to the authorised development including visibility splays, bridges and road widening and to remove impediments (including vegetation) to such access;
	Pass and repass on foot, with or without vehicles, plant and machinery (including rights to lay and use any temporary surface) for all purposes in connection with the authorised development;
	Install, use, support, protect, inspect, alter, remove, replace, refurbish, reconstruct, retain, renew, improve and maintain security fencing, gates, boundary treatment, public rights of way and any other ancillary apparatus and any other works as necessary;
	Install, use, support, protect, inspect, alter, remove, replace, refurbish, reconstruct, retain, renew, improve and maintain sewers, drains, pipes, ducts, mains, conduits, services, flues and to drain into and manage waterflows in any drains, watercourses and culverts;
	Install, execute, implement, retain, repair, improve, renew, remove, relocate and plant trees, woodlands, shrubs, hedgerows, seeding, landscaping and other ecological measures together with the right to maintain, inspect and replant such trees, shrubs, hedgerows, landscaping and other ecological measures the right to pass and repass on foot, with or without vehicles, plant and machinery for all purposes in connection with the implementation and maintenance of landscaping and ecological mitigation or enhancement works;
	Restrict and remove the erection of buildings or structures, restrict the altering of ground levels, restrict and remove the planting of trees or carrying out operations or actions (including but not limited to blasting and piling) which may obstruct, interrupt or interfere with the exercise of the rights or damage the authorised development.
1-07, 2-13, 2-27, 2-32, 2-36, 2-37	Install, use, support, protect, inspect, alter, remove, replace, refurbish, reconstruct, retain,

	renew, improve and maintain electrical underground cables, earthing cables, optical fibre cables, data cables, telecommunications cables and other services, works associated with such cables including bays, ducts, protection and safety measures and equipment, and other ancillary apparatus and structures (including but not limited to access chambers, manholes and marker posts) and any other works necessary together with the right to fell, trim or lop trees and bushes which may obstruct or interfere with the said cables, telecommunications and other ancillary apparatus;
	Remain, pass and repass on foot, with or without vehicles, plant and machinery (including rights to lay and use any temporary surface or form a temporary compound) for all purposes in connection with the authorised development;
	Continuous vertical and lateral support for the authorised development;
	Install, use, support, protect, inspect, alter, remove, replace, refurbish, reconstruct, retain, renew, improve and maintain sewers, drains, pipes, ducts, mains, conduits, services, flues and to drain into and manage waterflows in any drains, watercourses and culverts;
	Alter, improve, form, maintain, retain, use (with or without vehicles, plant and machinery), remove, reinstate means of access to the authorised development including visibility splays, bridges and road widening and to remove impediments (including vegetation) to such access;
	Install, execute, implement, retain, repair, improve, renew, remove, relocate and plant trees, woodlands, shrubs, hedgerows, seeding, landscaping and other ecological measures together with the right to maintain, inspect and replant such trees, shrubs, hedgerows, landscaping and other ecological measures the right to pass and repass on foot, with or without vehicles, plant and machinery for all purposes in connection with the implementation and maintenance of landscaping and ecological mitigation or enhancement works;
	Install, use, support, protect, inspect, alter, remove, replace, refurbish, reconstruct, retain, renew, improve and maintain security fencing, gates, boundary treatment, public rights of way and any other ancillary apparatus and any other works as necessary;
	Restrict and remove the erection of buildings or structures, restrict the altering of ground levels, restrict and remove vegetation and restrict the

	planting of trees or carrying out operations or actions (including but not limited to blasting and piling) which may obstruct, interrupt or interfere with the exercise of the rights or damage the authorised development.
1-07, 2-13, 2-13a, 2-19, 2-21, 2-27, 2-31, 2-32, 2-36, 2-37	With or without vehicles, plant and equipment to enter the land to construct the overhead electric line and thereafter to use, retain, inspect, maintain, repair, alter, renew and replace, decommission and leave in situ or remove;
	With or without vehicles, plant and equipment to enter the land to fell, trim or lop trees and bushes which may obstruct or interfere with the rights sought by the undertaker;
	With or without vehicles, plant and equipment to enter the land to access any adjoining land;
	With or without vehicles, plant and equipment to enter the land to exercise the rights over and across any access route;
	To require the landowner not to do or suffer anything to be done upon the land which may interfere with or cause damage to the overhead electric line, including without limitation impose clearance restrictions, not to erect any building or structure or allow any plant or tree to grow within the land, not to change the level of the surface, ground cover or composition of the land or do or allow to be done anything that may cause the level of the surface, ground cover or composition to be altered, not to drill, dig or break up the land;
	To fly over, use on, and recover from the land robots, helicopters, drones, gadgets or similar devices either remote controlled or autonomous, including for the purposes of inspection and maintenance;
	To construct and install land drains cutoff drainage and/or run-off drainage systems (including all necessary supports) soakaways and attenuation ponds on the land, and thereafter to infill and/or retain and make use of, including from time to time to inspect, cleanse, maintain, repair, remove, decommission and leave in situ, reinstate, renew, alter and replace, the same;
	To require the landowner not to do or suffer anything to be done upon the land which may interfere with the drainage systems, soakaways or attenuation ponds;
	Including without limitation not to erect any building or structure or allow any plant or tree to grow within the land insofar as it may interfere with the drainage systems, not to change the level of the surface, ground cover or composition of the land or do or allow to be

	done anything that may cause the level of the surface, ground cover or composition to be altered, not to drill, dig or break up the land;
	To carry out any other works, including environmental mitigation, necessary or expedient to the land and listed in Schedule 1 of the Order;
	To carry out any activities ancillary or incidental thereto.

SCHEDULE 10

Article 24

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

Compensation enactments

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

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

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

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

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

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

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

"(a) the acquiring authority enters on land for the purpose of exercising a right in pursuant of a notice of entry under section 11(1) of the 1965 Act (as modified by paragraph 5(5) of Schedule 10 (modification of compensation and compulsory purchase enactments for the creation of new rights and imposition of new restrictive covenants) to The Droves Solar Farm Order 202[ ];

(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 10 to The Droves Solar Farm Order 202[ ]) to acquire an interest in the land; and

(c) the acquiring authority enters on and takes possession of that land,

the authority is deemed for the purposes of subsection (3)(a) to have entered on that land where it entered on that land for the purpose of exercising that right.".

Application of Part 1 of the 1965 Act

4. Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act, as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act to the acquisition of land under article 21 (compulsory acquisition of land) and as modified by article 28 (modification of Part 1 of the Compulsory Purchase Act 1965), applies to the compulsory acquisition of a right by the creation of a new right under article 24 (compulsory acquisition of rights)—

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

(**a**) 1973 c. 26.

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) Section 11 (powers of entry)(**a**) of the 1965 Act is modified to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right or restrictive covenant, as well as the notice of entry required by subsection (1) of that section (as it applies to compulsory acquisition under article 21 (compulsory acquisition of land)), it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant (which is deemed for this purpose to have been created on the date of service of the notice); and sections 11A (powers of entry: further notices of entry)(**b**), 11B (counter-notice requiring possession to be taken on specified date)(**c**), 12 (penalty for unauthorised entry)(**d**) and 13 (refusal to give possession to acquiring authority)(**e**) of the 1965 Act are modified correspondingly.

(6) Section 20 (tenants at will, etc.)(**f**) of the 1965 Act applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such

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(**a**) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1958 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1), sections 186(2) and 188 of, and paragraph 6 of Schedule 14 and paragraph 3 of Schedule 16 to, the Housing and Planning Act 2016 (c. 22) and S.I. 2009/1307.

(**b**) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016.

(**c**) Section 11B was inserted by section 187(3) of the Housing and Planning Act 2016.

(**d**) Section 12 was amended by sections 56(2) of, and Part 1 of Schedule 9 to, the Courts Act 1971 (c. 23) and paragraphs (2) and (4) of Schedule 16 to the Housing and Planning Act 2016.

(**e**) Section 13 was amended by sections 62(3), 139(4) to (9) and 146 of, and paragraphs 27 and 28 of Schedule 13 and Part 3 of Schedule 23 to the Tribunals, Courts and Enforcement Act 2007 (c. 15).

(**f**) Section 20 was amended by paragraph 4 of Schedule 15 to the Planning and Compensation Act 1991 (c. 34) and S.I. 2009/1307.

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

(7) Section 22 (interests omitted from purchase) of the 1965 Act as modified by article 28(3) (modification of Part 1 of the Compulsory Purchase Act 1965) is so modified as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired or restrictive covenant imposed, subject to compliance with that section as respects compensation.

(8) For Schedule 2A to the 1965 Act (counter notice requiring purchase of land not in notice to treat) substitute—

"SCHEDULE 2A

COUNTER-NOTICE REQUIRING PURCHASE OF LAND

1.—(1) This Schedule applies where an acquiring authority serves a notice to treat in respect of a right over, or restrictive covenant affecting, the whole or part of a house, building or factory and have not executed a general vesting declaration under section 4 of the 1981 Act as applied by article 26 (application of the 1981 Act) of The Droves Solar Farm Order 202[ ] in respect of the land to which the notice to treat relates.

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

2. In this Schedule, "house" includes any park or garden belonging to a house.

Counter-notice requiring purchase of land

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

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

Response to counter-notice

5. On receiving a counter-notice, the acquiring authority must decide whether to—

(a) withdraw the notice to treat,

(b) accept the counter notice, or

(c) refer the counter notice to the Upper Tribunal.

6. The authority must serve notice of their decision on the owner within the period of three months beginning with the day on which the counter-notice is served ("the decision period").

7. If the authority decides to refer the counter-notice to the Upper Tribunal they must do so within the decision period.

8. If the authority does not serve notice of a decision within the decision period they are to be treated as if they had served notice of a decision to withdraw the notice to treat at the end of that period.

9. If the authority serves notice of a decision to accept the counter-notice, the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in the house, building or factory.

Determination by the Upper Tribunal

10. On a referral under paragraph 7, the Upper Tribunal must determine whether the acquisition of the right or the imposition of the restrictive covenant would—

(a) in the case of a house, building or factory; cause material detriment to the house, building or factory, or

(b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

11. In making its determination, the Upper Tribunal must take into account—

(a) the effect of the acquisition of the right or the imposition of the covenant,

(b) the use to be made of the right or covenant proposed to be acquired or imposed, and

(c) if the right or covenant is proposed to be acquired or imposed for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.

12. If the Upper Tribunal determines that the acquisition of the right or the imposition of the covenant would have either of the consequences described in paragraph 10, it must determine how much of the house, building or factory the authority ought to be required to take.

13. If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in that land.

14.—(1) If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the authority may at any time within the period of six weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.

(2) If the acquiring authority withdraws the notice to treat under this paragraph they must pay the person on whom the notice was served compensation for any loss or expense cause by the giving and withdrawal of the notice.

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

SCHEDULE 11

Article 31

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

(1) *Plot reference number shown on the Land Plan*	*(2)* *Purpose for which temporary possession may be taken*
1-08, 2-12, 2-33, 2-34, 2-35, 4-46, 5-47, 5-49, 5-50, 5-51, 5-53, 5-54, 5-55, 5-56	Temporary use (including access and compounds) to facilitate the construction of Work Nos. 1 to 11.

SCHEDULE 12

Article 40

HEDGEROWS TO BE REMOVED

PART 1

REMOVAL OF HEDGEROWS

(1) *Hedgerow ID*	*(2)* *Extent of removal*
H17	Removal of part of approximately 48m of hedgerow within the area identified by an orange line on sheet 2 of the hedgerow plan
H55c	Removal of part of approximately 387m of hedgerow within the area identified by an orange line on sheet 2 of the hedgerow plan
H130	Removal of part of approximately 693m of hedgerow within the area identified by an orange line on sheet 4 of the hedgerow plan
H141	Removal of part of approximately 496m of hedgerow within the area identified by an orange line on sheet 4 of the hedgerow plan
H155	Removal of part of approximately 47m of hedgerow within the area identified by an orange line on sheet 4 of the hedgerow plan

PART 2

REMOVAL OF IMPORTANT HEDGEROWS

(1) *Hedgerow ID*	*(2)* *Extent of removal*
H1	Removal of part of approximately 600m of hedgerow within the area identified by a green line on sheet 1 of the hedgerow plan
H2	Removal of part of approximately 751m of hedgerow within the area identified by a green line on sheet 1 of the hedgerow plan
H4	Removal of part of approximately 103m of hedgerow within the area identified by a green line on sheet 1 of the hedgerow plan
H5	Removal of part of approximately 92m of hedgerow within the area identified by a green line on sheet 1 of the hedgerow plan
H6	Removal of part of approximately 576m of hedgerow within the area identified by a green line on sheet 1 of the hedgerow plan
H7	Removal of part of approximately 639m of hedgerow within the area identified by a green line on sheet 1 of the hedgerow plan
H8	Removal of part of approximately 234m of

	hedgerow within the area identified by a green line on sheet 1 of the hedgerow plan
H9	Removal of part of approximately 341m of hedgerow within the area identified by a green line on sheet 1 of the hedgerow plan
H10	Removal of part of approximately 632m of hedgerow within the area identified by a green line on sheet 1 of the hedgerow plan
H11	Removal of part of approximately 571m of hedgerow within the area identified by a green line on sheet 1 of the hedgerow plan
H12	Removal of part of approximately 74m of hedgerow within the area identified by a green line on sheet 1 of the hedgerow plan
H13	Removal of part of approximately 127m of hedgerow within the area identified by a green line on sheet 2 of the hedgerow plan
H14	Removal of part of approximately 13m of hedgerow within the area identified by a green line on sheet 2 of the hedgerow plan
H15	Removal of part of approximately 38m of hedgerow within the area identified by a green line on sheet 2 of the hedgerow plan
H16	Removal of part of approximately 120m of hedgerow within the area identified by a green line on sheet 2 of the hedgerow plan
H18	Removal of part of approximately 489m of hedgerow within the area identified by a green line on sheet 2 of the hedgerow plan
H25	Removal of part of approximately 299m of hedgerow within the area identified by a green line on sheet 2 of the hedgerow plan
H32	Removal of part of approximately 127m of hedgerow within the area identified by a green line on sheet 2 of the hedgerow plan
H33	Removal of part of approximately 127m of hedgerow within the area identified by a green line on sheet 2 of the hedgerow plan
H36	Removal of part of approximately 302m of hedgerow within the area identified by a green line on sheet 2 of the hedgerow plan
H37	Removal of part of approximately 93m of hedgerow within the area identified by a green line on sheet 2 of the hedgerow plan
H38	Removal of part of approximately 485m of hedgerow within the area identified by a green line on sheet 2 of the hedgerow plan
H41	Removal of part of approximately 306m of hedgerow within the area identified by a green line on sheet 2 of the hedgerow plan
H42	Removal of part of approximately 137m of hedgerow within the area identified by a green line on sheet 2 of the hedgerow plan
H43	Removal of part of approximately 27m of hedgerow within the area identified by a green

	line on sheet 2 of the hedgerow plan
H44	Removal of part of approximately 29m of hedgerow within the area identified by a green line on sheet 2 of the hedgerow plan
H45	Removal of part of approximately 15m of hedgerow within the area identified by a green line on sheet 2 of the hedgerow plan
H46	Removal of part of approximately 100m of hedgerow within the area identified by a green line on sheet 2 of the hedgerow plan
H47	Removal of part of approximately 48m of hedgerow within the area identified by a green line on sheet 2 of the hedgerow plan
H48	Removal of part of approximately 103m of hedgerow within the area identified by a green line on sheet 2 of the hedgerow plan
H49	Removal of part of approximately 164m of hedgerow within the area identified by a green line on sheet 2 of the hedgerow plan
H50	Removal of part of approximately 159m of hedgerow within the area identified by a green line on sheet 2 of the hedgerow plan
H51	Removal of part of approximately 157m of hedgerow within the area identified by a green line on sheet 2 of the hedgerow plan
H53	Removal of part of approximately 197m of hedgerow within the area identified by a green line on sheet 2 of the hedgerow plan
H54	Removal of part of approximately 79m of hedgerow within the area identified by a green line on sheet 2 of the hedgerow plan
H55a	Removal of part of approximately 17m of hedgerow within the area identified by a green line on sheet 2 of the hedgerow plan
H55b	Removal of part of approximately 195m of hedgerow within the area identified by a green line on sheet 2 of the hedgerow plan
H56	Removal of part of approximately 371m of hedgerow within the area identified by a green line on sheet 2 of the hedgerow plan
H57	Removal of part of approximately 387m of hedgerow within the area identified by a green line on sheet 2 of the hedgerow plan
H58	Removal of part of approximately 14m of hedgerow within the area identified by a green line on sheet 2 of the hedgerow plan
H60	Removal of part of approximately 274m of hedgerow within the area identified by a green line on sheet 2 of the hedgerow plan
H61	Removal of part of approximately 237m of hedgerow within the area identified by a green line on sheet 2 of the hedgerow plan
H62	Removal of part of approximately 27m of hedgerow within the area identified by a green line on sheet 2 of the hedgerow plan

H63	Removal of part of approximately 19m of hedgerow within the area identified by a green line on sheet 2 of the hedgerow plan
H64	Removal of part of approximately 66m of hedgerow within the area identified by a green line on sheet 2 of the hedgerow plan
H65	Removal of part of approximately 173m of hedgerow within the area identified by a green line on sheet 2 of the hedgerow plan
H66	Removal of part of approximately 167m of hedgerow within the area identified by a green line on sheet 2 of the hedgerow plan
H71	Removal of part of approximately 289m of hedgerow within the area identified by a green line on sheet 3 of the hedgerow plan
H72	Removal of part of approximately 43m of hedgerow within the area identified by a green line on sheet 3 of the hedgerow plan
H73	Removal of part of approximately 417m of hedgerow within the area identified by a green line on sheet 3 of the hedgerow plan
H74	Removal of part of approximately 296m of hedgerow within the area identified by a green line on sheet 3 of the hedgerow plan
H75	Removal of part of approximately 174m of hedgerow within the area identified by a green line on sheet 3 of the hedgerow plan
H76	Removal of part of approximately 210m of hedgerow within the area identified by a green line on sheet 3 of the hedgerow plan
H77	Removal of part of approximately 517m of hedgerow within the area identified by a green line on sheet 3 of the hedgerow plan
H78	Removal of part of approximately 595m of hedgerow within the area identified by a green line on sheet 3 of the hedgerow plan
H79	Removal of part of approximately 261m of hedgerow within the area identified by a green line on sheet 3 of the hedgerow plan
H80	Removal of part of approximately 105m of hedgerow within the area identified by a green line on sheet 3 of the hedgerow plan
H81	Removal of part of approximately 34m of hedgerow within the area identified by a green line on sheet 3 of the hedgerow plan
H82	Removal of part of approximately 90m of hedgerow within the area identified by a green line on sheet 3 of the hedgerow plan
H83	Removal of part of approximately 279m of hedgerow within the area identified by a green line on sheet 3 of the hedgerow plan
H84	Removal of part of approximately 70m of hedgerow within the area identified by a green line on sheet 3 of the hedgerow plan
H85	Removal of part of approximately 33m of

	hedgerow within the area identified by a green line on sheet 3 of the hedgerow plan
H86	Removal of part of approximately 387m of hedgerow within the area identified by a green line on sheet 3 of the hedgerow plan
H92	Removal of part of approximately 220m of hedgerow within the area identified by a green line on sheet 3 of the hedgerow plan
H93	Removal of part of approximately 157m of hedgerow within the area identified by a green line on sheet 3 of the hedgerow plan
H94	Removal of part of approximately 257m of hedgerow within the area identified by a green line on sheet 3 of the hedgerow plan
H95	Removal of part of approximately 278m of hedgerow within the area identified by a green line on sheet 3 of the hedgerow plan
H96	Removal of part of approximately 600m of hedgerow within the area identified by a green line on sheet 3 of the hedgerow plan
H97	Removal of part of approximately 411m of hedgerow within the area identified by a green line on sheet 3 of the hedgerow plan
H98	Removal of part of approximately 401m of hedgerow within the area identified by a green line on sheet 4 of the hedgerow plan
H99	Removal of part of approximately 161m of hedgerow within the area identified by a green line on sheet 4 of the hedgerow plan
H100	Removal of part of approximately 210m of hedgerow within the area identified by a green line on sheet 4 of the hedgerow plan
H101	Removal of part of approximately 42m of hedgerow within the area identified by a green line on sheet 4 of the hedgerow plan
H102	Removal of part of approximately 41m of hedgerow within the area identified by a green line on sheet 4 of the hedgerow plan
H103	Removal of part of approximately 448m of hedgerow within the area identified by a green line on sheet 4 of the hedgerow plan
H104	Removal of part of approximately 217m of hedgerow within the area identified by a green line on sheet 4 of the hedgerow plan
H105	Removal of part of approximately 240m of hedgerow within the area identified by a green line on sheet 4 of the hedgerow plan
H106	Removal of part of approximately 157m of hedgerow within the area identified by a green line on sheet 4 of the hedgerow plan
H107	Removal of part of approximately 207m of hedgerow within the area identified by a green line on sheet 4 of the hedgerow plan
H108	Removal of part of approximately 405m of hedgerow within the area identified by a green

	line on sheet 4 of the hedgerow plan
H109	Removal of part of approximately 26m of hedgerow within the area identified by a green line on sheet 4 of the hedgerow plan
H110	Removal of part of approximately 1506m of hedgerow within the area identified by a green line on sheet 4 of the hedgerow plan
H111	Removal of part of approximately 380m of hedgerow within the area identified by a green line on sheet 4 of the hedgerow plan
H112	Removal of part of approximately 565m of hedgerow within the area identified by a green line on sheet 4 of the hedgerow plan
H113	Removal of part of approximately 381m of hedgerow within the area identified by a green line on sheet 4 of the hedgerow plan
H114	Removal of part of approximately 900m of hedgerow within the area identified by a green line on sheet 4 of the hedgerow plan
H115	Removal of part of approximately 126m of hedgerow within the area identified by a green line on sheet 4 of the hedgerow plan
H116	Removal of part of approximately 104m of hedgerow within the area identified by a green line on sheet 4 of the hedgerow plan
H117	Removal of part of approximately 102m of hedgerow within the area identified by a green line on sheet 4 of the hedgerow plan
H118	Removal of part of approximately 455m of hedgerow within the area identified by a green line on sheet 4 of the hedgerow plan
H119	Removal of part of approximately 21m of hedgerow within the area identified by a green line on sheet 4 of the hedgerow plan
H120	Removal of part of approximately 88m of hedgerow within the area identified by a green line on sheet 4 of the hedgerow plan
H121	Removal of part of approximately 268m of hedgerow within the area identified by a green line on sheet 4 of the hedgerow plan
H122	Removal of part of approximately 157m of hedgerow within the area identified by a green line on sheet 4 of the hedgerow plan
H123	Removal of part of approximately 11m of hedgerow within the area identified by a green line on sheet 4 of the hedgerow plan
H124	Removal of part of approximately 55m of hedgerow within the area identified by a green line on sheet 4 of the hedgerow plan
H125	Removal of part of approximately 67m of hedgerow within the area identified by a green line on sheet 4 of the hedgerow plan
H126	Removal of part of approximately 43m of hedgerow within the area identified by a green line on sheet 4 of the hedgerow plan

H127	Removal of part of approximately 110m of hedgerow within the area identified by a green line on sheet 4 of the hedgerow plan
H128	Removal of part of approximately 50m of hedgerow within the area identified by a green line on sheet 4 of the hedgerow plan
H129	Removal of part of approximately 511m of hedgerow within the area identified by a green line on sheet 4 of the hedgerow plan
H130a	Removal of part of approximately 777m of hedgerow within the area identified by a green line on sheet 4 of the hedgerow plan
H131	Removal of part of approximately 400m of hedgerow within the area identified by a green line on sheet 4 of the hedgerow plan
H132	Removal of part of approximately 105m of hedgerow within the area identified by a green line on sheet 4 of the hedgerow plan
H133	Removal of part of approximately 210m of hedgerow within the area identified by a green line on sheet 4 of the hedgerow plan
H134	Removal of part of approximately 394m of hedgerow within the area identified by a green line on sheet 4 of the hedgerow plan
H135	Removal of part of approximately 370m of hedgerow within the area identified by a green line on sheet 4 of the hedgerow plan
H136	Removal of part of approximately 176m of hedgerow within the area identified by a green line on sheet 4 of the hedgerow plan
H137	Removal of part of approximately 906m of hedgerow within the area identified by a green line on sheet 4 of the hedgerow plan
H138	Removal of part of approximately 297m of hedgerow within the area identified by a green line on sheet 4 of the hedgerow plan
H139	Removal of part of approximately 126m of hedgerow within the area identified by a green line on sheet 4 of the hedgerow plan
H140	Removal of part of approximately 209m of hedgerow within the area identified by a green line on sheet 4 of the hedgerow plan
H142	Removal of part of approximately 26m of hedgerow within the area identified by a green line on sheet 4 of the hedgerow plan
H143	Removal of part of approximately 67m of hedgerow within the area identified by a green line on sheet 4 of the hedgerow plan
H143a	Removal of part of approximately 84m of hedgerow within the area identified by a green line on sheet 4 of the hedgerow plan
H149	Removal of part of approximately 235m of hedgerow within the area identified by a green line on sheet 4 of the hedgerow plan
H150	Removal of part of approximately 218m of

	hedgerow within the area identified by a green line on sheet 4 of the hedgerow plan
H154	Removal of part of approximately 310m of hedgerow within the area identified by a green line on sheet 4 of the hedgerow plan

SCHEDULE 13

Article 42

DOCUMENTS AND PLANS TO BE CERTIFIED

PART 1

DOCUMENTS AND PLANS

(1) *Document name*	*(2)* *Document reference*	*(3)* *Revision number*	*(4)* *Date*
Access and rights of way plan	[EN0110013/APP/2.5]	–	November 2025
Book of reference	[EN0110013/APP/4.3]	3	July 2026
Design principles, parameters and commitments	[EN0110013/APP/5.8]	5	October 2026
Environmental statement	[EN0110013/APP/6.1-6.5]	–	November 2025
Hedgerow plan	[EN0110013/APP/2.11]	–	November 2025
Land plan	[EN0110013/APP/2.2]	–	November 2025
Outline archaeological mitigation strategy	[EN0110013/APP/6.4]	1	June 2026
Outline battery safety management plan	[EN0110013/APP/7.14]	2	September 2026
Outline construction environmental management plan	[EN0110013/APP/7.6]	5	October 2026
Outline construction traffic management plan	[EN0110013/APP/7.7]	4	October 2026
Outline decommissioning strategy	[EN0110013/APP/7.10]	2	July 2026
Outline landscape and ecological management plan	[EN0110013/APP/7.11]	3	October 2026
Outline operational environmental management plan	[EN0110013/APP/7.8]	5	October 2026
Outline operational traffic management plan	[EN0110013/APP/7.9]	2	July 2026
Outline public right of way and permissive path management plan	[EN0110013/APP/7.12]	–	November 2025
Outline employment, skills and supply chain strategy	[EN0110013/APP/7.15]	–	November 2025
Outline soil management plan	[EN0110013/APP/7.13]	1	June 2026
Permitted preliminary works environmental management plan	[EN0110013/APP/8.25]	–	September 2026
RAF Marham mitigation areas plan	[EN0110013/APP/8.28]	1	October 2026
Streets plan	[EN0110013/APP/2.4]	–	November 2025
Works plan	[EN0110013/APP/2.3]	1	July 2026

PART 2

SUBSTITUTE AND SUPPLEMENTARY DOCUMENTS

(1) Originating document	*(2) Replacement or supplementary part*	*(3) Document reference*	*(4) Date*	*(5) Examination library reference*
Environmental Statement	Chapter 1: Introduction	[EN0110013/APP/6.1]	October 2026	–
Environmental Statement	Chapter 3: Order Limits and Context	[EN0110013/APP/6.1]	June 2026	[REP1-030]
Environmental Statement	Chapter 4: Reasonable Alternatives and Design Evolution	[EN0110013/APP/6.1]	July 2026	[REP3-028]
Environmental Statement	Chapter 5: The Scheme	[EN0110013/APP/6.1]	October 2026	–
Environmental Statement	Chapter 6: Landscape and Visual	[EN0110013/APP/6.2]	October 2026	–
Environmental Statement	Chapter 7: Ecology and Biodiversity	[EN0110013/APP/6.2]	July 2026	[REP3-038]
Environmental Statement	Chapter 9: Transport and Access	[EN0110013/APP/6.2]	June 2026	[REP1-036]
Environmental Statement	Chapter 10: Noise and Vibration	[EN0110013/APP/6.2]	July 2026	[REP3-030]
Environmental Statement	Chapter 11: Soils and Agriculture	[EN0110013/APP/6.2]	August 2026	[AS-080]
Environmental Statement	Chapter 12: Water Resources	[EN0110013/APP/6.2]	October 2026	–
Environmental Statement	Chapter 13: Climate Change	[EN0110013/APP/6.2]	June 2026	[REP1-040]
Environmental Statement	Chapter 14: Socio-Economics	[EN0110013/APP/6.2]	August 2026	[AS-078]
Environmental Statement	Chapter 15: Human Health	[EN0110013/APP/6.2]	July 2026	[REP3-032]
Environmental Statement	Chapter 16: Other Environmental Matters	[EN0110013/APP/6.2]	July 2026	[REP3-034]
Environmental Statement	Chapter 17: In-Combination Effects	[EN0110013/APP/6.2]	June 2026	[REP1-038]
Environmental Statement	Chapter 18: Summary of Effects	[EN0110013/APP/6.2]	October 2026	–
Environmental Statement	Figure 2.1: Cumulative	[EN0110013/APP/6.3]	July 2026	[REP3-057]

	Schemes -Within 25km			
Environmental Statement	Figure 2.2: Cumulative Schemes - Countywide	[EN0110013/APP/6.3]	July 2026	[REP3-040]
Environmental Statement	Figure 5.2: Construction Masterplan	[EN0110013/APP/6.3]	June 2026	[REP1-043]
Environmental Statement	Figure 6.5: Zone of Theoretical Visibility - DTM	[EN0110013/APP/6.3]	July 2026	[REP3-054]
Environmental Statement	Figure 6.6: Zone of Theoretical Visibility - DSM	[EN0110013/APP/6.3]	July 2026	[REP3-055]
Environmental Statement	Figure 6.7: Visual Receptor Groups	[EN0110013/APP/6.3]	July 2026	[REP3-056]
Environmental Statement	Figure 6.10: PP1-16 and PPa-g Winter Photograph Panels - Part A	[EN0110013/APP/6.3]	October 2026	–
Environmental Statement	Figure 6.11: PP1-16 and PPa-g Summer Photograph Panels - Part A	[EN0110013/APP/6.3]	October 2026	–
Environmental Statement	Figure 6.14: PM8, PM12 and PM14 Winter Photomontages – Illustrative Scheme - Part A	[EN0110013/APP/6.3]	July 2026	[REP3-058]
Environmental Statement	Figure 6.14: PM8, PM12 and PM14 Winter Photomontages – Illustrative Scheme - Part B	[EN0110013/APP/6.3]	July 2026	[REP3-059]
Environmental Statement	Figure 6.14: PM8, PM12 and PM14 Winter Photomontages – Illustrative Scheme - Part C	[EN0110013/APP/6.3]	July 2026	[REP3-060]
Environmental Statement	Figure 12.5: Source Protection Zones	[EN0110013/APP/6.3]	September 2026	[REP4-023]
Environmental Statement	Figure 12.6: Groundwater Monitoring Locations	[EN0110013/APP/6.3]	July 2026	[REP3-047]
Environmental Statement	Figure 12.7: Triangulated Baseline	[EN0110013/APP/6.3]	July 2026	[REP3-048]

	Groundwater Elevation			
Environmental Statement	Figure 12.8: Depth to Triangulated Baseline Groundwater Elevation	[EN0110013/APP/6.3]	July 2026	[REP3-049]
Environmental Statement	Figure 12.9: Depth to NEAC Groundwater Wet Conditions	[EN0110013/APP/6.3]	July 2026	[REP3-050]
Environmental Statement	Figure 12.10: Groundwater Flow Directions from NEAC Groundwater Model	[EN0110013/APP/6.3]	July 2026	[REP3-041]
Environmental Statement	Figure 12.12: Drinking Water Protection Designations	[EN0110013/APP/6.3]	July 2026	[REP3-042]
Environmental Statement	Figure 12.13: Work No. 2 Maximum Potential Foundations and Groundwater Elevation	[EN0110013/APP/6.3]	July 2026	[REP3-043]
Environmental Statement	Figure 12.14: Work No. 3 Maximum Potential Foundations and Groundwater Elevation	[EN0110013/APP/6.3]	July 2026	[REP3-044]
Environmental Statement	Figure 12.15: Work No. 4 Maximum Potential Foundations and Groundwater Elevation	[EN0110013/APP/6.3]	July 2026	[REP3-045]
Environmental Statement	Figure 16.1: Utilities Plan	[EN0110013/APP/6.3]	July 2026	[REP3-051]
Environmental Statement	Appendix 2.4: Cumulative Schemes	[EN0110013/APP/6.4]	July 2026	[REP3-063]
Environmental Statement	Appendix 5.1: Illustrative Technical Information	[EN0110013/APP/6.4]	June 2026	[REP2-020]
Environmental Statement	Appendix 6.7: Residential Visual Amenity Assessment	[EN0110013/APP/6.4]	October 2026	–

Environmental Statement	Appendix 6.8: Amenity and Recreation Assessment	[EN0110013/APP/6.4]	October 2026	–
Environmental Statement	Appendix 7.1: Consultation and Legislation, Planning Policy and Guidance	[EN0110013/APP/6.4]	June 2026	[REP1-044]
Environmental Statement	Appendix 12.1: Consultation and Legislation, Planning Policy and Guidance	[EN0110013/APP/6.4]	July 2026	[REP3-061]
Environmental Statement	Appendix 12.2: Flood Risk Assessment	[EN0110013/APP/6.4]	October 2026	–
Environmental Statement	Appendix 12.3: Water Framework Directive Assessment	[EN0110013/APP/6.4]	June 2026	[REP2-012]
Environmental Statement	Appendix 16.4: Arboricultural Impact Assessment	[EN0110013/APP/6.4]	June 2026	[REP2-014]

SCHEDULE 14

Article 44

ARBITRATION RULES

Commencing an arbitration

1.—(1) The arbitration is deemed to have commenced when a party ("the claimant") serves a written notice of arbitration on the other party ("the respondent").

(2) The written notice of arbitration must set out—

(a) the parties to the arbitration;

(b) a brief statement of the legal issues between the parties; and

(c) the nature of the relief sought.

Appointment of the arbitrator

2.—(1) Within 14 days of the receipt of the notice of arbitration, the parties must agree and nominate a single arbitrator and notify the arbitrator of their appointment.

(2) If the nominated arbitrator refuses the appointment, the parties must agree and nominate an alternative arbitrator within 14 days of the receipt of the notice of the nominated arbitrator's refusal.

(3) If the parties do not agree and nominate a single arbitrator within the time period stipulated in sub-paragraph (1) (or as the case may be, sub-paragraph (2)), the Secretary of State will, on application by either party after giving written notice to the other party, appoint the a single arbitrator.

Time periods

3.—(1) All time periods in these arbitration rules are measured in days and include weekends, but not bank or public holidays.

(2) Time periods are calculated from the day after the arbitrator is appointed which is either—

(a) the date the arbitrator notifies the parties in writing of his/her acceptance of an appointment by agreement of the parties; or

(b) the date the arbitrator is appointed by the Secretary of State.

Timetable

4.—(1) The timetable for the arbitration is that which is set out in sub-paragraphs (2) to (4) below unless amended in accordance with paragraph 6(5).

(2) Within 28 days of the arbitrator being appointed, the claimant must provide both the respondent and the arbitrator with—

(a) a written statement of claim which describes the nature of the difference between the parties, the legal and factual issues, the claimant's contentions as to those issues, the amount of its claim or the remedy it is seeking; and

(b) all statements of evidence and copies of all documents on which it relies, including contractual documentation, correspondence (including electronic documents), legal precedents and expert witness reports.

(3) Within 28 days of receipt of the claimant's statements under sub-paragraph (2) by the arbitrator and respondent, the respondent must provide the claimant and the arbitrator with—

(a) a written statement of defence consisting of a response to the claimant's statement of claim, its statement in respect of the nature of the difference, the legal and factual issues

in the claimant's claim, its acceptance of any elements of the claimant's claim and its contentions as to those elements of the claimant's claim it does not accept;

(b) all statements of evidence and copies of all documents on which it relies, including contractual documentation, correspondence (including electronic documents), legal precedents and expert witness reports; and

(c) any objection it wishes to make to the claimant's statements, comments on the claimant's expert reports (if submitted by the claimant) and explanations of the objections.

(4) Within 21 days of the respondent serving its statements under sub-paragraph (3), the claimant may make a statement of reply by providing both the respondent and the arbitrator with—

(a) a written statement responding to the respondent's submissions, including its reply in respect of the nature of the difference, the issues (both factual and legal) and its contentions in relation to the issues;

(b) all statements of evidence and copies of documents in response to the respondent's submissions;

(c) any expert report in response to the respondent's submissions;

(d) any objections to the statements of evidence, expert reports or other documents submitted by the respondent; and

(e) its written submissions in response to the legal and factual issues involved.

Procedure

5.—(1) The parties' pleadings, witness statements and expert reports (if any) must be concise. A single pleading must not exceed 30 single-sided A4 pages using 10pt Arial font.

(2) The arbitrator will make an award on the substantive differences based solely on the written material submitted by the parties unless the arbitrator decides that a hearing is necessary to explain or resolve any matters.

(3) Either party may, within two days of delivery of the last submission, request a hearing giving specific reasons why it considers a hearing is required.

(4) Within 14 days of receiving the last submission, the arbitrator must notify the parties whether a hearing is to be held and the length of that hearing.

(5) Within 21 days of the arbitrator advising the parties that a hearing is to be held, the date and venue for the hearing are to be fixed by agreement with the parties, save that if there is no agreement the arbitrator must direct a date and venue which the arbitrator considers is fair and reasonable in all the circumstances. The date for the hearing must not be less than 35 days from the date of the agreement or arbitrator's direction confirming the date and venue of the hearing.

(6) A decision must be made by the arbitrator on whether there is any need for expert evidence to be submitted orally at the hearing. If oral expert evidence is required by the arbitrator, then any experts attending the hearing may be asked questions by the arbitrator.

(7) There is to be no examination or cross-examination of experts, but the arbitrator must invite the parties to ask questions of the experts by way of clarification of any answers given by the experts in response to the arbitrator's questions. Prior to the hearing in relation to the experts—

(a) at least 28 days before a hearing, the arbitrator must provide a list of issues to be addressed by the experts;

(b) if more than one expert is called, they will jointly confer and produce a joint report or reports within 21 days of the issues being provided; and

(c) the form and content of a joint report must be as directed by the arbitrator and must be provided at least seven days before the hearing.

(8) Within 14 days of a hearing or a decision by the arbitrator that no hearing is to be held the parties may by way of exchange provide the arbitrator with a final submission in connection with

the matters in dispute and any submissions on costs. The arbitrator must take these submissions into account in the award.

(9) The arbitrator may make other directions or rulings as considered appropriate in order to ensure that the parties comply with the timetable and procedures to achieve an award on the substantive difference within six months of the date on which the arbitrator is appointed, unless both parties otherwise agree to an extension to the date for the award.

(10) If a party fails to comply with the timetable, procedure or any other direction then the arbitrator may continue in the absence of a party or submission or document, and may make a decision on the information before the arbitrator attaching the appropriate weight to any evidence submitted beyond any timetable or in breach of any procedure or direction.

(11) The arbitrator's award must include reasons. The parties must accept that the extent to which reasons are given must be proportionate to the issues in dispute and the time available to the arbitrator to deliver the award.

Arbitrator's powers

6.—(1) The arbitrator has all the powers of the Arbitration Act 1996, save where modified in this Schedule.

(2) There must be no discovery or disclosure except as may be ordered by the arbitrator under sub-paragraph (3).

(3) The arbitrator may order the parties to produce such documents as are reasonably requested, either by another party no later than the statement of reply or by the arbitrator, where—

(a) in the opinion of the arbitrator the documents are manifestly relevant to the legal issues between the parties;

(b) the documents requested have been specifically identified; and

(c) the arbitrator is satisfied that the burden of production is not excessive.

(4) Any application and orders made under sub-paragraph (3) should be made by way of a Redfern Schedule without any hearing.

(5) Any time limits fixed in accordance with this procedure or by the arbitrator may be varied by agreement between the parties, subject to any such variation being acceptable to and approved by the arbitrator. In the absence of agreement, the arbitrator may vary the timescales or procedure—

(a) if the arbitrator is satisfied that a variation of any fixed time limit is reasonably necessary to avoid a breach of the rules of natural justice and then; and

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

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

Costs

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

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

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

(4) The arbitrator must specify the proportions in which the parties must bear the costs of the arbitration, and in determining such proportions the arbitrator must apply the general principle that each party should bear its own costs, making such adjustments as the arbitrator considers appropriate having regard to all material circumstances, including such matters as exaggerated

claims or defences, the degree of success for different elements of the claims, claims that have incurred substantial costs, the conduct of the parties and the degree of success of a party.

Confidentiality

8.—(1) Subject to sub-paragraphs (2) and (3), any arbitration hearing and documentation will be open and accessible by the public.

(2) The arbitrator may direct that the whole or part of a hearing is to be private or any documentation to be confidential where it is necessary in order to protect commercially sensitive information.

(3) Nothing in this paragraph will prevent or permit any disclosure of a document by a party pursuant to an order of a court in England and Wales or where disclosure is required or prohibited under any enactment.

SCHEDULE 15

Article 45

PROTECTIVE PROVISIONS

PART 1

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

1. For the protection of the utility undertakers referred to in this Part of this Schedule (save for any utility undertakers which are specifically protected by any other Part of this Schedule, which will take precedence), the following provisions have effect, unless otherwise agreed in writing between the undertaker and the utility undertakers concerned.

2. In this Part of this Schedule—

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

"apparatus" means—

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

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

(c) in the case of a water undertaker—

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

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

(d) in the case of a sewerage undertaker—

(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; and

(e) any other mains, pipelines or cables that are not the subject of the protective provisions in Parts 2 to 9 of this Schedule;

"functions" includes powers and duties;

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

"utility undertaker" means—

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

(b) a gas transporter within the meaning of Part 1 of the Gas Act 1986;

(c) water undertaker within the meaning of the Water Industry Act 1991;

(d) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991; and

(e) an owner or operator of apparatus within paragraph (e) of the definition of that term,

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.

3. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the utility undertaker are regulated by the provisions of Part 3 of the 1991 Act.

4. Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 12 (temporary closure, restriction or prohibition of use of streets and public rights of way), a utility undertaker is at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

5. Regardless of any provision in this Order or anything shown on the land plan, the undertaker must not acquire any apparatus otherwise than by agreement.

6.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that the utility undertaker's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of a utility undertaker to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided, to the reasonable satisfaction of the utility undertaker in question in accordance with sub-paragraphs (2) to (7).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to the utility undertaker in question written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order a utility undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the utility undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, the utility undertaker in question must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this 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 44 (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 44, 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 of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the utility undertaker in question that it desires itself to execute any work, or part of any work, in connection with the construction or removal of apparatus in any land controlled by the undertaker, that work, instead of being executed by the utility undertaker, must be executed by the undertaker

without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker.

(7) Nothing in sub-paragraph (6) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

7.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights 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 44 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the utility undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to that utility undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

8.—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 6(2), the undertaker must submit to the utility undertaker in question a plan, section and description of the works to be executed.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the utility undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the utility undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by a utility undertaker under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If a utility undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 7 apply as if the removal of the apparatus had been required by the undertaker under paragraph 6(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the utility undertaker in question notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

9.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker the reasonable expenses incurred by that utility undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 6(2).

(2) There is to be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

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 44 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the utility undertaker in question by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

(a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the execution of any such works as are referred to in paragraph 6(2); and

(b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a utility undertaker in respect of works by virtue of sub-paragraph (1), if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

10.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 6(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any utility undertaker, the undertaker must—

(a) bear and pay the cost reasonably incurred by that utility undertaker in making good such damage or restoring the supply; and

(b) make reasonable compensation to that utility undertaker for any other expenses, loss, damages, penalty or costs incurred by the utility undertaker,

by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of a utility undertaker, its officers, servants, contractors or agents.

(3) A utility undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

11. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and a utility undertaking in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 2

FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

12. For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the operator.

13. In this Part of this Schedule—

"the 2003 Act" means the Communications Act 2003;

"electronic communications apparatus" has the same meaning as in the electronic communications code;

"electronic communications code" has the same meaning as in section 106 (application of the electronic communications code) of the 2003 Act;

"electronic communications code network" means—

(a) so much of an electronic communications network or conduit system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the 2003 Act; and

(b) an electronic communications network which the Secretary of State is providing or proposing to provide;

"electronic communications code operator" means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act; and

"operator" means the operator of an electronic communications code network.

14. The exercise of the powers of article 33 (statutory undertakers) is subject to Part 10 (undertakers' works affecting electronic communications apparatus) of the electronic communications code.

15.—(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised development or its construction, or of any subsidence resulting from any of those works—

(a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works), or other property of an operator; or

(b) there is any interruption in the supply of the service provided by an operator,

the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and make reasonable compensation to that operator for any other expenses, loss, damages, penalty or costs incurred by it, by reason, or in consequence of, any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.

(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 44 (arbitration).

16. This Part of this Schedule does not apply to—

(a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act; or

(b) any damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised development.

17. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 3

FOR THE PROTECTION OF NATIONAL GRID ELECTRICITY TRANSMISSION PLC

Application

18.—(1) For the protection of National Grid 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.

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and National Grid, where the benefit of this Order is transferred or granted to another person under article 37 (consent to transfer the benefit of the Order)—

(a) any agreement of the type mentioned in sub-paragraph (1) has effect as if it had been made between National Grid and the transferee or grantee (as the case may be); and

(b) written notice of the transfer or grant must be given to National Grid on or before the date of that transfer or grant.

(3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to National Grid (but without prejudice to paragraph 28(3)(b)).

Interpretation

19. In this Part of this Schedule—

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

"acceptable insurance" means general third party liability insurance effected and maintained by the undertaker or its contractor with a combined property damage and bodily injury limit of indemnity of not less than [redacted]) per occurrence or series of occurrences arising out of one event or such lower amount as approved by National Grid. Such insurance must be maintained during the construction period of the authorised works and in respect of any maintenance works to the authorised development by or on behalf of the undertaker which constitute specified works and such insurance must be arranged with an insurer whose security/credit rating meets the same requirements as an "acceptable credit provider", such insurance to include (without limitation)—

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

(b) pollution liability for third party property damage and third party bodily damage arising from any pollution/contamination event with a (sub)limit of indemnity of not less than [redacted]) per occurrence or series of occurrences arising out of one event or [redacted]) in aggregate;

"acceptable security" means either—

(a) a parent company guarantee from a parent company in favour of National Grid to cover the undertaker's liability to National Grid to a total liability cap of £50,000,000.00 (fifty million pounds) or such lower amount as approved by National Grid (in a form reasonably satisfactory to National Grid and where required by National Grid, accompanied with a legal opinion confirming the due capacity and authorisation of the parent company to enter into and be bound by the terms of such guarantee); or

(b) a bank bond or letter of credit from an acceptable credit provider in favour of National Grid to cover the undertaker's liability to National Grid for an amount of not less than

[redacted] per asset per event up to a total liability cap of [redacted] or such lower amount as approved by National Grid (in a form reasonably satisfactory to National Grid);

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

"apparatus" means any electric lines or electrical plant as defined in the 1989 Act, belonging to or maintained by National Grid together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of National Grid for the purposes of any or all of transmission, distribution 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 given to the term "authorised development" in article 2 (interpretation) of 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 Part of this Schedule;

"commence" and "commencement" in this Part of this Schedule includes 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 (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

"ground monitoring scheme" means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, must require the undertaker to submit for National Grid's approval a ground mitigation scheme;

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

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

"incentive deduction" means any incentive deduction National Grid receives under its electricity transmission licence which is caused by an event on its transmission system that causes electricity not to be supplied to a demand customer and which arises as a result of the authorised works;

"maintain" and "maintenance" will include the ability and right of National Grid in relation to any apparatus or alternative apparatus of National Grid, to do any of construct, use, repair, alter, inspect, renew or remove the apparatus;

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

"NGESO" is as defined in the STC;

"parent company" means a parent company of the undertaker acceptable to and which shall have been approved by National Grid acting reasonably;

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

"specified works" means any of the authorised works or activities undertaken in association with the authorised development 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 24 or otherwise; or

(b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 24 or otherwise; or

(c) includes any of the activities that are referred to in development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines";

"STC" means the System Operator Transmission Owner Code prepared by the electricity transmission owners and NGESO as modified from time to time;

"STC claims" means any claim made under the STC against National Grid arising out of or in connection with the de-energisation (whereby no electricity can flow to or from the relevant system through the generator or interconnector's equipment) of a generator or interconnector party solely as a result of the de-energisation of plant and apparatus forming part of National Grid's transmission system which arises as a result of the authorised works; and

"transmission owner" is as defined in the STC.

On street apparatus

20. Except for paragraph 21 (apparatus of National Grid in streets subject to temporary prohibition or restriction of use), paragraph 26 (retained apparatus: protection of National Grid as electricity undertaker), paragraph 27 (expenses), and paragraph 28 (indemnity) of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of National Grid, the provisions of this Part of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Grid are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus of National Grid in streets subject to temporary prohibition or restriction of use and public rights of way

21. Notwithstanding the temporary prohibition or restriction of use or diversion of a street or public right of way under the powers of article 12 (temporary closure, restriction or prohibition of use of streets and public rights of way), National Grid is at liberty at all times to take all necessary access across any such street or public right of way and to execute and do all such works and things in, upon or under any such street or public right of way as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction of use or diversion was in that street or public right of way.

Protective works to buildings

22. The undertaker, in the case of the powers conferred by article 19 (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.

Acquisition of land

23.—(1) Regardless of any provision in this Order or anything shown on the land plan or contained in the book of reference to the Order, the undertaker may not appropriate or acquire or take temporary possession of any land or apparatus or appropriate, acquire, extinguish, interfere with or override any easement, other interest or right or apparatus of National Grid 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 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 or affect the provisions of any enactment or agreement regulating the relations between National Grid and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as National Grid reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Grid and the undertaker acting reasonably and which must be no less favourable on the whole to National Grid unless otherwise agreed by National Grid, and the undertaker must use reasonable endeavours to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

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

(4) Any agreement or consent granted by National Grid under paragraph 26 or any other paragraph of this Part of this Schedule, will not be taken to constitute agreement under sub-paragraph (1).

Removal of apparatus

24.—(1) If, in the exercise of the powers conferred by the 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 to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Grid in accordance with sub-paragraphs (2) to (5).

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), secure any necessary consents for the alternative apparatus and afford to National Grid to its satisfaction (taking into account paragraph 25(1) below) the necessary facilities and rights—

(a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and

(b) subsequently for the maintenance of that apparatus.

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

(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 and the undertaker.

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

Facilities and rights for alternative apparatus

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

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed (in National Grid's opinion, acting reasonably), the terms and conditions to which those facilities and rights are subject may be referred to arbitration in accordance with paragraph 32 of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection of National Grid as electricity undertaker

26.—(1) Not less than 56 days before the commencement of any specified works, the undertaker must submit to National Grid a plan of the works to be executed and seek from National Grid details of the underground extent of their electricity assets.

(2) The plan to be submitted to National Grid under sub-paragraph (1) must include a method statement and describe—

(a) the exact position of the works;

(b) the level at which these are proposed to be constructed or renewed;

(c) the manner of their construction or renewal including details of excavation, positioning of plant;

(d) the position of all apparatus;

(e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;

(f) any intended maintenance regimes;

(g) an assessment of risks of rise of earth issues; and

(h) a ground monitoring scheme, where required.

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

(a) details of any cable trench design including route, dimensions, clearance to pylon foundations;

(b) demonstration that pylon foundations will not be affected prior to, during and post construction;

(c) details of load bearing capacities of trenches;

(d) details of any cable installation methodology including access arrangements, jointing bays and backfill methodology;

(e) a written management plan for high voltage hazard during construction and ongoing maintenance of any cable route;

(f) written details of the operations and maintenance regime for any cable, including frequency and method of access;

(g) assessment of earth rise potential if reasonably required by National Grid's engineers; and

(h) evidence that trench bearing capacity is to be designed to support overhead line construction traffic of up to and including 26 tonnes in weight.

(4) The undertaker must not commence any specified works until National Grid has given written approval of the plan submitted pursuant to sub-paragraph (1).

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

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (6) or (8); and

(b) must not be unreasonably withheld and must be provided within 42 days of submission of the plan under sub-paragraph (1).

(6) In relation to any work to which sub-paragraph (1) applies, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing apparatus against interference or risk of damage or for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(7) The specified works must be carried out in accordance with the plan submitted under sub-paragraph (1) as approved or as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable modifications and requirements as may be made in accordance with sub-paragraph (6) or (8) by National Grid and National Grid will be entitled to watch and inspect the execution of those works.

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

(9) If National Grid in accordance with sub-paragraph (6) or (8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, sub-paragraphs (1) to (3) and (6) to (8) apply as if the removal of the apparatus had been required by the undertaker under paragraph 24(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 any specified works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(11) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and must comply with—

(a) sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances; and

(b) sub-paragraph (12) at all times.

(12) At all times when carrying out any works authorised under this Order, the undertaker must comply with National Grid's policies for development near overhead lines EN43-8 and the Health and Safety Executive's guidance note 6 "Avoidance of Danger from Overhead Lines".

Expenses

27.—(1) Save where otherwise agreed in writing between National Grid and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to National Grid within 30 days of receipt of an itemised invoice or claim from National Grid all charges, costs and expenses reasonably anticipated within the following three months or reasonably or properly incurred by National Grid in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works as are referred to in this Part of this Schedule including without limitation—

(a) any costs reasonably incurred by or compensation properly paid by National Grid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Grid as a consequence of National Grid—

(i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 24(3); or

(ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Grid;

(b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;

(c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;

(d) the approval of plans;

(e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;

(f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this 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 32 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 Grid by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

(a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) Any amount which apart from this sub-paragraph would be payable to National Grid in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on National Grid any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

Indemnity

28.—(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 it) 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, or there is any interruption in any service provided, or in the supply of any goods, by National Grid, or National Grid becomes liable to pay any amount to any third party, the undertaker will—

(a) bear and pay on demand accompanied by an invoice or claim from National Grid the cost reasonably and properly incurred by National Grid in making good such damage or restoring the supply; and

(b) indemnify National Grid for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Grid, by reason or in consequence of any such damage or interruption or National Grid becoming liable to any third party and including STC claims or an incentive deduction other than arising from any negligence or default of National Grid.

(2) The fact that any act or thing may have been done by National Grid on behalf of the undertaker or in accordance with a plan approved by National Grid or in accordance with any requirement of National Grid or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph unless National Grid fails to carry out and execute the works properly with due care and attention and in a skilful and workmanlike manner or in a manner that does not accord with the approved plan or as otherwise agreed in writing between the undertaker and National Grid.

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker in respect of—

(a) any damage or interruption to the extent that it is attributable to the neglect or default of National Grid, its officers, servants, contractors or agents;

(b) any authorised works or any other works authorised by this Part of this Schedule carried out by National Grid as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the 2008 Act or article 37 (consent to transfer the benefit of the Order) subject to the proviso that once such works become apparatus ("new apparatus"), any authorised works yet to be executed and not falling within this paragraph (b) will be subject to the full terms of this Part of this Schedule including this paragraph 28; or

(c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable.

(4) National Grid must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required

in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering its representations.

(5) National Grid must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(6) National Grid must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where it is within National Grid's reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of National Grid's control and if reasonably requested to do so by the undertaker National Grid must provide an explanation of how the claim has been minimised, where relevant.

(7) 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 or in respect of which National Grid has an easement or wayleave for its apparatus or any other interest or to carry out any works within 15 metres of National Grid's apparatus until the following conditions are satisfied—

(a) unless and until National Grid is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has first provided the acceptable security and (unless otherwise agreed with National Grid acting reasonably) provided evidence that it shall maintain such acceptable security for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works and National Grid has confirmed the same to the undertaker in writing; and

(b) unless and until National Grid is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance and (unless otherwise agreed with National Grid acting reasonably) provided evidence to National Grid that it shall maintain such acceptable insurance for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and National Grid has confirmed the same in writing to the undertaker.

(8) In the event that the undertaker fails to comply with paragraph (7), nothing in this Part of this Schedule will prevent National Grid from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

Enactments and agreements

29. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between National Grid 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 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

30.—(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or National Grid requires the removal of apparatus under paragraph 24(2) or National Grid makes requirements for the protection or alteration of apparatus under paragraph 26, the undertaker will use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of National Grid's undertaking and National Grid will use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever National Grid's consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

Access

31. If in consequence of the agreement reached in accordance with paragraph 23 or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

32. Save for differences or disputes arising under paragraphs 24(2), 24(4), and 25(1) any difference or dispute arising between the undertaker and National Grid under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Grid, be determined by arbitration in accordance with article 44 (arbitration).

Notices

33. Notwithstanding article 46 (service of notices), any plans submitted to National Grid by the undertaker pursuant to paragraph 26 must be submitted using the LSBUD system (https://lsbud.co.uk) or to such other address as National Grid may from time to time appoint instead for that purpose and notify to the undertaker in writing.

PART 4

FOR THE PROTECTION OF NATIONAL HIGHWAYS LIMITED

Application etc.

34.—(1) The provisions of this Part of this Schedule apply for the protection of National Highways and have effect unless otherwise agreed in writing between the undertaker and National Highways.

(2) For any part of the strategic road network that is managed under a DBFO contract, both National Highways and the highway operations and maintenance contractor will have the benefit of this Part of this Schedule, save that for the purposes of any approval required under this Part the undertaker must liaise with National Highways.

(3) Except where expressly amended by the Order, the operation of the powers and duties of National Highways or the Secretary of State under the 1980 Act, the 1984 Act, the 1991 Act, the Transport Act 2000, or the Town and Country Planning (General Permitted Development) (England) Order 2015 shall continue to apply in respect of the exercise of all statutory functions of National Highways.

Interpretation

35.—(1) Where the terms defined in article 2 (interpretation) of this Order are inconsistent with sub-paragraph (2) the latter prevail.

(2) In this Part of this Schedule—

"as built information" means one electronic copy of the following information where National Highways deems it to be necessary and insofar as it is relevant to the works impacting the strategic road network or any land in which National Highways holds an interest—

(a) as constructed drawings in both PDF and AutoCAD DWG formats for any road work designed by the undertaker; in compliance with Interim Advice Note 184 or any successor document, and for the cable works, showing the location and depth of the cable as installed and any ancillary or protective measures installed within the strategic road network or land that National Highways has an interest in;

(b) list of suppliers and materials used, as well as any relevant test results and CCTV surveys (if required to comply with DMRB standards);

(c) product data sheets and technical specifications for all materials used;

(d) as constructed information for any utilities discovered or moved during the works;

(e) method statements for the works carried out;

(f) in relation to road lighting, signs, and traffic signals any information required by Series 1300 and 1400 of the Specification for Highway Works or any replacement or modification of it;

(g) organisation and methods manuals for all products used;

(h) as constructed programme;

(i) test results and records as required by the detailed design information and during construction phase of the project;

(j) a stage 3 road safety audit subject to any exceptions to the road safety audit standard as agreed by the undertaker and National Highways;

(k) the health and safety file; and

(l) such other information, including CCTV surveys, as is required by National Highways to be used to update all relevant databases and to ensure compliance with National Highway's Asset Data Management Manual or any successor of it as is in operation at the relevant time.

"bond" means a bond in the form approved by National Highways duly executed by the undertaker and a reputable UK surety company or other UK financial institution to be previously approved in writing by National Highways (such approval not to be unreasonably withheld or delayed);

"the bond sum" means the sum equal to 200% of the cost of carrying out the road works or the cable works or both (to include all costs plus any commuted sum), or such other sum agreed between the undertaker and National Highways, to be provided to National Highways in the form of—

(a) a bond; or

(b) a cash surety; or

(c) where agreed by National Highways a combination of a bond and cash surety;

"cash surety" means a cash deposit to be paid by the undertaker into an account specified by National Highways;

"commuted sum" means such sum calculated as provided for in paragraph 47 of this Part of this Schedule to be used to fund the future cost of maintaining any new National Highways assets, structures or apparatus as part of the road works provided under the Order;

"cable works" means any works under this Order which consist of the installation and maintenance of cables, cable ducts, tunnels for cables and cable ducts and related or associated works to those operations under the strategic road network or land in which National Highways has an interest and to be installed through the use of trenchless installation techniques where no works are required to or on the operational carriageway;

"condition survey" means a survey of the condition of National Highways structures and assets that in the reasonable opinion of National Highways may be affected by the road works or cable works which National Highways may require includes a CCTV survey of specified drains that National Highways reasonably considers may be materially and adversely affected by the road works or cable works;

"contractor" means any contractor or subcontractor appointed by the undertaker to carry out the road works or the cable works or both;

"defects period" means the period from the date of the provisional certificate to the date of the final certificate which shall be no less than 12 months from the date of the provisional certificate;

"detailed design information" means such of the following drawings specifications and calculations as are relevant to—

(a) the road works—

(i) site clearance details;

(ii) boundary, environmental and mitigation fencing;

(iii) road restraints systems and supporting road restraint risk appraisal process assessment;

(iv) drainage and ducting as required by DMRB CD 535 Drainage asset data and risk management and DMRB CS551 Drainage surveys – standards for Highways;

(v) earthworks including supporting geotechnical assessments required by DMRB CD622 Managing geotechnical risk and any required strengthened earthworks appraisal form certification;

(vi) pavement, pavement foundations, kerbs, footways and paved areas;

(vii) traffic signs and road markings;

(viii) traffic signal equipment and associated signal phasing and timing detail;

(ix) road lighting (including columns and brackets);

(x) regime of California Bearing Ratio testing;

(xi) electrical work for road lighting, traffic signs and signals;

(xii) motorway communications as required by DMRB;

(xiii) highway structures and any required structural approval in principle;

(xiv) landscaping;

(xv) proposed departures from DMRB standards;

(xvi) walking, cycling and horse riding assessment and review report in accordance with DMRB GG142 Designing for walking, cycling and horse riding or any successor document;

(xvii) stage 1 and stage 2 road safety audits and exceptions agreed;

(xviii) utilities diversions;

(xix) topographical survey;

(xx) maintenance and repair strategy in accordance with the DMRB GD304 Designing health and safety into maintenance, or any replacement or modification of it;

(xxi) health and safety information including any asbestos survey required by GG105 or any successor document;

(xxii) other such information that may be required by National Highways to be used to inform the detailed design of the road works; and

(b) the cable works—

(i) earthworks including supporting geotechnical assessments required by DMRB CD622 Managing geotechnical risk or any successor document and any required strengthened earthworks appraisal form certification;

(ii) health and safety information including any asbestos survey required by GG105 or any successor document;

(iii) regime of California Bearing Ratio testing;

(iv) any proposed departures from DMRB standards;

(v) apparatus diversions;

(vi) topographical survey;

(vii) technical approval of highway structures under CG300 of DMRB; and

(viii) other such information that may be required by National Highways to be used to inform the detailed design of the cable works;

"DBFO contract" means the design build finance operate contract between National Highways and the highway operations and maintenance contractor for the maintenance and operation of

parts of the strategic road network which are within the Order Limits or any successor or replacement contract that may be current at the relevant time;

"DMRB" means the Design Manual for Roads and Bridges or any replacement or modification of it;

"final certificate" means the certificate relating to those aspects of the road works that have resulted in any alteration to the strategic road network to be issued by National Highways pursuant to paragraph 45;

"the health and safety file" means the file or other permanent record containing the relevant health and safety information for the authorised development required by the Construction Design and Management Regulations 2015 (or such updated or revised regulations as may come into force from time to time);

"highway operations and maintenance contractor" means the contractor appointed by National Highways under the DBFO contract;

"nominated persons" means the undertaker's representatives or the contractor's representatives on site during the carrying out of the cable works or road works as notified to National Highways from time to time;

"programme of works" means a document setting out the sequence and timetabling of the cable works or road works;

"provisional certificate" means the certificate of provisional completion relating to those aspects of the cable works or the road works or both that have resulted in any alteration to the strategic road network to be issued by National Highways in accordance with paragraph 40 or 57 as appropriate when it considers the cable works or road works are substantially complete and, if relevant, may be opened for traffic;

"road safety audit" means an audit carried out in accordance with the road safety audit standard;

"road safety audit standard" means DMRB Standard HD GG119 or any replacement or modification of it;

"road space booking" means road space bookings in accordance with National Highways' Asset Management Operational Requirements (AMOR) including Network Occupancy Management System (NOMS) used to manage road space bookings and network occupancy;

"road works" means so much of any work including highway works, street works, surveys and signalisation authorised by this Order and including any maintenance of that work, but excluding the cable works, as is undertaken on the strategic road network or land in which National Highways has an interest;

"specification for highways works" means the specification for highways works forming part of the manual of contract documents for highway works published by National Highways and setting out the requirements and approvals procedures for work, goods or materials used in the construction, improvement or maintenance of the strategic road network or any successor of it;

"strategic road network" means any part of the road network including trunk roads, special roads or streets for which National Highways is the highway authority including structures drainage infrastructure, street furniture, verges and vegetation and all other highways assets together with all land, apparatus and rights located in, on, over or under the highway;

"utilities" means any pipes, wires, cables or equipment belonging to any person or body having power or consent to undertake street works under the 1991 Act; and

"winter maintenance" means maintenance of the road surface to deal with snow and ice.

(3) Notwithstanding the grant of development consent in article 3 of the Order, the authorised development must not be carried out in, under or over the strategic road network without the written consent of National Highways pursuant to this Part of this Schedule.

(4) References to any standards, manuals, contracts, Regulations and Directives including to specific standards forming part of the DMRB are, for the purposes of this Part of this Schedule, to be construed as a reference to the same as amended, substituted or replaced, and with such modifications as are required in those circumstances.

Works outside the Order limits

36. If the undertaker proposes to carry out works to the strategic road network that are outside of the Order Limits in connection with the authorised development, the undertaker must enter into an agreement with National Highways in respect of the carrying out of those works prior to the commencement of those works.

Prior approvals

37.—(1) The road works must not commence, save to the extent agreed otherwise by National Highways, until—

(a) a stage 1 and stage 2 road safety audit has been carried out and all recommendations raised by them or any exceptions are approved by National Highways;

(b) the programme of works has been approved by National Highways;

(c) the detailed design of the road works comprising the following details, insofar as considered relevant by National Highways, has been submitted to and approved by National Highways—

(i) the detailed design information, incorporating all recommendations and any exceptions approved by National Highways under paragraph (a);

(ii) details of the proposed road space bookings and the undertaker is entitled to submit its application for road space bookings at the same time as the relevant details are submitted under sub-paragraph (i);

(iii) the identity and qualifications of the contractor and nominated persons; and

(iv) a process for stakeholder liaison, with key stakeholders to be identified and agreed between National Highways and the undertaker;

(d) a scheme of traffic management has been submitted by the undertaker and approved by National Highways such scheme to be capable of amendment by agreement between the undertaker and National Highways from time to time;

(e) stakeholder liaison has taken place in accordance with the process for such liaison agreed between the undertaker and National Highways under sub-paragraph (c)(iv) above;

(f) National Highways has approved the audit brief and CVs for all road safety audits and exceptions to items raised in accordance with the road safety audit standard;

(g) the undertaker has agreed the estimate of the commuted sum with National Highways;

(h) the scope of all maintenance operations (routine inspections, incident management, reactive and third party damage) to be carried out by the undertaker during the construction of the specified works (which must include winter maintenance) has been agreed in writing by National Highways;

(i) the undertaker has procured to National Highways collateral warranties in a form approved by National Highways from the contractor and designer of the road works in favour of National Highways to include covenants requiring the contractor and designer to exercise all reasonable skill care and diligence in designing and constructing the road works, including in the selection of materials, goods, equipment and plant;

(j) a condition survey and regime of monitoring has been agreed in writing by National Highways; and

(k) any further information that National Highways may reasonably request within 14 days of the submission to National Highways of the detailed design of any road works.

(2) The cable works must not commence until—

(a) the programme of works has been approved by National Highways;

(b) the detailed design of the cable works comprising the following details insofar as is considered relevant by National Highways has been submitted to and approved by National Highways—

(i) the detailed design information;

(ii) details of the proposed road space bookings and the undertaker is entitled to submit its application for road space bookings at the same time as the relevant details are submitted under sub-paragraph (i);

(iii) a method statement including details of the cable works, equipment and location;

(c) a survey to determine the appropriate minimum depth for the cable works has been carried out and the minimum cable depth has been approved by National Highways;

(d) the detailed design of the cable works including supporting geotechnical assessments required by DMRB CD622 Managing geotechnical risk and any required strengthened earthworks appraisal form certification, has been submitted to and approved by National Highways; and

(e) a condition survey and regime of monitoring has been agreed in writing by National Highways.

(f) the CASS01 has been approved by National Highways; and

(g) any further information that National Highways may reasonably request within 14 days of the submission to National Highways of the detailed design of any cable works.

(3) Save in an emergency, the undertaker must not, without the consent of National Highways, exercise the powers in—

(a) article 5 (power to maintain the authorised development);

(b) article 8 (street works);

(c) article 10 (power to alter layout, etc., of streets);

(d) article 12 (temporary closure, restriction or prohibition of use of streets and public rights of way);

(e) article 16 (traffic regulation measures);

(f) article 19 (protective works to buildings);

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

(h) article 25 (private rights);

(i) article 31 (temporary use of land for constructing the authorised development);

(j) article 32 (temporary use of land for maintaining the authorised development); or

(k) article 40 (felling or lopping of trees and removal of hedgerows),

over any part of the strategic road network or land in which National Highways has an interest, and National Highways may, in connection with any such exercise, require the undertaker to provide details of any proposed road space bookings and submit a scheme of traffic management to National Highways for approval.

(4) National Highways must prior to the commencement of the cable works and road works or the exercise of any power referenced in sub-paragraph (3) inform the undertaker of the identity of the person who will act as a point of contact on behalf of National Highways for consideration of the information required under sub-paragraph (1).

(5) Any approval of National Highways required under this paragraph—

(a) must not be unreasonably withheld;

(b) must be given in writing;

(c) will be deemed to have been refused if neither given nor refused within 2 months of the receipt of the information for approval or where further particulars are requested by National Highways, within 2 months of receipt of the information to which the request for further particulars relates; and

(d) may be subject to any conditions as National Highways considers necessary.

(6) Any change to the identity of the contractor or designer of the road works or the cable works will be notified to National Highways immediately and details of their suitability to deliver the

road works or cable works (as applicable) will be provided on request along with collateral warranties in a form agreed by National Highways.

(7) Any change to the detailed design of the road works or cable works must be approved by National Highways in accordance with sub-paragraph (1) of this Part.

(8) Article 47 does not apply to any application for consent, agreement or approval required or contemplated by any of the provisions to this Part of this Schedule.

Construction of the cable works and road works

38.—(1) The undertaker must give National Highways 2 months' notice in writing of the date on which any cable works or road works will start unless otherwise agreed by National Highways.

(2) The undertaker must comply with National Highways' road space booking procedures when booking road space on the strategic road network prior to and during the carrying out the road works or cable works (as applicable) and no road works or cable works for which a road space booking is required may commence without a road space booking having first been secured from National Highways.

(3) The cable works and road works must be carried out by the undertaker to the satisfaction of National Highways in accordance with—

(a) the relevant detailed design information and programme of works approved pursuant to sub-paragraph (1) or (2) above or as subsequently varied by agreement between the undertaker and National Highways;

(b) the DMRB, the Manual of Contract Documents for Highway Works, including the Specification for Highway Works, together with all other relevant standards as required by National Highways to include, inter alia; all relevant interim advice notes, the Traffic Signs Manual and the Traffic Signs Regulations and General Directions 2016 save to the extent that exceptions from those standards apply which have been approved by National Highways; and

(c) all aspects of the Construction (Design and Management) Regulations 2015 ("the CDM Regulations") or any statutory amendment or variation of the same, and the undertaker will be client and must ensure that all client duties (as defined in the CDM Regulations) are undertaken to the satisfaction of National Highways, and no approval or consent given under this Part of this Schedule will constitute a consent or approval pursuant to the CDM Regulations unless this is expressly stated within the consent or approval.

(4) The undertaker must ensure that, where practicable and without entering the highway, the highway is kept free from mud, soil and litter as a result of carrying out a road work or cable work.

(5) The undertaker must permit and must require the contractor to permit at all reasonable times persons authorised by National Highways (whose identity must have been previously notified to the undertaker by National Highways) to gain reasonable access to the cable works and road works for the purposes of inspection and supervision of those works, and to gain reasonable access to land in which National Highways has an interest where access is affected by the cable works or road works or the exercise of the powers in this Order.

(6) If any part of the cable works or road works is constructed—

(a) other than in accordance with the requirements of this Part of this Schedule; or

(b) in a way that causes damage to the highway, highway structure or asset or any other land of National Highways,

National Highways may by notice in writing require the undertaker, at the undertaker's own expense, to comply promptly with the requirements of this Part of this Schedule or remedy any damage notified to the undertaker under this Part of this Schedule, to the satisfaction of National Highways.

(7) If during the carrying out of the authorised development the undertaker or its appointed contractors or agents causes damage to the strategic road network then National Highways may by notice in writing require the undertaker, at its own expense, to remedy the damage.

(8) If, within 28 days from the day on which a notice under sub-paragraph (5) or (6) is served on the undertaker (or, in the event of there being, in the opinion of National Highways, a danger to road users, within such lesser period as National Highways may stipulate in the notice), the undertaker has failed to take the steps required by that notice, National Highways may carry out the steps required of the undertaker by that notice and may recover from the undertaker any expenditure reasonably incurred by National Highways in so doing, such sum to be payable within 28 days of written demand.

(9) Nothing in this Part of this Schedule prevents National Highways from carrying out any work or taking any such action as it reasonably believes to be necessary as a result of or in connection with the carrying out or maintenance of the authorised development without prior notice to the undertaker in the event of an emergency or to prevent the occurrence of danger to the public and National Highways may recover any expenditure it reasonably incurs in so doing.

(10) In constructing the cable works and road works, the undertaker must at its own expense divert or protect all utilities and all agreed alterations and reinstatement of highway over existing utilities must be constructed to the satisfaction of National Highways.

(11) Until such time that National Highways issues the provisional certificate the undertaker must carry out all maintenance (including winter maintenance) in accordance with the scope of maintenance operations agreed by National Highways pursuant to paragraph 37(1)(h) and the undertaker must carry out such maintenance at its own cost.

(12) The undertaker must notify National Highways if it fails to complete the road works or cable works in accordance with the agreed programme pursuant to paragraph 37(1)(b) of this Part or suspends the carrying out of any road work or cable work beyond 14 days and National Highways reserves the right to withdraw any road space booking granted to the undertaker to ensure compliance with its network occupancy requirements.

Payments

39.—(1) The undertaker must pay to National Highways a sum equal to the costs and expenses which National Highways reasonably and properly incurs (including costs and expenses for using internal or external staff and costs relating to work which becomes abortive) in relation to the cable works and road works and in relation to any approvals sought under this Order, or otherwise incurred under this Part, including—

(a) the checking and approval of the information required under paragraphs 38(1) and 38(2);

(b) the supervision of the cable works and road works;

(c) contractual costs properly payable to the highway operations and maintenance contractor as a consequence of any road works or cable works, including costs incurred by the highway operations and maintenance contractor in carrying out the tasks referred to in paragraphs (a) and (b), in which case National Highways will be responsible for the payment of any sums received from the undertaker under this paragraph to the highway operations and maintenance contractor;

(d) the checking and approval of the information required to determine approvals under this Order;

(e) all costs relating to the transfer of any land required for the road works or cable works;

(f) all legal and administrative costs and disbursements incurred by National Highways in connection with the exercise by the undertaker of the powers in the Order and paragraphs (a) to (e) of this sub-paragraph; and

(g) any value added tax which is payable by National Highways in respect of such costs and expenses and for which it cannot obtain reinstatement from HM Revenue and Customs,

together comprising “the NH costs”.

(2) The undertaker must pay to National Highways upon demand, which may be prior to such costs being incurred, the total costs that National Highways believe will be properly and necessarily incurred by National Highways in undertaking any statutory procedure or preparing

and bringing into force any traffic regulation order or orders necessary to carry out or for effectively implementing the authorised development.

(3) National Highways must provide the undertaker with a schedule showing its estimate of the NH costs prior to the commencement of the cable works and road works. Where the undertaker accepts that the estimate of NH costs is reasonable, the undertaker must pay to National Highways the estimate of the NH costs prior to commencing the road works or cable works. Where the undertaker does not accept that the estimate of costs is reasonable, escalation under sub-paragraph (7) will apply.

(4) If at any time after the payment referred to in sub-paragraph (3) has become payable, National Highways reasonably believes that the NH costs will exceed the estimated NH costs it may give notice to the undertaker of the amount that it believes the NH costs will exceed the estimate of the NH costs (the excess). Where the undertaker accepts that the estimate of NH costs is reasonable, the undertaker must pay to National Highways within 28 days of the date of receipt of a properly issued VAT invoice from National Highways addressed to the undertaker for the excess sum, a sum equal to the excess. Where the undertaker does not accept that the estimate of costs is reasonable, escalation under sub-paragraph (7) will apply.

(5) National Highways must give the undertaker a final account of the NH costs referred to in sub-paragraph (1) above within 30 days of the issue of the provisional certificate issued pursuant to paragraph 40(4) or 41(3) or, in any case where National Highways has confirmed in writing that no provisional certificate is required, within 30 days of completion of the approved works.

(6) Within 30 days of the issue of the final account—

(a) if the final account shows a further sum as due to National Highways the undertaker must pay to National Highways the sum shown due to it;

(b) if the account shows that the payment or payments previously made by the undertaker have exceeded the costs incurred by National Highways, National Highways must refund the difference to the undertaker.

(7) Where the undertaker does not agree that an estimate provided by National Highways under this paragraph is reasonable, the undertaker must notify National Highways of that within 15 days of receiving the estimate. The undertaker and National Highways will escalate the estimate internally and will each nominate a senior officer to attend a discussion on the estimate. Where the parties fail to reach agreement following such discussion, any difference or dispute over reasonableness of any excess sum shall be determined by expert determination in accordance with paragraph 52.

(8) Save where otherwise agreed between the undertaker and National Highways or where alternative direction is made by expert determination in accordance with paragraph 52, if any payment due under the provisions of this Part of this Schedule is not made on or before the date on which it falls due, the party from whom it was due must at the same time as making the payment pay to the other party interest at 3% above the Bank of England base lending rate from time to time being in force for the period starting on the date upon which the payment fell due and ending with the date of payment of the sum on which interest is payable together with that interest.

Provisional Certificate for road works

40.—(1) Following the completion of any road works or prior to the reopening of any part of the strategic road network following any closure or partial closure, whichever is earlier, the undertaker must notify National Highways and National Highways will, with all reasonable despatch, carry out a site inspection to satisfy itself that the strategic road network is, in its opinion, safe for traffic and the undertaker must comply with any requirements of National Highways following the site inspection.

(2) As soon as the undertaker considers that the provisional certificate may be properly issued it must apply to National Highways for the provisional certificate.

(3) Following an application for a provisional certificate, National Highways must as soon as reasonably practicable—

(a) inspect the road works; and

(b) provide the undertaker with a written list of works that are required for the provisional certificate to be issued or confirmation that no further works are required for this purpose.

(4) When—

(a) a stage 3 road safety audit for the road works has been carried out and all recommendations raised including remedial works have (subject to any exceptions agreed) been approved by National Highways;

(b) the road works incorporating the approved remedial works under paragraph (a) and any further works notified to the undertaker pursuant to sub-paragraph (3)(b) have been completed to the satisfaction of National Highways;

(c) the as built information has been provided to National Highways; and

(d) the undertaker has paid the commuted sum to National Highways,

National Highways must issue the provisional certificate.

(5) On the issue of the provisional certificate for the road works or the cable works, the bond sum will be reduced to 20% of the original amount of the bond sum provided that in the event any claim or claims have been made against the undertaker or liability on its part has arisen under the bond sum (which here shall also include any claim or claims to which National Highways are joined howsoever they arise) before that date National Highways will be at liberty to retain a sufficient sum in addition to the 20% to ensure it does not have to meet any costs for or arising from or in connection with the specified works. The undertaker must submit stage 4 road safety audits as required by and in line with the timescales stipulated in the road safety audit standard. The undertaker must comply with the findings of the stage 4 road safety audit and must pay all costs of and incidental to such and provide updated as-built information to National Highways.

Provisional Certificate for cable works

41.—(1) As soon as the undertaker considers that the provisional certificate for the cable works may be properly issued it must apply to National Highways for the provisional certificate.

(2) Following an application for a provisional certificate, National Highways must as soon as reasonably practicable—

(a) inspect the cable works, the strategic road network, and any land in which National Highways has an interest that is affected by the cable works; and

(b) provide the undertaker with a written list of works that are required for the provisional certificate to be issued or confirmation that no further works are required for this purpose.

(3) Within 28 days of the completion of any cable works, the undertaker must submit to National Highways the as built information

(4) When the cable works incorporating any further works notified to the undertaker pursuant to sub-paragraph (2)(b) have been completed to the satisfaction of National Highways and the as built information has been provided to National Highways, National Highways must issue the provisional certificate.

(5) The undertaker must make available to National Highways upon request copies of any survey or inspection reports produced pursuant to any inspection or survey of any cable works, following completion of the inspection or survey, that the undertaker may from time to time carry out.

Opening

42. Unless otherwise agreed in writing by National Highways, the undertaker must notify National Highways not less than 14 days in advance of the intended date of opening to the public of the strategic road network and the undertaker must notify National Highways of the actual date the strategic road network will be opened to the public within 7 days of that date, and the undertaker must not open the strategic road network to the public prior to the expiration of the requisite notice period.

Final condition survey

43.—(1) The undertaker must, as soon as reasonably practicable after making its application for a provisional certificate pursuant to paragraph 40(2) or 41(1), arrange for any highways structures and assets that were the subject of the condition survey to be re-surveyed and must submit the re-survey to National Highways for its approval. The re-survey will include a renewed geotechnical assessment required by DMRB CD622 for the cable works, road works and any other works beneath the strategic road network.

(2) If the re-surveys carried out pursuant to sub-paragraph (1) indicates that any damage has been caused to a structure or asset, the undertaker must submit a scheme for remedial works in writing to National Highways for its approval in writing and the undertaker must carry out the remedial works at its own cost and in accordance with the scheme submitted and such programme as National Highways may require.

(3) If the undertaker fails to carry out the remedial work in accordance with the approved scheme and programme or fails to submit a scheme for remedial works to National Highways, National Highways may carry out the steps required of the undertaker and may recover from the undertaker any expenditure it reasonably incurs in so doing.

(4) National Highways may, at its discretion, at the same time as giving its approval to the re-surveys pursuant to sub-paragraph (1) give notice in writing that National Highways will remedy any damage identified in the re-surveys and National Highways may recover from the undertaker any expenditure it reasonably incurs in so doing.

(5) The undertaker must make available to National Highways upon request copies of any survey or inspection reports produced pursuant to any inspection or survey of any cable work or road work following its completion that the undertaker may from time to time carry out.

Defects Period

44.—(1) The undertaker must at its own expense remedy any defects in the strategic road network resulting from the carrying out of the road works as are reasonably required by National Highways to be remedied during the defects period. All identified defects must be remedied in accordance with the following timescales—

(a) in respect of matters of urgency, within 24 hours of receiving notification for the same (urgency to be determined at the absolute discretion of National Highways);

(b) in respect of matters which National Highways considers to be serious defects or faults, within 14 days of receiving notification of the same; and

(c) in respect of all other defects notified to the undertaker, within 4 weeks of receiving notification of the same.

(2) Following the issuing of the provisional certificate, National Highways has responsibility for routine maintenance of the strategic road network save for any soft landscaping works which must be established and which must thereafter be maintained for a period of 3 years by and at the expense of the undertaker.

Final Certificate

45.—(1) The undertaker must apply to National Highways for the final certificate no sooner than 12 months from the date of the provisional certificate for each of the cable works and road works.

(2) Following receipt of the application for the final certificate, National Highways must as soon as reasonably practicable—

(a) inspect the strategic road network; and

(b) provide the undertaker with a written list of any further works required to remedy or make good any defect or damage in the strategic road network as resulting from the cable works or road works or confirmation that no such works are required for this purpose.

(3) The undertaker must carry out such works notified to it pursuant to sub-paragraph (2).

(4) When National Highways is satisfied that—

(a) any defects or damage arising from defects during the defects period and any defects notified to the undertaker pursuant to sub-paragraph (2) and any remedial works required as a result of any relevant stage 4 road safety audit have been made good to the reasonable satisfaction of National Highways; and

(b) the NH costs have been paid to National Highways in full,

National Highways must issue the final certificate.

(5) The bond sum is released in full upon the issue of the final certificate, provided that in the event any claim or claims have been made against the undertaker or liability on its part has arisen under the bond sum (which here will also include any claim or claims to which National Highways are joined howsoever they arise) National Highways will be at liberty to retain a sufficient sum to ensure it does not have to meet any costs for or arising from or in connection with the road works or cable works.

(6) The undertaker must pay to National Highways within 28 days of the date of receipt of a properly issued VAT invoice from National Highways addressed to the undertaker, the costs reasonably incurred by National Highways in identifying the defects and supervising and inspecting the undertaker's work to remedy the defects that it is required to remedy pursuant to this paragraph.

Security

46.—(1) The road works and cable works must not commence until the undertaker procures that the road works and cable works are secured by the bond sum to indemnify National Highways against all losses, damages, costs or expenses arising from any breach of any one or more of the obligations of the undertaker in respect of the road works and cable works under the provisions of this Part of this Schedule.

(2) If at any time the undertaker is in breach of these provisions of this Part of this Schedule or becomes insolvent without prejudice to any other remedy National Highways is entitled upon giving notice to the undertaker to use such parts of the bond sum as National Highways considers necessary. For the avoidance of doubt should National Highways have to carry out works pursuant to this Part of this Schedule it may, at its sole discretion, use the bond sum to forward fund such works.

Commuted sums

47.—(1) National Highways must provide to the undertaker an estimate of the commuted sum, calculated in accordance with Commuted Lump Sum A Guide for Promoters of Major Third Party Projects dated 28 November 2023 or any successor guidance, prior to the commencement of the specified works.

(2) The undertaker must pay to National Highways the commuted sum prior to the issue of the provisional certificate.

Insurance

48. Prior to the commencement of the cable works and road works the undertaker must effect public liability insurance with an insurer in the minimum sum of £50,000,000.00 (fifty million pounds) in respect of any one claim or series of claims arising from one event against any legal liability for damage loss or injury to any property or any person as a direct result of the execution of the cable works or road works or use of the strategic road network by the undertaker.

Indemnity

49.—(1) The undertaker indemnifies National Highways from and against all costs, claims, expenses, damages, losses and liabilities suffered by National Highways arising from the construction of the road works or maintenance of the road works undertaken (but always

excluding any consequential loss or indirect loss suffered by National Highways) before the issue of the final certificate for the relevant road works, or any construction, maintenance or decommissioning of the cable works, or exercise of or failure to exercise any power under this Order within 30 days of an itemised demand subject to sub-paragraphs (2) to (5).

(2) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of—

(a) any damage to the extent that it is attributable to the neglect or default of National Highways, its officers, servants, contractors or agents;

(b) any road works carried out by National Highways as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the 2008 Act or article 36 (benefit of the Order).

(3) National Highways must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

(4) National Highways must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(5) National Highways must use its reasonable endeavours to mitigate and to minimise any costs, claims, expenses, damages, losses and to which the indemnity under this paragraph applies where it is within National Highways' reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties outside of National Highways' control and if reasonably requested to do so by the undertaker National Highways must provide an explanation of how the claim has been minimised, where relevant.

Maintenance of the authorised development

50.—(1) The undertaker must, prior to the commencement of any works of maintenance to the cable works or road works, give National Highways 28 days' notice in writing of the date on which those works will start unless otherwise agreed by National Highways, acting reasonably.

(2) If, for the purposes of maintaining the cable works or road works, the undertaker needs to occupy any road space, the undertaker must comply with National Highways' road space booking requirements and no maintenance of any works for which a road space booking is required may commence without a road space booking having first been secured.

(3) During any maintenance works, the undertaker must comply with any requirements that National Highways may notify to the undertaker, such requirements to be notified to the undertaker not less than 7 days' in advance of the planned commencement date of the maintenance works.

(4) The provisions of paragraph 43 shall apply to the opening of any part of the strategic road network following occupation of any road space under this paragraph.

Land

51.—(1) Following the issue of the final certificate pursuant to paragraph 45(4) National Highways may serve notice on the undertaker that it wishes to take a freehold transfer of land within the extent of strategic road network boundary which is not in the ownership of National Highways but has been acquired by the undertaker for the purposes of carrying out the road works.

(2) If the undertaker receives notice under sub-paragraph (1) then the undertaker must effect a freehold transfer of the land which is the subject of the notice and complete such transfer as soon as reasonably practicable at no cost to National Highways.

(3) The undertaker must not exercise the powers of this Order over any land forming part of the strategic road network or land owned by National Highways, other than with the consent of National Highways (such consent not to be unreasonably withheld and delayed), so as to—

(a) acquire or use the land;

(b) acquire new or existing rights in the land;

(c) impose or extinguish any restrictive covenant over the land;

(d) extinguish any existing rights held by National Highways; or

(e) interfere with the apparatus of National Highways.

(4) A consent under sub-paragraph (1) must be requested in writing by email to legalservicesinbox@nationalhighways.co.uk.

Expert Determination

52.—(1) Article 44 (arbitration) of the Order does not apply to this Part of this Schedule.

(2) Any difference under this Part of this Schedule may be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) On notification by either party of a dispute, the parties must jointly instruct an expert within 14 days of notification of the dispute.

(4) All parties involved in settling any difference must use best endeavours to do so within 21 days from the date that an expert is appointed.

(5) The expert must—

(a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 7 days of the expert's appointment;

(b) permit a party to comment on the submissions made by the other party within 7 days of receipt of the submission;

(c) issue a decision within 7 days of receipt of the submissions under paragraph (b); and

(d) give reasons for the decision.

(6) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 44.

(7) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.

PART 5

FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

53.—(1) The following provisions apply for the protection of the Agency unless otherwise agreed in writing between the undertaker and the Agency.

(2) In this part of this Schedule—

"Agency" means the Environment Agency;

"construction" includes execution, placing, altering, replacing, relaying and removal and excavation and "construct" and "constructed" is construed accordingly;

"drainage work" means any main river and includes any land which provides or is expected to provide flood storage capacity for any main river and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage, flood defence or tidal monitoring;

"emergency" means an occurrence which presents a risk of—

(a) serious flooding;

(b) serious detrimental impact on drainage; or

(c) serious harm to the environment;

"fishery" means any waters containing fish and fish in, or migrating to or from, such waters and the spawn, spawning ground, habitat or food of such fish;

"main river" has the same meaning given in section 113 of the Water Resources Act 1991;

"non-tidal main river" has the meaning given in paragraph 2(1) of Part 1 of Schedule 25 to the Environmental Permitting (England and Wales) Regulations 2016;

"plans" includes plans, sections, elevations, drawings, specifications, programmes, proposals, calculations, method statements and descriptions;

"remote defence" means any berm, wall or embankment that is constructed for the purposes of preventing or alleviating flooding from, or in connection with, any main river;

"sea defence" means any bank, wall, embankment (any berm, counterwall or cross-wall connected to any such bank, wall or embankment), barrier, tidal sluice and other defence, whether natural or artificial, against the inundation of land by sea water or tidal water, including natural or artificial high ground which forms part of or makes a contribution to the efficiency of the defences of the Agency's area against flooding, but excludes any sea defence works which are for the time being maintained by a coast protection authority under the provisions of the Coast Protection Act 1949 or by any local authority or any navigation, harbour or conservancy authority;

"specified work" means so much of any work or operation authorised by this Order as is in, on, under, over or within—

(a) 16 metres of the base of a sea defence which is likely to—

(i) endanger the stability of, cause damage or reduce the effectiveness of that sea defence, or

(ii) interfere with the Agency's access to or along that sea defence or the Agency's ability to undertake works to ensure the efficacy of that sea defence;

(b) 8 metres of the base of a remote defence which is likely to—

(i) endanger the stability of, cause damage or reduce the effectiveness of that remote defence, or

(ii) interfere with the Agency's access to or along that remote defence;

(c) 16 metres of a drainage work involving a tidal main river;

(d) 8 metres of a drainage work involving a non-tidal main river;

(e) any distance of a drainage work and is otherwise likely to—

(i) affect any drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work;

(ii) affect the flow, purity or quality of water in any main river or other surface waters;

(iii) cause obstruction to the free passage of fish or damage to any fishery;

(iv) affect the conservation, distribution or use of water resources; or

(v) affect the conservation value of the main river and habitats in its immediate vicinity;

or which involves—

(f) an activity that includes dredging, raising or taking of any sand, silt, ballast, clay, gravel or other materials from or off the bed or banks of a drainage work (or causing such materials to be dredged, raised or taken), including hydrodynamic dredging or desilting; and

(g) any quarrying or excavation within 16 metres of a drainage work which is likely to cause damage to or endanger the stability of the banks or structure of that drainage work;

"tidal main river" has the meaning given in paragraph 2(1) of Part 1 of Schedule 25 to the Environmental Permitting (England and Wales) Regulations 2016.

Submission and approval of plans

54.—(1) Before beginning to construct any specified work, the undertaker must submit to the Agency plans of the specified work and such further particulars available to it as the Agency may within 28 days of the receipt of the plans reasonably request.

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the Agency, or determined under paragraph 64.

(3) Any approval of the Agency required under this paragraph—

(a) must not be unreasonably withheld or delayed;

(b) subject to sub-paragraph (5), is deemed to have been refused if it is neither given nor refused within 2 months of the submission of the plans or such later date as is agreed between the Agency and the undertaker and if further particulars have been requested pursuant to sub-paragraph (1) the period between the making of this request and the provision of further particulars in response to it shall not be taken into account in the calculation of the 2 months for the purposes of this sub-paragraph; and

(c) may be given subject to such reasonable requirements as the Agency may have for the protection of any drainage work or the fishery or for the protection of water resources, or for the prevention of flooding or pollution or for nature conservation or the prevention of environmental harm in the discharge of its environmental duties.

(4) The Agency must use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (3)(b).

(5) In the case of a refusal, the Agency must provide reasons for the grounds of that refusal.

Construction of protective works

55. Without limiting paragraph 54, the requirements which the Agency may have under that paragraph include conditions requiring the undertaker, at its own expense, to construct such protective works, whether temporary or permanent, before or during the construction of the specified works (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

(a) to safeguard any drainage work against damage; or

(b) to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased,

by reason of any specified work.

Timing of works and service of notices

56.—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the Agency under paragraph 55, must be constructed—

(a) without unreasonable delay in accordance with the plans approved under this Part of this Schedule; and

(b) to the reasonable satisfaction of the Agency,

and the Agency is entitled by its officer to watch and inspect the construction of such works.

(2) The undertaker must give to the Agency not less than 14 days' notice in writing of its intention to commence construction of any specified work and notice in writing of its completion not later than 7 days after the date on which it is completed.

(3) If the Agency reasonably requires, the undertaker must construct all or part of the protective works so that they are in place prior to the construction of any specified work to which the protective works relate.

Works not in accordance with this Part of this Schedule

57.—(1) If there is any failure by the undertaker to obtain consent or comply with conditions imposed by the Agency in accordance with these protective provisions and where the Agency acting reasonably considers it necessary to avoid any of the risks specified in sub-paragraph (2), the Agency may serve written notice requiring the undertaker to cease all or part of the specified works as may be specified within the notice within the period specified in the notice, and the undertaker must cease constructing the specified works or part thereof until such time as it has obtained the consent or complied with the condition specified with the notice served.

(2) The risks specified in sub-paragraph (1) are—

(a) risk of flooding;

(b) risk of harm to the environment;

(c) risk of detrimental impact on drainage;

(d) damage to the fishery.

(3) If any part of a specified work or any protective work required by the Agency is constructed otherwise than in accordance with the requirements of this Part of this Schedule, the Agency may by notice in writing require the undertaker at the undertaker's own expense to comply with the requirements of this Part of this Schedule or (if the undertaker so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as the Agency reasonably requires.

(4) Subject to sub-paragraph (4) if, within a reasonable period, being not less than 28 days beginning with the date when a notice under sub-paragraph (2) is served upon the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may execute the works specified in the notice and any reasonable expenditure incurred by the Agency in so doing is recoverable from the undertaker.

(5) In the event of any dispute as to whether sub-paragraph (2) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the Agency must not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined in accordance with paragraph 64.

Maintenance of works

58.—(1) Subject to sub-paragraph (5) the undertaker must from the commencement of the construction of the specified works maintain in good repair and condition and free from obstruction any drainage work which is situated within the Order limits and on land held by the undertaker for the purposes of or in connection with the specified works, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

(2) If any such drainage work which the undertaker is liable to maintain is not maintained to the reasonable satisfaction of the Agency, the Agency may by notice in writing require the undertaker to repair and restore the work, or any part of such work, or (if the undertaker so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed), to remove the work and restore the site to its former condition, to such extent and within such limits as the Agency reasonably requires.

(3) Subject to sub-paragraph (4) if, within a reasonable period, being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2) on the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may do what is necessary for such compliance and any reasonable expenditure incurred by the Agency in so doing is recoverable from the undertaker.

(4) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the Agency must not, except in the case of an emergency, exercise the

powers conferred by sub-paragraph (3) until the dispute has been finally determined in accordance with paragraph 64.

(5) This paragraph does not apply to—

(a) drainage works which are vested in the Agency, or which the Agency or another person is liable to maintain and is not proscribed by the powers of the Order from doing so; and

(b) any obstruction of a drainage work expressly authorised in the approval of specified works plans and carried out in accordance with the provisions of this Part provided that any obstruction is removed as soon as reasonably practicable.

Remediating impaired drainage work

59. If by reason of the construction of any specified work or of the failure of any such work, the efficiency of any drainage work for flood defence purposes is impaired, or that drainage work is otherwise damaged, such impairment or damage must be made good by the undertaker to the reasonable satisfaction of the Agency and if the undertaker fails to do so, the Agency may make good the impairment or damage and recover any expenditure incurred by the Agency in so doing from the undertaker.

Agency access

60. If by reason of the construction of any specified work or the failure of any such work, the Agency's access to flood defences or equipment maintained for flood defence purposes is materially obstructed, the undertaker must notify the Agency immediately and provide suitable alternative means of access that will allow the Agency to maintain the flood defence or use the equipment no less effectively than was possible before the obstruction occurred and such alternative access must be made available or as soon as reasonably practicable after the undertaker becomes aware of such obstruction, except in the case of an emergency in which case the undertaker must provide such alternative means of access on demand.

Free passage of fish

61.—(1) The undertaker must take all such measures as may be reasonably practicable to prevent any interruption of the free passage of fish in the fishery during the construction of any specified work.

(2) If by reason of—

(a) the construction of any specified work; or

(b) the failure of any such work,

damage to the fishery is caused, or the Agency has reason to expect that such damage may be caused, the Agency may serve notice on the undertaker requiring it to take such steps as may be reasonably practicable to make good the damage, or, as the case may be, to protect the fishery against such damage within the period specified in the notice.

(3) If the undertaker fails to take such steps as are described in the notice served under sub-paragraph (2), the Agency may take those steps and any expenditure incurred by the Agency in so doing is recoverable from the undertaker.

(4) In any case where immediate action by the Agency is reasonably required in order to secure that the risk of damage to the fishery is avoided or reduced, the Agency may take such steps as are reasonable for the purpose, and may recover from the undertaker any expenditure incurred in so doing provided that notice specifying those steps is served on the undertaker as soon as reasonably practicable after the Agency has taken, or commenced to take, the steps specified in the notice.

Indemnity

62. The undertaker indemnifies the Agency in respect of all costs, charges and expenses which the Agency may incur—

(a) in the examination or approval of plans under this Part of this Schedule;

(b) in the inspection of the construction of the specified works or any protective works required by the Agency under this Part of this Schedule; and

(c) in the carrying out of any surveys or tests by the Agency which are reasonably required in connection with the construction of the specified works.

63.—(1) The undertaker is responsible for and indemnifies the Agency against all costs and losses, liabilities, claims and demands not otherwise provided for in this Part of this Schedule which may be reasonably incurred or suffered by the Agency by reason of, or arising out of—

(a) the construction, operation or maintenance of any specified works comprised within the authorised development or the failure of any such works comprised within them; or

(b) any act or omission of the undertaker, its employees, contractors or agents or others whilst engaged upon the construction, operation or maintenance of the authorised development or dealing with any failure of the authorised development.

(2) For the avoidance of doubt, in sub-paragraph (1)—

(a) "costs" includes—

(i) expenses and charges;

(ii) staff costs and overheads; and

(iii) legal costs;

(b) "losses" includes physical damage;

(c) "claims" and "demands" include as applicable—

(i) costs (within the meaning of paragraph (a)) incurred in connection with any claim or demand; and

(ii) any interest element of sums claimed or demanded; and

(d) "liabilities" includes—

(i) contractual liabilities;

(ii) tortious liabilities (including liabilities for negligence or nuisance);

(iii) liabilities to pay statutory compensation or for breach of statutory duty; and

(iv) liabilities to pay statutory penalties imposed on the basis of strict liability (but does not include liabilities to pay other statutory penalties).

(3) The Agency must give to the undertaker reasonable notice of any such claim or demand and must not settle or compromise a claim without the agreement of the undertaker and that agreement must not be unreasonably withheld or delayed.

(4) The Agency must, at all times take reasonable steps to prevent and mitigate any such claims, demands, proceedings, costs, damages, expenses or loss.

(5) The fact that any work or thing has been executed or done by the undertaker in accordance with a plan approved by the Agency, or to its satisfaction, or in accordance with any directions or award of an arbitrator, must not relieve the undertaker from any liability under the provisions of this Part of this Schedule.

(6) Nothing in this paragraph imposes any liability on the undertaker with respect to any costs, charges, expenses, damages, claims, demands or losses to the extent that they are attributable to the neglect or default of the Agency, its officers, servants, contractors or agents.

Disputes

64. Any dispute arising between the undertaker and the Agency under this Part of this Schedule must, if the parties agree, be determined by arbitration under article 44 (arbitration), but failing agreement be determined by the Secretary of State for Environment, Food and Rural Affairs or its successor and the Secretary of State for Energy Security and Net Zero or its successor acting

jointly on a reference to them by the undertaker or the Agency, after notice in writing by one to the other.

PART 6

FOR THE PROTECTION OF DRAINAGE AUTHORITIES

65. The provisions of this Part have effect for the protection of the drainage authority unless otherwise agreed in writing between the undertaker and the drainage authority.

66. In this Part of this Schedule—

"construction" includes execution, placing, altering, replacing, relaying and removal and excavation and "construct" and "constructed" is to be construed accordingly;

"drainage authority" means in relation to an ordinary watercourse, the drainage board concerned within the meaning of section 23 (prohibition on obstructions etc. in watercourses) of the Land Drainage Act 1991;

"drainage work" means any ordinary watercourse and includes any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage or flood defence in connection with an ordinary watercourse which is the responsibility of the drainage authority;

"independent review" means a review carried out by a third party confirming the findings of the undertaker in the assessment of the impact of the proposed specified work on flood risk;

"ordinary watercourse" has the meaning given by section 72 (interpretation) of the Land Drainage Act 1991;

"plans" includes any information reasonably required by the drainage authority including location details, grid references, sections, drawings, specifications, assessments and method statements; and

"specified work" means so much of any work or operation authorised by this Order as is in, on, under over or within 8 metres of a drainage work and which comprises any of the following works carried out in relation to or which may affect any ordinary watercourse—

(a) the erection of any mill, dam, weir, or other similar obstruction to the flow of an ordinary watercourse, or raising or otherwise altering any such obstruction;

(b) the construction or installation of a bridge or other structure;

(c) the erection of a culvert in an ordinary watercourse;

(d) the alteration of an ordinary watercourse or a culvert or other form of drainage infrastructure in a manner that would be likely to affect the flow of an ordinary watercourse;

(e) the introduction by means of any channel, siphon, pipeline or sluice or by any other means whatsoever any water into any ordinary watercourse within the Order limits so as to directly or indirectly increase the flow or volume of water in any ordinary watercourse within the Order limits without the previous consent of the drainage authority;

(f) any work likely to obstruct flow or adversely affect the integrity of any embankment, wall or enclosing structure containing an ordinary watercourse.

67.—(1) Before commencing construction of a specified work, the undertaker must submit to the drainage authority plans of the specified work, including an independent review and such further particulars available to it as the drainage authority may within 14 days of the submission of the plans reasonably request.

(2) The undertaker must not commence construction of the specified work until approval, unconditionally or conditionally, has been given as provided under this paragraph.

(3) A specified work must not be constructed except in accordance with such plans as may be approved in writing by the drainage authority or determined under paragraph 76.

(4) Any approval of the drainage authority required under this paragraph—

(a) must not be unreasonably withheld or delayed;

(b) is deemed to have been given if it is neither given nor refused within 28 days of the submission of the plans for approval, or submission of further particulars (where required by the drainage authority under sub-paragraph (1)) whichever is the later; and

(c) may be given subject to such reasonable requirements as the drainage authority may make for the protection of any drainage work, for the protection of any ordinary watercourse or for the prevention of flooding.

(5) Any refusal under this paragraph must be accompanied by a statement of the reasons for refusal.

68. Without limiting paragraph 67, the requirements which the drainage authority may make under that paragraph include conditions requiring the undertaker at its own expense to construct such protective works, whether temporary or permanent, during the construction of the specified work (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

(a) to safeguard any drainage work against damage by reason of any specified work; or

(b) to secure that the efficiency of any drainage work for flood defence and land drainage purposes is not impaired, and that the risk of flooding is not otherwise increased, by reason of any specified work.

69.—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the drainage authority under paragraph 68, must be constructed—

(a) without unreasonable delay in accordance with the plans approved or deemed to have been approved or settled under this Part of this Schedule; and

(b) to the reasonable satisfaction of the drainage authority, and an officer of the drainage authority is entitled to watch and inspect the construction of such works.

(2) The undertaker must give to the drainage authority—

(a) not less than 14 days' notice in writing of its intention to commence construction of any specified work; and

(b) notice in writing of its completion not later than 7 days after the date of completion.

(3) If the drainage authority reasonably requires, the undertaker must construct all or part of the protective works so that they are in place before the construction of the specified work to which the protective works relate.

(4) If any part of a specified work or any protective work required by the drainage authority is constructed otherwise than in accordance with the requirements of this Part of this Schedule, the drainage authority may by notice in writing require the undertaker at the undertaker's expense to comply with the requirements of this Part of this Schedule or (if the undertaker so elects and the drainage authority in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is agreed, to restore the site to its former condition to such extent and within such limits as the drainage authority reasonably requires.

(5) Subject to sub-paragraph (6) and paragraphs 74 and 75, if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (4) is served on the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and subsequently to make reasonably expeditious progress towards their implementation, the drainage authority may execute the works specified in the notice and any reasonable expenditure incurred by it in so doing is recoverable from the undertaker.

(6) In the event of any dispute as to whether sub-paragraph (4) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the drainage authority must not except in an emergency exercise the powers conferred by sub-paragraph (5) until the dispute has been finally determined in accordance with paragraph 76.

70.—(1) Subject to sub-paragraph (5), the undertaker must. from the commencement of the construction of the specified work, maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation on land held by the undertaker for the purpose of or in connection with the specified work, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

(2) If any drainage work which the undertaker is liable to maintain is not maintained to the reasonable satisfaction of the drainage authority, the drainage authority may by notice in writing require the undertaker to repair and restore the work, or any part of the work, or (if the undertaker so elects and the drainage authority in writing consents, such consent not to be unreasonably withheld or delayed), to remove the specified work and restore the site to its former condition, to such extent and within such limits as the drainage authority reasonably requires.

(3) Subject to sub-paragraph (4) and paragraphs 74 and 75 if, within a reasonable period being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2) on the undertaker, the undertaker has failed to begin taking steps to comply with the reasonable requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the drainage authority may do what is reasonably necessary for such compliance and may recover any reasonable expenditure reasonably incurred by it in so doing from the undertaker.

(4) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the drainage authority must not except in a case of emergency exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined in accordance with paragraph 76.

(5) This paragraph does not apply to—

(a) drainage works which are vested in the drainage authority, or which the drainage authority or another person is liable to maintain and is not prevented by this Order from so doing; and

(b) any obstruction of a drainage work for the purpose of a work or operation authorised by this Order and carried out in accordance with the provisions of this Part of this Schedule provided that any obstruction is removed as soon as reasonably practicable.

71. Subject to paragraphs 74 and 75 and sub-paragraph 70(5)(b), if by reason of the construction of any specified work or of the failure of any such work the efficiency of any drainage work for flood defence purposes or land drainage is impaired, or that drainage work is otherwise damaged, such impairment or damage must be made good by the undertaker to the reasonable satisfaction of the drainage authority and, if the undertaker fails to do so, the drainage authority may make good the impairment or damage and recover from the undertaker any expenditure incurred by the drainage authority in so doing from the undertaker.

72. If by reason of the construction of the specified work the drainage authority's access to flood defences or equipment maintained for flood defence purposes is materially obstructed, the undertaker must provide such alternative means of access that will allow the drainage authority to maintain the flood defence or use the equipment no less effectively than was possible before the obstruction within 24 hours of the undertaker becoming aware of such obstruction.

73. The undertaker must make reasonable compensation for costs, charges and expenses which the drainage authority may reasonably incur—

(a) in the examination or approval of plans under this Part of this Schedule;

(b) in the inspection of the construction of the specified works or any protective works required by the drainage authority under this Part of this Schedule; and

(c) in the carrying out of any surveys or tests by the drainage authority which are reasonably required in connection with the construction of the specified works.

74.—(1) The undertaker must make reasonable compensation for costs and losses which may be reasonably incurred or suffered by the drainage authority by reason of—

(a) the construction of any specified work comprised within the authorised works; or

(b) any act or omission of the undertaker, its employees, contractors or agents or others whilst engaged upon the construction of the specified works.

(2) In sub-paragraph (1)—

"costs" includes—

(a) expenses and charges;

(b) staff costs and overheads; and

(c) legal costs; and

"losses" includes physical damage.

(3) The undertaker must make reasonable compensation for liabilities, claims and demands against the drainage authority arising out of or in connection with the specified works or otherwise out of the matters referred to in sub-paragraphs (1)(a) and (1)(b).

(4) In sub-paragraph (3)—

"claims" and "demands" include as applicable—

(a) costs (within the meaning of sub-paragraph (2)) incurred in connection with any claim or demand; and

(b) any interest element of sums claimed or demanded; and

"liabilities" includes—

(a) contractual liabilities;

(b) tortious liabilities (including liabilities for negligence or nuisance);

(c) liabilities to pay statutory compensation or for breach of statutory duty; and

(d) liabilities to pay statutory penalties imposed on the basis of strict liability (but does not include liabilities to pay other statutory penalties).

(5) The drainage authority must give to the undertaker notice of any such claim or demand.

(6) The undertaker may at its own expense conduct all negotiations for the settlement of the same and any litigation that may arise therefrom.

(7) The drainage authority must not compromise or settle any such claim or make any admission which might be prejudicial to the claim without the agreement of the undertaker which agreement must not be unreasonably withheld or delayed.

(8) The drainage authority must, at all times take reasonable steps to prevent and mitigate any such claims, demands, proceedings, costs, damages, expenses or loss.

(9) The drainage authority must, at the request of the undertaker, afford all reasonable assistance for the purpose of contesting any such claim or action and is entitled to be repaid its reasonable expenses reasonably incurred in so doing.

75. The fact that any work or thing has been executed or done by the undertaker in accordance with a plan approved or deemed to be approved by the drainage authority, or to its satisfaction, or in accordance with any directions or award of an arbitrator, does not relieve the undertaker from any liability under this Part of this Schedule.

76. Any dispute arising between the undertaker and the drainage authority under this Part of this Schedule, if the parties agree, is to be determined by arbitration under article 44 (arbitration), but otherwise is to be determined by the Secretary of State acting jointly on a reference to them by the undertaker or the drainage authority, after notice in writing by one to the other.

PART 7

FOR THE PROTECTION OF ANGLIAN WATER

Application

77. For the protection of Anglian Water the following provisions have effect, unless otherwise agreed in writing between the undertaker and Anglian Water.

Interpretation

78. In this Part of this Schedule—

"alternative apparatus" means alternative apparatus adequate to enable Anglian Water to fulfil its statutory functions in a manner no less efficient than previously;

"Anglian Water" means Anglian Water Services Limited (company number 02366656) whose registered office is at Lancaster House, Lancaster Way, Ermine Business Park, Huntington, Cambridgeshire PE29 6XU;

"apparatus" means—

(a) works, mains, pipes or other apparatus belonging to or maintained by Anglian Water for the purposes of water supply and sewerage;

(b) any drain or works vested in Anglian Water under the Water Industry Act 1991;

(c) 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;

(d) any drainage system constructed for the purpose of reducing the volume of surface water entering any public sewer belonging to Anglian Water; and

(e) includes a sludge main, disposal main 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,

and for the purpose of this definition, where words are defined by section 219 of that Act, they must be taken to have the same meaning;

"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

"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.

On street apparatus

79. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and Anglian Water are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus in restricted streets

80. Regardless of the temporary closure, restriction or diversion of any highway under the powers conferred by article 12 (temporary closure, restriction or prohibition of use of streets and public rights of way), Anglian Water 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

81. The undertaker, in the case of the powers conferred by article 19 (protective works to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus unless the prior written consent of Anglian Water has been obtained pursuant to paragraph 85 (such consent not to be unreasonably withheld).

Acquisition of land

82. 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, such agreement not to be unreasonably withheld or delayed if the acquisition is required in connection with an approval or consent granted under this Part of this Schedule.

Removal of apparatus

83.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or requires that Anglian Water's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of Anglian Water to maintain that apparatus in that land must not be extinguished, until—

(a) alternative apparatus has been constructed and is in operation to the reasonable satisfaction of Anglian Water in accordance with sub-paragraphs (2) to (8); and

(b) facilities and rights have been secured for that alternative apparatus in accordance with paragraph 84.

(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 Anglian Water 28 days' written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order an undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to Anglian Water 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 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 Anglian Water must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of or 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 Anglian Water and the undertaker or in default of agreement settled by arbitration in accordance with article 44 (arbitration).

(5) Anglian Water must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 44, and after the grant to Anglian Water 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.

(6) Regardless of anything in sub-paragraph (5), if Anglian Water gives notice in writing to the undertaker that it desires the undertaker to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker or to the extent that Anglian Water fails to proceed with that work in accordance with sub-paragraph (5) or the undertaker and Anglian Water otherwise agree, that work, instead of being executed by Anglian

Water, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of Anglian Water.

(7) If Anglian Water fails either reasonably to approve, or to provide reasons for its failure to approve along with an indication of what would be required to make acceptable, any proposed details relating to required removal works under sub-paragraph (2) within 28 days of receiving a notice of the required works from the undertaker, then such details are deemed to have been approved. For the avoidance of doubt, any such "deemed consent" does not extend to the actual undertaking of the removal works, which must remain the sole responsibility of Anglian Water or its contractors unless the works are to be carried out by the undertaker in accordance with sub-paragraph (6).

(8) Whenever alternative apparatus is to be or is being substituted for existing apparatus, the undertaker must, before taking or requiring any further step in such substitution works, use best endeavours to comply with Anglian Water's reasonable requests for a reasonable period of time to enable Anglian Water to—

(a) make network contingency arrangements; or

(b) bring such matters as it may consider reasonably necessary to the attention of end users of the utility in question.

Facilities and rights for alternative apparatus

84.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to Anglian Water facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the undertaker and Anglian Water or in default of agreement settled by arbitration in accordance with article 44 (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 Anglian Water 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 Anglian Water as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

(3) Such facilities and rights as are set out in this paragraph are deemed to include any statutory permits granted to the undertaker or Anglian Water in respect of the apparatus in question, whether under the Environmental Permitting (England and Wales) Regulations 2016 or other legislation.

Retained apparatus

85.—(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 (or any means of access to it) the removal of which has not been required by the undertaker under paragraph 83(2), the undertaker must submit to Anglian Water a plan of the works to be executed.

(2) Those works must be executed only in accordance with the plan submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by Anglian Water for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and Anglian Water is entitled to watch and inspect the execution of those works.

(3) Any requirements made by Anglian Water under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan under sub-paragraph (1) is submitted to it.

(4) If Anglian Water 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 77 to 79 and 82 to 84 apply as if the removal of the apparatus had been required by the undertaker under paragraph 83(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 instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case must give to Anglian Water notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (3) in so far as is reasonably practicable in the circumstances, using its best endeavours to keep the impact of those emergency works on Anglian Water's apparatus, on the operation of its water and sewerage network and on end-users of the services Anglian Water provides to a minimum, save that the undertaker's obligation to use such best endeavours is subject to the undertaker's obligation to ensure the safe operation of the authorised development and measures taken by the undertaker to address a danger to life or property must be interpreted as the use of best endeavours.

(7) For the purposes of sub-paragraph (1) and without prejudice to the generality of the principles set out in that sub-paragraph, works are deemed to be in land near Anglian Water's apparatus (where it is a pipe) if those works fall within the following distances measured from the medial line of such apparatus—

(a) 4 metres where the diameter of the pipe is less than 250 millimetres;

(b) 5 metres where the diameter of the pipe is between 250 and 400 millimetres; and

(c) a distance to be agreed on a case by case basis and before the submission of the Plan under sub-paragraph (1) is submitted where the diameter of the pipe exceeds 400 millimetres.

Expenses and costs

86.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to Anglian Water all expenses reasonably incurred by Anglian Water 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 this Part of this Schedule but always excluding any consequential loss or indirect loss suffered by Anglian Water.

(2) There must be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated, and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 44 (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 Anglian Water by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

(a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraphs 81 or 83(2), or by reason of any subsidence resulting from such development or works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of Anglian Water, or there is any interruption in any service provided, or in the supply of any goods, by Anglian Water, the undertaker must—

(a) bear and pay the cost reasonably incurred by Anglian Water in making good such damage or restoring the supply; and

(b) make reasonable compensation to Anglian Water for any other expenses, loss, damages, penalty or costs incurred by Anglian Water,

by reason or in consequence of any such damage or interruption but always excluding any consequential loss or indirect loss arising from such damage or interruption.

(6) The fact that any act or thing may have been done by Anglian Water on behalf of the undertaker or in accordance with a plan approved by Anglian Water or in accordance with any requirement of Anglian Water or under its supervision does not, subject to sub-paragraph (7), excuse the undertaker from liability under the provisions of sub-paragraph (1) unless Anglian Water fails to carry out and execute the works properly with due care and attention and in a skilful and professional like manner or in a manner that does not accord with the approved plan.

(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 unlawful or unreasonable act, neglect or default of Anglian Water, its officers, servants, contractors or agents.

(8) Anglian Water 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 (such consent not to be unreasonably withheld or delayed) who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(9) Anglian Water must use reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands and penalties to which the undertaker must bear and pay the costs for.

Cooperation

87.—(1) Where in consequence of the proposed construction of any of the authorised development, the undertaker or Anglian Water requires the removal of apparatus under paragraph 83(2) or Anglian Water makes requirements for the protection or alteration of apparatus under paragraph 85, the undertaker must use all reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of Anglian Water's undertaking, using existing processes where requested by Anglian Water, provided it is appropriate to do so, and Anglian Water must use all reasonable endeavours to co-operate with the undertaker for that purpose.

(2) Where the undertaker identifies any apparatus which may belong to or be maintainable by Anglian Water but which does not appear on any statutory map kept for the purpose by Anglian Water, it shall inform Anglian Water of the existence and location of the apparatus as soon as reasonably practicable.

(3) Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Anglian Water in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

(4) The undertaker and Anglian Water may by written agreement substitute any period of time for those periods set out in this Part of this Schedule.

PART 8

FOR THE PROTECTION OF EASTERN POWER NETWORKS

Application

88. For the protection of EPN as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and EPN.

Interpretation

89. In this Part of this Schedule—

"alternative apparatus" means alternative apparatus adequate to enable EPN to fulfil its statutory functions in a manner no less efficient than previously;

"apparatus" means electric lines and electrical plant (as defined in section 64(1) of the Electricity Act 1989(**a**)), belonging to or maintained by EPN;

"EPN" means Eastern Power Networks plc (company number 02366906) whose registered office is at Newington House, 237 Southwark Bridge Road, London SE1 6NP;

"functions" includes powers and duties;

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

"plan" 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 the works to be executed; and

"specified works" means any of the authorised development which—

(a) will or may be situated within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 94(2) or otherwise; or

(b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 94(2) or otherwise.

On street apparatus

90. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and EPN are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus in restricted streets and public rights of way

91. Regardless of the temporary alteration, diversion or restriction of use of any street or public right of way under the powers of article 12 (temporary closure, restriction or prohibition of use of streets and public rights of way) EPN is at liberty at all times to take all necessary access across any such restricted, altered or diverted street or public right of way and to execute and do all such works and things in, upon or under any such street or public right of way as may be reasonably

(**a**) 1989 c. 29.

necessary or desirable to enable it to maintain any apparatus which at the time of the restriction, alteration or diversion was in that street or public right of way.

Protective works to buildings

92. The undertaker, in the case of the powers conferred by article 19 (protective works to buildings), must exercise those powers so as not to obstruct or render materially less convenient the access to any apparatus or the ability of EPN to perform its statutory duties (such agreement not to be unreasonably withheld or delayed).

Acquisition of land

93. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

Removal of apparatus

94.—(1) If in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or requires that apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule and any right of EPN 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 EPN in accordance with sub-paragraphs (2) to (6).

(2) If, for the purpose of executing any specified 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 EPN no less than 28 days' 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 EPN reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to EPN the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance and use 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, EPN 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 save that this obligation does not extend to the requirement for EPN to use its powers of compulsory acquisition unless it elects to do so.

(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 EPN and the undertaker or in default of agreement settled by arbitration in accordance with paragraph 102 (arbitration).

(5) EPN must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with paragraph 102, and after the grant to EPN 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.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to EPN that the undertaker desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker, that work, instead of being executed by EPN, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of EPN.

Facilities and rights for alternative apparatus

95.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to EPN necessary facilities and rights in land for the construction and maintenance of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms as may be agreed between the undertaker and EPN and must be no less favourable on the whole to EPN than the facilities and rights enjoyed by it in respect of the apparatus to be removed, unless otherwise agreed by EPN, such agreement not to be unreasonably withheld or delayed.

(2) If the facilities and rights to be afforded by the undertaker and agreed with EPN under sub-paragraph (1) in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to EPN 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 102 (arbitration) and the arbitrator must make such provision for the payment of compensation by the undertaker to EPN as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus

96.—(1) Not less than 56 days before the commencement of any specified works, the undertaker must submit to EPN a plan of the works to be executed.

(2) The plan to be submitted to EPN under sub-paragraph (1) must include a method statement and describe—

(a) the exact position of the works;

(b) the level at which the works are proposed to be constructed or renewed;

(c) the manner of the construction or renewal of the works;

(d) the position of all apparatus; and

(e) by way of detailed drawings, every alteration proposed to be made to such apparatus.

(3) The undertaker must not commence any specified works until EPN has given written approval of the plan and works so submitted.

(4) Any approval of EPN given under sub-paragraph (3)—

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5); and

(b) must not be unreasonably withheld or delayed.

(5) EPN may require such modifications to be made to the plan as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Specified works must be executed in accordance with the plan submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (5) by EPN for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and EPN will be entitled to watch and inspect the execution of those works where reasonably practicable to do so and in accordance with any relevant health and safety legislation.

(7) Any requirements made by EPN under sub-paragraph (5) must be made within a period of 28 days beginning with the date on which the plan is submitted to it.

(8) If EPN in accordance with sub-paragraph (5) 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 90 to 92 and 95 to 97 apply as if the removal of the apparatus had been required by the undertaker under paragraph 94(2).

(9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of any specified works,

a new plan instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(10) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to EPN notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (6) in so far as is reasonably practicable in the circumstances.

(11) In sub-paragraph (10), works that are carried out "in a case of emergency" means such works whose execution at the time when they are executed is required in order to put an end to, or to prevent the occurrence of, circumstances then existing or imminent (or which the person responsible for the works believes on reasonable grounds to be existing or imminent) which are likely to cause danger to persons or property.

Expenses and costs

97.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to EPN all expenses reasonably and properly incurred or to be incurred by EPN in, or in connection with—

(a) the inspection, removal, alteration, relaying, replacing or protection of any apparatus or the construction of any alternative apparatus which may be required in consequence of the execution of any specified works;

(b) the acquisition of facilities and rights or exercise of statutory powers for any apparatus or alternative apparatus in consequence of the operation of any of these provisions;

(c) the cutting off of any apparatus from any other apparatus, or the making safe of any redundant apparatus, in consequence of the exercise of any power conferred by this Order affecting EPN's apparatus;

(d) the survey of any land, apparatus or works, the superintendence and monitoring of works and the installation or removal of any temporary works reasonably necessary in consequence of the exercise of any power conferred by this Order affecting EPN's apparatus; and

(e) any other work or thing rendered reasonably necessary in consequence of the exercise of any power conferred by this Order affecting EPN's apparatus.

(2) There must be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 102 (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 EPN by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

(a) an extension of apparatus to a length greater than the length of existing apparatus must 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 must 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 EPN 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 EPN 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.

98.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any specified works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of EPN, or there is any interruption in any service provided, or in the supply of any goods, by EPN, the undertaker must—

(a) bear and pay the cost reasonably and properly incurred by EPN in making good such damage or restoring the supply; and

(b) indemnify EPN against any other losses, expenses, demands, proceedings, damages, claims, penalty or costs properly incurred by or recovered from EPN, by reason or in consequence of any such damage or interruption or EPN becoming liable to any third party as aforesaid other than arising from any default of EPN.

(2) The fact that any act or thing may have been done by EPN on behalf of the undertaker or in accordance with a plan approved by EPN or in accordance with any requirement of EPN or under its supervision will not, subject to sub-paragraph (3), excuse the undertaker from liability under the provisions of sub-paragraph (1), unless EPN 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 agreed by EPN in accordance with paragraph 94(4) and paragraph 96(3).

(3) Nothing in sub-paragraph (1) will impose any liability on the undertaker in respect of—

(a) any damage or interruption to the extent that it is attributable to the neglect or default of EPN, its officers, servants, contractors or agents;

(b) any part of the specified works carried out by EPN in the exercise of any functions conferred by this Order pursuant to a transfer or grant under article 36 (benefit of the Order); 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) arising from any such damage or interruption, which is not reasonably foreseeable.

(4) EPN must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must be made without the consent of the undertaker and, if such consent is withheld, the undertaker will have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(5) EPN 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) EPN 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 and if reasonably requested to do so by the undertaker EPN must provide an explanation of how the claim has been minimised.

Enactments and agreements

99. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and EPN in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Cooperation

100.—(1) Where in consequence of the proposed construction of any part of the authorised development, the undertaker or EPN requires the removal of apparatus under paragraph 94(2) or EPN makes requirements for the protection or alteration of apparatus under paragraph 96(4), the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of EPN's undertaking and EPN must use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever EPN'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

101. If in consequence of the exercise of the powers conferred by this Order the access to any apparatus is materially obstructed the undertaker must provide such alternative means of access to that apparatus as will enable EPN to maintain or use the apparatus no less effectively than was possible before the obstruction.

Arbitration

102. Any difference or dispute arising between the undertaker and EPN under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and EPN, be determined by arbitration in accordance with article 44 (arbitration).

SCHEDULE 16 Article 47

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

Interpretation

1.—(1) In this Schedule—

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

(a) a requirement;

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

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

"requirement consultee" means—

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

(b) in relation to an application made under requirement 3 to amend an approved document (as defined in requirement 3), any body or authority that was required to be consulted in relation to the approval of that approved document; and

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

(2) In the event an application is made to discharge more than one consent, agreement or approval, this must be treated as though separate applications were made for the discharge of each consent, agreement or approval.

Applications made under requirement

2.—(1) Where an application has been made to the relevant planning authority for any consent, agreement or approval required by a requirement, the undertaker will also submit a copy of that application to any requirement consultee.

(2) 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 in writing to the undertaker of its decision on the application within a period of eight weeks beginning with the later of—

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

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

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

(3) Subject to sub-paragraph 4, in the event that the relevant planning authority does not determine an application within the period set out in sub-paragraph (2), 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.

(4) 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 in comparison with those reported in the environmental statement and if it will then it must be accompanied by information setting out what those effects are.

(5) Where an application has been made to the relevant planning authority for any consent, agreement or approval required by a requirement included in this Order and the relevant planning authority does not determine the application within the period set out in sub-paragraph (1) and is accompanied by a report pursuant to sub-paragraph (4) which states that the subject matter of such

application is likely to give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement then the application is to be taken to have been refused by the relevant planning authority at the end of that period.

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 10 working days of receipt of the application, notify the undertaker in writing specifying the further information required.

(3) If the provision governing or requiring the application specifies that consultation with a requirement consultee is required, the relevant planning authority must issue the consultation to the requirement consultee within 5 working days of receipt of the application, and must notify the undertaker in writing specifying any further information the relevant planning authority considers necessary or that is requested by the requirement consultee within 5 working days of receipt of such a request and in any event within 15 working days of receipt of the application (or such other period as is agreed in writing between the undertaker and the relevant planning authority).

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

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

Appeals

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

(a) the relevant planning authority refuses an application for any 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(5);

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

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

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

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

(b) the Secretary of State must appoint a person to determine the appeal as soon as reasonably practicable and must, as soon as reasonably practicable, 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 any requirement consultee must submit written representations to the appointed person in respect of the appeal within 10 working days of the start date and must ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;

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

(f) the appointment of the person pursuant to sub-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 they must, within five working 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 relevant party to the appointed person and the other appeal parties on the date specified by the appointed person (the "specified date"), and the appointed person must notify the appeal parties of the revised timetable for the appeal on or before that day. The revised timetable for the appeal must require submission of written representations to the appointed person within 10 working days of the specified date, but otherwise the process and time limits set out in sub-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 them in the first instance.

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

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

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

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

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

(11) On application by the relevant planning authority or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. 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 advice on planning appeals and award costs published in Planning Practice Guidance: Appeals (March 2014) or any circular or guidance which may from time to time replace it.

Fees

5.—(1) Where an application is made to the relevant planning authority for a discharge, a fee is to apply and must be paid to the relevant planning authority for each application.

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

(a) a fee of £2,535 for the first application for the discharge of each of the requirements 5, 6, 7, 8, 9, 11, 13, 14, 15, 16, 17 and 20;

(b) a fee of £578 for each subsequent application for the discharge of each of the requirements listed in paragraph (a) and any application under requirement 5 in respect of the requirements listed in paragraph (a); and

(c) a fee of £145 for any application for the discharge of—

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

(ii) any application under requirement 3 in respect of requirements not listed in paragraph (a); and

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

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

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

(b) the relevant planning authority failing to determine the application within the relevant period in paragraph 2(2) 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(2)(c) of this Schedule, as applicable.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises The Droves Solar Farm Limited (referred to in this Order as the undertaker) to construct, operate, maintain and decommission a ground mounted solar photovoltaic generating station with a gross electrical output capacity over 100 megawatts and associated development. The Order would permit the undertaker to acquire, compulsorily or by agreement, land and rights in land and to use land for this purpose.

A copy of the Order plans and the book of reference mentioned in the Order and certified in accordance with article 42 (certification of plans and documents, etc.) of this Order may be inspected free of charge during working hours at Swaffham Library, The Pightle, Swaffham, PE37 7DF.