



**WHITESTONE**  
solar farm

# WHITESTONE SOLAR FARM

## Volume 3: Draft Development Consent Order

### 3.1.1 Draft Development Consent Order

[\(Tracked\)](#)

Application Document ref. EN0110020/APP/3.1.[1](#)

Revision [024](#)

[June-August](#) 2026

Planning Act 2008  
Infrastructure Planning  
(Applications: Prescribed Forms and  
Procedure) Regulations 2009  
Regulation 5(2)(b)

REPORT

| Document status       |                                        |                    |                    |                    |                             |
|-----------------------|----------------------------------------|--------------------|--------------------|--------------------|-----------------------------|
| Version               | Purpose of document                    | Authored by        | Reviewed by        | Approved by        | Review date                 |
| Rev01                 | DCO submission                         | JH                 | AW                 | JT                 | June 2026                   |
| <a href="#">Rev02</a> | <a href="#">Section 51/55 Response</a> | <a href="#">JH</a> | <a href="#">AW</a> | <a href="#">JT</a> | <a href="#">August 2026</a> |

| Approval for issue      |  |                                                 |
|-------------------------|--|-------------------------------------------------|
| Whitestone Net Zero Ltd |  | <del>4 June</del> <a href="#">3 August</a> 2026 |

Prepared by:  
TLT LLP

Prepared for:  
Whitestone Net Zero Ltd

**202[ ] No. 0000**

**INFRASTRUCTURE PLANNING**

**Whitestone Solar Farm Order 202[ ]**

*Made* - - - - 202[ ]

*Coming into force* 202[ ]

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An application has been made to the Secretary of State for an Order 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 was examined by the Examining Authority appointed by the Secretary of State in accordance with the 2008 Act and carried out in accordance with 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having considered the application together with the documents that accompanied it, and the representations made and not withdrawn, has, in accordance with section 74(2)(d) of the 2008 Act made a report and recommendation to the Secretary of State.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 105(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), 120(i), 122(j), 123(k) and 140 of the 2008 Act makes the following Order—

## PART 1

### PRELIMINARY

#### **Citation and commencement**

1. This Order may be cited as the Whitestone 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(l);

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- (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). Section 74(2) was amended by paragraph 29(3) of that Schedule. Section 105(2) was amended by paragraph 50 of that Schedule. Section 114 was amended by paragraph 55 of that Schedule. Section 120 was amended by section 140 of, and paragraph 60 of Schedule 13 to, that Act.
- (b) S.I. 2009/2264.
- (c) S.I. 2010/103 as amended by the Infrastructure Planning (Examination Procedure) (Amendment) Rules 2024 (S.I. 2024/317).
- (d) As amended by paragraph 29(1) and (3) of Schedule 13 to the Localism Act 2011.
- (e) S.I. 2017/572.
- (f) Section 105(2) was amended by paragraph 50 of Schedule 13 to the Localism Act 2011.
- (g) As amended by paragraph 55 of Schedule 13 to the Localism Act 2011.
- (h) As amended by section 160 of the Housing and Planning Act 2016 (c. 22) and section 43 of the Wales Act 2017 (c. 4).
- (i) As amended by section 140 and paragraph 60 of Part 1 of Schedule 13 to the Localism Act 2011.
- (j) As amended by paragraph 62 of Part 1 of Schedule 13 to the Localism Act 2011.
- (k) As amended by paragraph 62 of Part 1 of Schedule 13 to the Localism Act 2011.
- (l) 1961 c. 33.

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

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

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

“the 1984 Act” means the Road Traffic Regulation Act 1984(d);

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

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

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

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

“the 2017 Regulations” means the Compulsory Purchase of Land (Vesting Declarations) (England) Regulations 2017(i);

“apparatus” has the same meaning as in Part 3 (street works in England and Wales) of the 1991 Act;

“authorised development” means the development described in Schedule 1 (authorised development) and any other development authorised by this Order, or any part of it, which is development within the meaning of section 32 (meaning of development) of the 2008 Act;

“battery energy storage system” means batteries and equipment for the storage of electrical energy;

“the book of reference” means the document of that description referenced in Schedule 13 (documents to be certified) and certified by the Secretary of State;

“bridleway” has the same meaning as in section 329(1) of the 1980 Act;

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

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

“carriageway” has the same meaning as in section 329(1) of the 1980 Act;

“commence” means beginning to carry out any material operation, as defined in section 155 of the 2008 Act (which explains when development begins), comprised in or carried out 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;

“crown land plans” means the document of that description referenced in Schedule 13 (documents to be certified) and certified by the Secretary of State as the ~~C~~crown land plans for the purposes of this Order;

“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;

“electronic transmission” means a communication transmitted—

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

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

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- (a) 1965 c. 56.
- (b) 1980 c. 66.
- (c) 1981 c. 66.
- (d) 1984 c.27.
- (e) 1989 c. 29.
- (f) 1990 c. 8.
- (g) 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).
- (h) 2008 c. 29.
- (i) S.I. 2017/3.
- (j) 1971 c.80.

“environmental statement” means the environmental statement referenced in Schedule 13 (documents to be certified) and 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 section 329(1) of the 1980 Act;

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

“land plans” means the document of that description referenced in Schedule 13 (documents to be certified) and certified by the Secretary of State as the land plans for the purposes of this Order;

“the location plans” means the document of that description referenced in Schedule 13 (documents to be certified) and certified by the Secretary of State;

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

“the Order land” means the land shown on the land plans which is within the limits of land to be acquired or used and described in the book of reference;

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

“permitted preliminary works” means all or any of—

- (a) pre construction ecological mitigation (including advanced planting to allow for an early establishment of protective screening);
- (b) environmental surveys and monitoring, geotechnical surveys, intrusive archaeological surveys (including trenching) and other investigations for the purpose of assessing ground conditions (including the making of boreholes);
- (c) removal of plant and machinery;
- (d) above ground site preparation for temporary facilities for the use of contractors;
- (e) remedial work in respect of any contamination or other adverse ground conditions;
- (f) diversion and laying of apparatus;
- (g) receipt and erection of construction plan and equipment;
- (h) the provision of temporary means of enclosure and site security for construction;
- (i) the temporary display of site notices or advertisements;
- (j) site clearance (including vegetation removal, demolition of existing buildings and structures);

“relevant planning authority” means in any given provision of this Order the planning authority for the land to which the provision relates;

“requirements” means those matters set out in Part 1 of Schedule 2 (requirements) to this Order;

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

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

“streets, rights of way and access plans” means the document of that description referenced in Schedule 13 (documents to be certified) and certified by the Secretary of State;

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(a) “highway” is defined in section 238(1) for “highway authority” see section 1.

(b) “street authority” is defined in section 49, which was amended by paragraph 117 of Schedule 1 to the Infrastructure Act 2015 (c. 7).

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

“traffic regulations plans” means the document of that description referenced in Schedule 13 (documents to be certified) and certified by the Secretary of State;

“undertaker” means Whitestone Net Zero Ltd (company number 15826972) whose registered address is The Long Barn Manor Courtyard, Stratton-On-The-Fosse, Radstock, England, BA3 4QF;

“vegetation removal plans” means the document of that description referenced in Schedule 13 (documents to be certified) and certified by the Secretary of State as the vegetation removal plans for the purposes of this Order;

“watercourse” has the meaning given in the Land Drainage Act 1991(a); and

“works plans” means the document of that description referenced in Schedule 13 (documents to be certified) and certified by the Secretary of State as the works plans for the purposes of this Order.

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

(3) All distances, directions, capacities and lengths referred to in this Order are approximate and distances between points on a work comprised in the authorised development are to be taken to be measured along that work.

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

(5) References in this Order to points identified by letters or numbers are to be construed as references to points so lettered or numbered on the plans to which the reference applies.

(6) References in this Order to numbered works are references to the works numbered in Schedule 1 (authorised development).

(7) References to “Schedule” are, unless otherwise stated, references to Schedules to this Order.

(8) The expression “includes” is to be construed without limitation.

(9) References to any statutory body in this Order or any registered company listed in article 8 (consent to transfer benefit of Order) includes that body’s or that company’s successor bodies from time to time.

(10) References in this Order to “part of the authorised development” are to be construed as references to stages, phases or elements of the authorised development.

(11) In this Order, references to materially new or materially different environmental effects in comparison with those reported in the environmental statement must not be construed so as to include the avoidance, removal or reduction of an adverse environmental effect that was reported in the environmental statement as a result of the authorised development.

(12) References in this Order to the creation and acquisition of rights over land includes references to rights to oblige a party having an interest in land to grant those rights referenced in the Order, at the direction of the undertaker, either—

- (a) to an affected person directly, where that person’s land or rights over land have been adversely affected by this Order, and, where that is the case, the rights referenced in the Order are to be granted for the benefit of the land in which that affected person has an interest at the time of the making of this Order; or
- (b) to any statutory undertaker for the purposes of their undertaking.

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(a) 1991 c. 59, section 72(1).

## 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.

(2) Any enactment applying to land within or adjacent to the Order limits has effect subject to the provisions of this Order.

#### **Operation of generating station**

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

(2) Other than as set out in this Order, 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 generation station.

#### **Maintenance of authorised development**

5. The undertaker may at any time maintain the authorised development, except to the extent that this Order or an agreement made under this Order provides otherwise.

#### **Maintenance of drainage works**

6.—(1) Nothing in this Order, or the construction, maintenance, operation 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 person responsible.

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

#### **Benefit of this Order**

7. Subject to article 8 (consent to transfer benefit of the Order), the provisions of this Order have effect solely for the benefit of the undertaker.

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

8.—(1) Subject to paragraph (3) the undertaker may with the written consent of the Secretary of State—

- (a) transfer to another person (“the transferee”) all or any part of the benefit of the provisions of this Order (including any part of the authorised development) and such related statutory rights as may be agreed between the undertaker and the transferee; or
- (b) grant to another person (“the lessee”), for a period agreed between the undertaker and the lessee, all or any part of the benefit of the provisions of this Order (including any part of the authorised development) and such related statutory rights as may be so agreed.

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(a) 1991 c. 59. The definition of “drainage” was substituted by paragraphs 191 and 194 of Schedule 22 to the Environment Act 1995 (c. 25).

(2) Subject to paragraph (8), where a transfer or grant has been made in accordance with paragraph (1) references in this Order to the undertaker includes references to the transferee or the lessee.

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

- (a) the transferee or lessee holds a licence under section 6(2) (licences authorising supply, etc.) of the 1989 Act<sup>(a)</sup>;
- (b) the time limits for all claims for compensation in respect of the acquisition of land or effects upon land under this Order have elapsed and—
  - (i) no such claims have been made;
  - (ii) any such claims that have been made have all been compromised or withdrawn;
  - (iii) compensation has been paid in final settlement of any claims made;
  - (iv) payment of compensation into court in lieu of settlement of all such claims has taken place; or
  - (v) it has been determined by a tribunal or court of competent jurisdiction in respect of all claims that no compensation is payable.

(4) Where the consent of the Secretary of State is not required under paragraph (3), the undertaker must notify the Secretary of State in writing before transferring or granting all or any part of the benefit of the provisions of this Order and such related statutory rights referred to in paragraph (1).

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

- (a) state—
  - (i) the name and contact details of the person to whom the benefit of the powers will be transferred or granted;
  - (ii) subject to paragraph (6), the date on which the transfer will take effect;
  - (iii) the powers to be transferred or granted;
  - (iv) in accordance with paragraph (8), the restrictions, liabilities and obligations that will apply to the person exercising the powers transferred or granted; and
- (b) where relevant, be accompanied by a plan showing the works or areas to which the transfer or grant relates.

(6) The date specified under paragraph (5)(a)(ii) must not be earlier than the expiry of five business days from the date of the receipt of the notice.

(7) The notice given under paragraph (4) must be signed by the undertaker and the person to whom the benefit of the powers will be transferred or granted as specified in that notice.

(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.

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(a) 1989 c. 29.

## Disapplication and modification of legislative provisions

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

- (a) sections 23 (prohibition of obstructions, etc. in watercourses), and 32 (variation of awards) of the Land Drainage Act 1991<sup>(a)</sup>;
- (b) the provisions of any byelaws made under section 66 (powers to make byelaws) of the Land Drainage Act 1991;
- (c) 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<sup>(b)</sup>;
- (d) the provisions of the Neighbourhood Planning Act 2017<sup>(c)</sup>, insofar as they relate to temporary possession of land under article 33 (temporary use of land for carrying out the authorised development) and article 34 (temporary use of land for maintaining the authorised development) of this Order; and
- (e) the local enactments and local byelaws listed in Schedule 3 (legislation to be disappplied), and any byelaws or other provisions made under any of those enactments or byelaws, insofar as the provisions are inconsistent with a provision, of or a power conferred by, this Order.

(2) For the purpose of paragraph (1)(f) a provision is inconsistent with the exercise of a power conferred by this Order if and insofar as (in particular)—

- (a) it would make it an offence to take action, or not to take action, in pursuance of a power conferred by this Order;
- (b) action taken in pursuance of a power conferred by this Order would cause the provision to apply so as to enable a person to require the taking of remedial or other action or so as to enable remedial or other action to be taken; or
- (c) action taken in pursuance of a power or duty under the provisions would or might interfere with the exercise of any work authorised by this Order.

(3) Regulation 6(1) of the Hedgerows Regulations 1997<sup>(d)</sup> is modified so as to read for the purposes of this Order only as if there were inserted after paragraph (1)(j) “or (k) for carrying out development which has been authorised by the Whitestone Solar Farm Order 202[ ].”.

(4) Regulation 5(5) of the Management of Hedgerows (England) Regulations 2024 is modified so as to read for the purposes of this Order only as if there were inserted after paragraph (5)(e) “(f) the carrying out of a development or in the exercise of any functions that are authorised by the Whitestone Solar Farm Order 202[ ].”.

(5) For the purposes of section 9 (requirement of licence for felling) of the Forestry Act 1967<sup>(e)</sup> any felling comprised in the carrying out of any work or operation required for the purposes of, or in connection with, the construction, maintenance or operation 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.

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(a) 1991 c. 59.

(b) 1991 c. 57. Paragraph 5 was amended by section 100(1) and (2) of the Natural Environment and Rural Communities Act 2006 (c. 16), section 84 of, and paragraph 3 of Schedule 11 to, the 2009 Act (c. 23), paragraphs 40 and 49 of Schedule 25 to the Flood and Water Management Act 2010 (c. 29) and S.I. 2013/755. Paragraph 6 was amended by paragraph 26 of Schedule 15 to the Environment Act 1995 (c. 25), section 224 of, and paragraphs 20 and 24 of Schedule 16, and Part 5(B) of Schedule 22, to, the 2009 Act and S.I. 2013/755. Paragraph 6A was inserted by section 103(3) of the Environment Act 1995.

(c) 2017 c. 20.

(d) S.I. 1997/1160, amended by S.I. 2015/377.

(e) 1967 c. 10.

(6) Despite the provisions of section 208 (liability) of the 2008 Act, for the purposes of regulation 6 of the Community Infrastructure Levy Regulations 2010<sup>(a)</sup> 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**

**10.**—(1) Where proceedings are brought under section 82(1) (summary proceedings by a person aggrieved by statutory nuisance) of the Environmental Protection Act 1990<sup>(b)</sup> in relation to a nuisance falling within paragraph, (a), (d), (e), (fb), (g) or (ga) of section 79(1) of that Act no order is to be made, and no fine may be imposed, under section 82(2) of that Act if—

- (a) the defendant shows that the nuisance—
  - (i) relates to premises used by the undertaker for the purposes of or in connection with the construction, maintenance or decommissioning of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) of the Control of Pollution Act 1974<sup>(c)</sup>; or
  - (ii) is a consequence of the construction, maintenance or decommissioning of the authorised development and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) For the purposes of paragraph (1), compliance with the controls and measures described in the construction environment management plan and decommissioning environmental management plan approved under Schedule 2 (requirements) to this Order will be sufficient, but not necessary, to show that an alleged nuisance could not reasonably be avoided.

(3) Section 61(9) (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 premises by the undertaker for purposes of, or, in connection with, the construction, maintenance or decommissioning of the authorised development.

## **PART 3**

### **STREETS**

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

**11.**—(1) Works executed under this Order in relation to a highway, which consists of or includes a carriageway are to be treated for the purposes of Part 3 (street works in England and Wales) of the 1991 Act as major highway works if—

- (a) they are of a description mentioned in any of paragraphs (a), (c) to (e), (g) and (h) of section 86(3) of that Act (which defines what highway authority works are major highway works); or
- (b) they are works which, had they been executed by the highway authority, might have been carried out in exercise of the powers conferred by section 64 (dual carriageways and

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

(b) 1990 c. 43.

(c) 1974 c. 40. Section 61(9) and 65(8) were 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.

roundabouts) of the 1980 Act or section 184 (vehicle crossings over footways and verges) of that Act.

(2) In Part 3 (street works in England and Wales) of the 1991 Act, in relation to works which are major highway works by virtue of paragraph (1), references to the highway authority concerned are to be construed as references to the undertaker.

(3) The following provisions of the 1991 Act (including any equivalent or modified provision in any permit scheme) do not apply in relation to any works executed under the powers conferred by this Order —

- (a) section 56 (power to give directions as to timing)(a);
- (b) section 56A (power to give directions as to placing of apparatus)(b);
- (c) section 58 (restrictions following substantial road works)(c);
- (d) section 58A (restriction on works following substantial street works)(d);
- (e) section 73A (power to require undertaker to re-surface street)(e);
- (f) section 73B (power to specify timing etc. of re-surfacing)(f);
- (g) section 73C (materials, workmanship and standard of re-surfacing)(g);
- (h) section 78A (contributions to costs of re-surfacing by undertaker)(h); and
- (i) Schedule 3A (restriction on works following substantial street works)(i).

(4) The provisions of the 1991 Act(j) mentioned in paragraph (5) (which together with other provisions of that Act, apply in relation to the execution of street works) and any regulations made, or code of practice issued or approved under, those provisions apply (with the necessary modifications) in relation to any closure, alteration or diversion of a street of a temporary nature by the undertaker under the powers conferred by article 14 (temporary closure of streets and public rights of way), whether or not the closure, alteration or diversion constitutes street works within the meaning of that Act.

(5) The provisions of the 1991 Act(k) referred to in paragraph (4) are—

- (a) section 54 (advance notice of certain works) subject to paragraph (6);
- (b) section 55 (notice of starting date of works subject to paragraph (6));
- (c) section 57 (notice of emergency works)(l);
- (d) section 59 (general duty of street authority to co-ordinate works)(m);
- (e) section 60 (general duty of undertakers to co-operate);
- (f) section 68 (facilities to be afforded to street authority);
- (g) section 69 (works likely to affect other apparatus in the street);
- (h) section 75 (inspection fees);
- (i) section 76 (liability for cost of temporary traffic regulation);
- (j) section 77 (liability for cost of use of alternative route); and

all such other provisions as apply for the purposes of the provisions mentioned above.

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(a) Section 56 was amended by section 43 of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).  
(b) Section 56A was inserted by section 44 of the Traffic Management Act 2004.  
(c) Section 58 was amended by section 51 of, and Schedule 1 to, the Traffic Management Act 2004.  
(d) Section 58A was amended by section 52 of the Traffic Management Act 2004.  
(e) Section 73A was inserted by section 55 of the Traffic Management Act 2004.  
(f) Section 73B was inserted by section 55 of the Traffic Management Act 2004.  
(g) Section 73C was inserted by section 55 of the Traffic Management Act 2004.  
(h) Section 78A was inserted by section 57 of the Traffic Management Act 2004.  
(i) Schedule 3A was inserted by section 52(2) of, Schedule 4 to, the Traffic Management Act 2004.  
(j) Sections 55, 57, 60, 68 and 69 were amended by the Traffic Management Act 2004.  
(k) Sections 55, 57, 60, 68 and 69 were amended by the Traffic Management Act 2004.  
(l) As amended by section 49(1) of the Traffic Management Act 2004 (c. 18).  
(m) As amended by section 42 of the Traffic Management Act 2004.

(6) Sections 54 and 55 of the 1991 Act as applied by paragraph (4) have effect as if references in section 57 of that Act to emergency works were a reference to a closure, alteration or diversion (as the case may be) required in a case of emergency.

(7) Nothing in article 13 (construction and maintenance of altered streets)—

- (a) affects the operation of section 87 (prospectively maintainable highways) of the 1991 Act;
- (b) means that the undertaker is not by reason of any duty under that article to maintain a street or to be taken to be the street authority in relation to that street for the purposes of Part 3 of that Act; or
- (c) has effect in relation to maintenance works which are street works within the meaning of the 1991 Act, as respects which the provisions of Part 3 (street works in England and Wales) of the 1991 Act apply.

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

**12.—**(1) The undertaker may for the purposes of the authorised development, or in connection with the authorised development, alter the layout of or carry out any works in the streets specified in column (1) of Schedule 4 (alteration of streets) in the manner specified in relation to that street in column (2).

(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 maintaining or decommissioning the authorised development, alter permanently or temporarily 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 the carriageway by reducing the width of any kerb or verge within the street;
- (b) alter the level or increase the width of any such kerb or verge;
- (c) make and maintain passing places; and
- (d) alter, remove, replace, install and relocate any street furniture, including bollards, lighting columns, road signs and chevron signs.

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

(4) The powers conferred by paragraph (2) must not be exercised without the prior written consent of 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.

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

(7) An application for consent under paragraph (4) is deemed advance notice under section 54 of the 1991 Act where advance notice is required.

### **Construction and maintenance of altered streets**

**13.—**(1) The alterations to each of the streets specified in column (1) of the table in Schedule 4 (alteration of streets) to this Order must be completed to the reasonable satisfaction of the street authority and, unless otherwise agreed by the street authority, the alterations must be maintained by and at the expense of the undertaker for a period of 12 months from their completion and from the expiry of that period by and at the expense of the street authority.

(2) Those restoration works carried out in accordance with article 12(3) (power to alter layout, etc., of streets) must be completed to the reasonable satisfaction of the street authority and must be maintained by the undertaker for a period of 12 months from their completion and from the expiry of that period by and at the expense of the street authority.

(3) 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.

(4) For the purposes of a defence under paragraph (3), 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 or restriction of streets and public rights of way**

**14.—**(1) Without prejudice to the generality of paragraph (2), the undertaker may temporarily close, alter, divert, restrict or authorise the use by vehicles, or classes of vehicles, or pedestrians of—

- (a) the streets set out in column (1) of Part 1 of Schedule 5 (streets and public rights of way to be temporarily or permanently closed or restricted) to the extent specified, by reference to the letters and numbers shown on the streets and access plan in column (1) of that Schedule; and
- (b) the public rights of way set out in column (1) of Part 2 and Part 3 of Schedule 5 (streets and public rights of way to be temporarily or permanently closed or restricted) to the extent specified, by reference to the letters and numbers shown on the streets and access plan in column (1) of that Schedule.

(2) Subject to paragraph (5) the undertaker, for the purposes of, or in connection with, the construction, operation, maintenance and decommissioning of the authorised development may temporarily close, alter, divert, prohibit the use of, authorise the use of or restrict the use of any street or public right of way and may for any reasonable time—

- (a) divert the traffic or a class of traffic from the street; and
- (b) subject to paragraph (4), prevent all persons from passing along the street.

(3) The undertaker may use any street temporarily closed, altered, diverted, prohibited or restricted under the powers conferred by this article within the Order limits as a temporary working site.

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

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

- (a) any street or public right of way referred to in paragraph (1) without first consulting the street authority; and

- (b) any other street or public right of way without the consent of the street authority, such consent not to be unreasonably withheld or delayed.

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

(7) The undertaker, for the purposes of, or in connection with, the construction, operation, maintenance and decommissioning of the authorised development, may temporarily close, prohibit the use of, authorise the use of, restrict the use of, alter or divert any public right of way within the Order limits which is added to the definitive map and statement (within the meaning of the Wildlife and Countryside Act 1981) on or after [            ].

(8) If a street authority which receives a valid application for consent under paragraph (5(b)) fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application was made, it is deemed to have granted consent.

### **Permanent closure or restriction of public rights of way**

**15.—**(1) The undertaker may, for the purposes of the authorised development—

- (a) permanently stop up the public right of way specified in columns 1 and 2 of Part 4 (public rights of way to be permanently closed with diversion) of Schedule 5 (streets and public rights of way to be temporarily or permanently closed or restricted) to the extent specified in column 2 of that Part of that Schedule;
- (b) provide the substitute public right of way described in column 3 of Part 4 (public rights of way to be permanently closed with diversion) of Schedule 5 (streets and public rights of way to be temporarily or permanently closed or restricted);

(2) No public right of way may be closed pursuant to paragraph (1)(a) unless the substitute public right of way has first been provided pursuant to paragraph (1)(b) to the reasonable satisfaction of the relevant street authority.

### **Access to works**

**16.—**(1) 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 Schedule 6 (access to works); and
- (b) with the consent of the street authority form and layout such other means of access, or improve existing means of access, at such locations within the Order limits.

(2) If the street authority which receives an application for consent under paragraph (1)(b) fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application was made, it is deemed to have granted consent.

### **Use of private roads**

**17.—**(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 of the authorised development.

(2) The undertaker must pay reasonable compensation to 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.

## **Traffic regulation measures**

**18.—**(1) 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, maintenance and decommissioning of the authorised development—

- (a) temporarily make provision for traffic signs and signals and use of bankpersons in respect of the lengths of road specified in Part 1 of Schedule 7 (traffic regulation measures) and the placing of any 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<sup>(a)</sup>; and
- (b) temporarily make provision, in respect of the lengths of road specified in Part 2 of Schedule 7 (traffic regulation measures) imposing the temporary speed limit mentioned in column (2).

(2) Subject to the provisions of this article and without limitation to the exercise of the powers conferred by paragraph (1), the undertaker may for the purposes of the construction, maintenance or decommissioning of the authorised development make temporary provision—

- (a) as to the speed at which vehicles may proceed along any road;
- (b) permitting, prohibiting or restricting the closing, 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 or 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 or made, or having effect as if made, under the 1984 Act

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

(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 Amendments) Regulations 2011<sup>(b)</sup> when in accordance with regulation 3(5) of those regulations.

(4) Before exercising the power conferred by paragraph (2) 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, which consent must not be unreasonably withheld.

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

- (a) except in the case of an emergency, given not less than 14 days' notice in writing of its intention to do so to the chief officer of police and to the traffic authority in whose area the road is situated; and
- (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 newspapers 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 paragraphs (1) or (2) of this article may be suspended, varied or revoked by the undertaker from time to time by subsequent exercise of the powers conferred in paragraphs (1) or (2).

(7) Any provision made by the undertaker under paragraphs (1) or (2)—

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<sup>(a)</sup> S.I. 2016/362.

<sup>(b)</sup> S.I. 2011/935.

- (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).

(8) If the traffic authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent under paragraph (4)(b) the traffic authority is deemed to have granted consent.

## PART 4

### SUPPLEMENTAL POWERS

#### **Discharge of water**

19.—(1) Subject to sub-paragraphs (3), (4) and (8) the undertaker may use any watercourse, public sewer or drain for the drainage of water in connection with the construction, 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 such terms and conditions as that person may reasonably impose, but must not be unreasonably withheld or delayed.

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

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

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

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

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

(8) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to Homes England, the Environment Agency, a harbour authority within the meaning of section 57

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(a) 2004 c. 18. There are amendments to this Act not relevant to this Order.

(b) 1991 c. 56. Section 106 was amended by section 35(8)(a) of the Competition and Service (Utilities) Act 1992 (c. 43) and sections 36(2) and 99 of the Water Act 2003 (c. 37). There are other amendments to this section which are not relevant to this Order.

(c) S.I. 2016/1154.

(interpretation) of the Harbours Act 1964(a), an internal drainage board, a joint planning board, a local authority, a National Park Authority, a sewerage undertaker or an urban development corporation; and

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

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

### **Protective work to buildings and land**

**20.**—(1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any land and any building or structure located within the Order limits or which may be affected by the authorised development as the undertaker considers necessary or expedient.

(2) Protective works may be carried out—

- (a) at any time before or during the construction or decommissioning of any part of the authorised development in the vicinity of the land and building; or
- (b) after the completion of that part of the authorised development in the vicinity of the land and 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 and place on, leave on and remove from the land and building any apparatus and equipment for use in connection with the survey.

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

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

and if it is reasonably required, the undertaker may take possession, or exclusive possession, of the building and any land or part thereof for the purpose of carrying out the protective works.

(5) Before exercising—

- (a) a power under paragraph (1) to carry out protective works to a building;
- (b) a power under paragraph (3) to enter a building and land within its curtilage;
- (c) a power under paragraph (4)(a) to enter a building and land within its curtilage; or
- (d) a power 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 the power and, in a case falling within sub-paragraph (a) or (c), specifying the protective works proposed to be carried out.

(6) Where a notice is served under paragraph (5)(a), (5)(c) or (5)(d) the owner or occupier of the building, structure or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question of whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 47 (arbitration).

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(a) 1964 c. 40.

(7) The undertaker must pay reasonable compensation to the owners or occupiers of any building, structure or land in relation to which powers under this article have been exercised for any loss or damage arising to them by reason of the exercise of the powers.

(8) Where—

- (a) protective works are carried out to a building or structure under this article; and
- (b) within the period of five years beginning with the date of final commissioning for that part of the authorised development in the vicinity of the building or structure it appears that the protective works are inadequate to protect the building or structure against damage caused by the construction, operation, maintenance or decommissioning of that part of the authorised development,

the undertaker must pay reasonable compensation to the owners or occupiers of the building or structure for any loss or damage sustained by them.

(9) Subject to article 51 (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) of the 2008 Act.

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

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

- (a) underpinning, strengthening and any other works the purpose of which is to prevent damage that may be caused to the building by the construction, operation, maintenance, use or decommissioning of the authorised development; and
- (b) any works the purpose of which is to remedy any damage that has been caused to the building by the construction, maintenance, use or decommissioning of the authorised development.

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

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

**21.—**(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised development and—

- (a) survey or investigate the land (including any watercourses, groundwater, static water bodies or vegetation on the land);
- (b) without limitations to the scope of sub-paragraph (a), make any excavation, trial holes, boreholes and other investigations in such positions on the land as the undertaker thinks fit to investigate the extent or the nature of the surface layer, subsoil and ground water and remove soil and water samples and discharge water from sampling operations on to the land;
- (c) without limitation to the scope of sub-paragraph (a), carry out ecological or archaeological investigations on such land including making any excavations, trenches or trial holes on the land for such purposes; 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 and 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 and that notice must indicate the nature of the activity that the undertaker intends to carry out.

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

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

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

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

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

but such consent must not be unreasonably withheld or delayed.

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

(6) If either a highway authority or a street authority which receives an application for consent fails to notify the undertaker of its decision within 28 days of receiving the application for consent—

- (a) under paragraph (4)(a) in the case of a highway authority; or
- (b) under paragraph (4)(b) in the case of a street authority,

that authority will be deemed to have granted consent.

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

## PART 5

### POWERS OF ACQUISITION

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

**22.**—(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised development or to facilitate, or is incidental, to it.

(2) This article is subject to—

- (a) article 24 (time limit for exercise of authority to acquire land compulsorily);
- (b) article 25 (compulsory acquisition of rights and imposition of restrictive covenants);
- (c) article 29 (acquisition of subsoil only);
- (d) article 32 (rights under or over streets);
- (e) article 33 (temporary use of land for carrying out the authorised development); and
- (f) article 39 (crown rights).

#### **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(a) is incorporated in this Order subject to the modification that—

- (a) paragraph 8(3) is not incorporated;
- (b) for the “acquiring authority” substitute “the undertaker”;
- (c) for “undertaking” substitute “authorised development”; and
- (d) for “compulsory purchase order” substitute “this Order”.

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(a) 1981 c. 67.

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

**24.**—(1) After the end of the period of 5 years beginning on the day on which this Order comes into force (and subject to article 30 (modification of Part 1 of the Compulsory Purchase Act 1965) and article 28 (application of the 1981 Act)—

- (a) no notice to treat is to be served under Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act; and
- (b) no declaration is to be executed under section 4 (execution of declaration) of the 1981 Act as applied by article 28 (application of the 1981 Act).

(2) The authority conferred by article 33 (temporary use of land for carrying out the authorised development) ceases at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

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

**25.**—(1) Subject to paragraphs (2) to (4), the undertaker may acquire such rights over the Order land, or impose restrictive covenants affecting the Order land including rights and restrictive covenants for the benefit of a statutory undertaker or any other person, as may be required for any purpose for which that land may be acquired under article 22 (compulsory acquisition of land), by creating them as well as by acquiring rights already in existence.

(2) In the case of the Order land specified in column (1) of Schedule 8 (land of which temporary possession may be taken and new rights etc. may be acquired) the undertaker's powers of compulsory acquisition are limited to the acquisition of rights in the land and the imposition of restrictive covenants, as may be required for or in connection with the authorised development for the purposes specified in relation to that land in column (2) of that Schedule.

(3) The power under paragraph (1) to acquire the rights and to impose the restrictive covenants described in Schedule 8 (land of which temporary possession may be taken and new rights etc. may be acquired) for the benefit of statutory undertakers or for the benefit of any other person—

- (a) does not preclude the acquisition of such other rights and the imposition of such other restrictive covenants in respect of the same land in accordance with Schedule 8 (land of which temporary possession may be taken and new rights etc. may be acquired) as may be required for the benefit of any other statutory undertaker or any other person; and
- (b) must not be exercised by the undertaker in a way that precludes the acquisition of such other rights and the imposition of such other restrictive covenants in respect of the same land in accordance with Schedule 8 (land of which temporary possession may be taken and new rights etc. may be acquired) as are required for the benefit of any other statutory undertaker or any other person.

(4) Subject to Schedule 2A (counter-notice requiring purchase of land) of the 1965 Act, as modified by Schedule 9 (modification of compensation and compulsory purchase enactments for the creation of new rights and imposition of new restrictive covenants), where the undertaker acquires a right over land or the benefit of a restrictive covenant affecting land under paragraph (1) or (2), the undertaker is not required to acquire a greater interest in that land.

(5) Schedule 9 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of new restrictive covenants) has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of a restrictive covenant.

### **Private rights over land**

**26.**—(1) Subject to the provisions of this article, all private rights or restrictive covenants over land under article 22 (compulsory acquisition of land) are extinguished—

- (a) as from the date of acquisition of the land 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,

whichever is the earliest.

(2) Subject to the provisions of this article, all private rights over land subject to the compulsory acquisition of rights or the imposition of restrictive covenants under article 25 (compulsory acquisition of rights and imposition of restrictive covenants) are extinguished in so far as their continuance would be inconsistent with the exercise of the right or burden of the restrictive covenant—

- (a) as from the date of the acquisition of the right or the benefit of the restrictive covenant by the undertaker whether compulsorily, by agreement or through the grant of a lease of the land by agreement; or
- (b) on the date of entry on the land by the undertaker under section 11(1) (power of entry) of the 1965 Act,

whichever is the earliest.

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

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

(5) Any person who suffers loss by the extinguishment or suspension of any private right 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 (determination of questions of disputed compensation) 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 35 (statutory undertakers) applies.

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

- (a) any notice given by the undertaker before—
  - (i) the completion of the acquisition of the land or the acquisition of the rights over land or the imposition of restrictive covenants over or affecting the land;
  - (ii) the undertaker's appropriation of the land;
  - (iii) the undertaker's entry onto the land; or
  - (iv) the undertaker's taking temporary possession of the land,
 that any or all of those paragraphs do not apply to any right specified in the notice; or
- (b) any agreement made at any time between the undertaker and the person in or to whom the right in question is vested or belongs.

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

- (a) is made with a person in or to whom the right is vested or belongs; and
- (b) is expressed to have effect also for the benefit of those deriving title from or under that person,

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

(9) Reference in this article to private rights over land include any right of way, trust, incident, 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 use of land arising by virtue of a contract, agreement or undertaking having that effect.

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

27.—(1) Any authorised activity which takes place on land within the Order land (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 the virtue of a contract.

(3) Subject to article 51 (no double recovery), where an interest, right or restriction to which this article applies is interfered with or breached under paragraph (1), unless otherwise agreed, compensation—

- (a) is payable under section 7 (measure of compensation in case of severance) or 10 (further provision as to compensation for injurious affection) of the 1965 Act; and
- (b) is to be assessed in the same way 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 (4); 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) of this article.

(6) In this article “authorised activity” means—

- (a) the construction, operation, maintenance or decommissioning of any part of the authorised development;
- (b) the exercise of any power authorised by this Order; or
- (c) the use of any land within the Order limits (including the temporary use of land).

### **Application of the 1981 Act**

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

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

(3) In section 1 (application of Act), in subsection (1), omit the words “in themselves”.

(4) In section 1 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.”.

(5) In section 4 (execution of declaration), for subsection (1) substitute—

“(1) The acquiring authority may execute in respect of any of the land which they are authorised to acquire by the compulsory purchase order a declaration in the prescribed form vesting the land in themselves, or in the case of land or a right that they are authorised to acquire for the benefit of a third party in the third party in question, from the end of such period as may be specified in the declaration (not being less than 3 months from the date on which the service of notices required by section 6 is completed).”.

(6) In section 5 (earliest date for execution of declaration), in subsection (2), omit the words from “and this subsection” to the end.

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

(8) In section 5B(1) (extension of time limit during challenge) for “section 23 (application to High Court in respect of compulsory purchase order) of the Acquisition of Land Act 1981, the three year period mentioned in section 5A” substitute “section 118 (legal challenges relating to applications for orders granting development consent) of the 2008 Act, the five year period mentioned in article 24 (time limit for exercise of authority to acquire land compulsorily) of the Whitestone Solar Farm Order 202[ ]”.

(9) In section 6 (notices after execution 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”.

(10) 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)”.

(11) In section 8 (vesting, and right to enter and take possession), after subsection (3), insert—

“(4) In this section references to the acquiring authority include any third party referred to in section 4(1).”.

(12) In section 10 acquiring authority’s liability arising on vesting of the land), in subsection (1), after “vested in an acquiring authority” insert “or a third party”.

(13) In section 11 (recovery of compensation overpaid), for subsection (1) substitute—

“(1) This section applies where after the execution of a general vesting declaration a person (“the claimant”) claims compensation in respect of the acquisition of an interest in land by virtue of the declaration, and the acquiring authority pay compensation in respect of that interest.”.

(14) 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 Whitestone Solar Farm Order 202[ ], which excludes the acquisition of subsoil only from this Schedule.”.

(15) 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 30 (modification of Part 1 of the Compulsory Purchase Act 1965)) to the compulsory acquisition of land under this Order.

### **Acquisition of subsoil only**

**29.—**(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in paragraph (1) of article 22 (compulsory acquisition of land) or article 25 (compulsory acquisition of rights and imposition of restrictive covenants) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

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

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

- (a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act as modified by article 30 (modification of Part 1 of the Compulsory Purchase Act 1965);
- (b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and

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

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

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

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

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

(2) In section 4A(1) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 4” substitute “section 118 of the 2008 Act (legal challenges relating to applications for orders granting development consent), the five year period mentioned in article 24 (time limit for exercise of authority to acquire land compulsorily) of the Whitestone Solar Farm Order 202[ ]”.

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

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

(4) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for “section 4 of this Act” substitute “article 24 (time limit for exercise of authority to acquire land compulsorily) of the Whitestone Solar Farm Order 202[ ]”.

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

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

“(2) But see article 29(3) (acquisition of subsoil only) of the Whitestone 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 17 (use of private roads), article 20 (protective works to buildings and land), article 21 (authority to survey and investigate the land), article 33 (temporary use of land for carrying out the authorised development) or article 34 (temporary use of land for maintaining the authorised development) of the Whitestone Solar Farm Order 202[ ].”.

### **Modification of the 2017 Regulations**

**31.**—(1) Schedule 1 to the 2017 Regulations is modified as follows and without limitation to the other provisions of this article, Form 1 and Form 2 in those regulations will include such other further consequential modifications as are necessary to enable the compulsory acquisition of rights for identified third parties.

(2) In paragraph (3) of Form 1, after “from the date on which the service of notices required by section 6 of the Act is completed”, insert—

“(1A) The [insert land or rights or both] described in Part [ ] of the Schedule hereto as being for the benefit of third parties and more particularly delineated on the plan annexed hereto vests in the third parties in question as from the end of the period of [insert period of 3 months or longer] from the date on which the service of notices required by section 6 of the Act is completed.”.

(3) References in Form 2 to “in themselves” is substituted with “in themselves and any identified third parties”.

(4) In paragraph (b) of the notes on use of Form 2—

- (a) after “Insert the name of the authority” insert “and where the context requires insert a reference to third parties”; and
- (b) omit “Thereafter rely on that definition wherever “(b)” appears in the text.”.

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

**32.—**(1) The undertaker may enter on, appropriate and use so much of the subsoil of or air-space 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 carrying out the authorised development**

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

(a) enter on and take temporary possession of—

- (i) the land specified in column (1) of the table in Schedule 8 (land of which temporary possession may be taken and new rights etc. may be acquired) for the purpose specified in relation to that land in column (2) of the table in that Schedule;
- (ii) any other Order land in respect of which no notice of entry has been served under section 11 (powers of entry) of the 1965 Act and no declaration has been made under section 4 (execution of declaration) of the 1981 Act (other than a notice of entry or a declaration in connection with the acquisition of rights and/or the imposition of restrictive covenants only);
- (b) remove any buildings, agricultural plant, apparatus, drainage, fences, landscaping, debris and vegetation from that land;
- (c) construct temporary works (including the provision of means of access), haul roads, security fencing, bridges, structures and buildings on that land;
- (d) use the land for the purposes of a temporary working site with access to the working site in connection with the authorised development;
- (e) construct any works, on that land as are mentioned in Schedule 1 (authorised development); and
- (f) carry out mitigation works required in accordance with the requirements in Schedule 2 (requirements).

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

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

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

(4) The undertaker is not required to serve notice under paragraph (3) where the undertaker has identified a potential risk to the safety of—

- (a) the authorised development or any of its parts;
- (b) the public; or
- (c) the surrounding environment,

and in such circumstances, the undertaker may enter the land under paragraph (1) subject to giving such period of notice as is reasonably practical in the circumstances.

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

- (a) in the case of land specified in paragraph (1)(a)(i), after the end of the period of one year beginning with the date of 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 notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act or has otherwise acquired the land subject to temporary possession.

(6) 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 unless otherwise agreed but the undertaker is not required to—

- (a) replace any building, structure, debris, drain or electric line removed under this article;
- (b) remove any drainage works installed by the undertaker under this article;
- (c) remove any new road surface or other improvements carried out under this article to any street;
- (d) remove any ground strengthening works which have been placed on the land to facilitate construction of the authorised development;
- (e) remove any fencing or boundary treatments installed by the undertaker under this article to replace or enhance existing fencing or boundary treatments;
- (f) restore the land on which any works have been carried out under paragraph (1)(f) insofar as the works relate to mitigation, compensation or enhancement works identified in the environmental statement or required under the requirements in Schedule 2 (requirements); or
- (g) remove any measures installed over or around statutory undertakers' apparatus to protect that apparatus from the authorised development.

(7) The undertaker must pay compensation to the owners and occupiers of land 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.

(8) 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.

(9) Any dispute as to the satisfactory removal of temporary works and restoration of land under paragraph (5) does not prevent the undertaker giving up possession of the land.

(10) Subject to article 51 (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).

(11) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i) except that the undertaker is not to be precluded from—

- (a) acquiring rights or imposing restrictions over any part of that land under article 25(2) (compulsory acquisition of rights and imposition of restrictive covenants) to the extent that such land is listed in column (1) of Schedule 8 (land of which temporary possession may be taken and new rights etc. may be acquired); or
- (b) acquiring any part of the subsoil (or rights in the subsoil) that land under article 29(2) (acquisition of subsoil only) or any part of the subsoil of or airspace over that land under article 32 (rights under or over streets).

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

(13) 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.

(14) Nothing in this article prevents the taking of temporary possession more than once in relation to any land under paragraph (1).

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

**34.—**(1) Subject to paragraph (2), at any time during the maintenance period (as defined in paragraph (12)) relating to any part of the authorised development, the undertaker may—

- (a) enter on and take temporary possession of any land within the Order land if possession is reasonably required for the purpose of maintaining the authorised development;
- (b) enter on any land within the Order land for the purpose of gaining such access as is reasonably required for the purpose of maintaining the authorised development; and
- (c) construct such temporary works (including the provision of means of access) and 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 (or such period less than 28 days as may be requested by the undertaker and which is then approved by the owner of the land) 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 is not required to serve notice under paragraph (3) where the undertaker has identified a potential risk to the safety of—

- (a) the authorised development or any of its parts;
- (b) the public; or
- (c) the surrounding environment,

and in such circumstances, the undertaker may enter the land under paragraph (1) subject to giving such period of notice as is reasonably practical in the circumstances.

(5) 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.

(6) 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.

(7) 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 powers conferred by this article.

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

(9) 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 (7).

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

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

(12) In this article “the maintenance period” means the period of 5 years beginning with the date of final commissioning save that in relation to landscaping or ecological works where “the maintenance period” means such period as may be approved in the landscape and ecological management plan in accordance with paragraph 9 of Schedule 2 (requirements) to this Order beginning with the date on which that part of the landscaping or ecological works is completed.

### **Statutory undertakers**

**35.** Subject to the provisions of Schedule 11 (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 plans within the Order land and described in the book of reference;
- (b) extinguish the rights of, remove, relocate the rights of or reposition the apparatus belonging to statutory undertakers over or within the Order land;
- (c) construct the authorised development in such a way as to cross underneath or over apparatus belonging to statutory undertakers and other like bodies within the Order land; and
- (d) construct over existing apparatus belonging to statutory undertakers any necessary track or roadway (whether temporary or permanent) together with the right to maintain or remove the same, and install such service media under or over the existing apparatus needed in connection with the authorised development.

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

**36.** Where a street is altered or diverted or its use is temporarily prohibited or restricted under article 12 (power to alter layout, etc., of streets), article 13 (construction and maintenance of altered streets) or article 14 (temporary closure 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 11 (protective provisions), as if this Order had not been made.

### **Acquisition of wayleaves, easements and other rights**

**37.** Schedule 10 (acquisition of wayleaves, easements and other rights) has effect.

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

**38.**—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 35 (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 35 (statutory undertakers), any person who is—

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

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

(3) This article does not have effect in relation to apparatus to which article 36 (apparatus and rights of statutory undertakers in closed streets) or Part 3 (street works in England and Wales) of the 1991 Act applies.

(4) In this article—

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

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

### **Crown rights**

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

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

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

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

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(a) 2003 c. 21.

## PART 6

### MISCELLANEOUS AND GENERAL

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

**40.**—(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, operation or decommissioning 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 may prejudice the operation of any agreement to which this article applies.

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

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

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

**41.** Development consent granted by this Order is treated as specific planning permission for the purposes of section 264(3)(a) (cases in which land is to be treated as operational land for the purposes of that Act) of the 1990 Act.

#### **Planning permission**

**42.**—(1) If planning permission is issued under the 1990 Act for development any part of which is within the Order limits following the publication of this Order that is—

- (a) not itself a nationally significant infrastructure project under the 2008 Act or part of such a project; and
- (b) required to complete or enable the construction, use, operation or decommissioning of any part of the development authorised by this Order,

then the carrying out, use, operation, maintenance or decommissioning of such development in accordance with the terms of the planning permission is not to constitute a breach of the terms of this Order.

(2) To the extent that development granted planning permission under the 1990 Act is inconsistent with authorised development which is carried out under this Order, the development which is the subject matter of the planning permission may continue to be carried out or used notwithstanding that inconsistency and is deemed not to be a breach of this Order and may not be enforced against under the 1990 Act by reason of such inconsistency.

(3) Development carried out, operated or used in accordance with the grant of planning permission under the 1990 Act that is inconsistent with the authorised development under this Order is deemed not to constitute a breach of this Order, and does not prevent the undertaker carrying out the authorised development granted development consent under this Order.

(4) Where the undertaker identifies an inconsistency between a planning permission and this Order which engages the provisions of paragraphs (2) or (3) as the case may be, it must notify the relevant planning authority as soon as reasonably practicable about the existence of the inconsistency, and how the undertaker is proceeding in view of that inconsistency in accordance with this article.

(5) In this article—

“inconsistency” means a circumstance in which a physical conflict exists, or one in which development is no longer capable of being physically implemented or otherwise operated in accordance with the permission or consent granted.

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

**43.—**(1) Subject to paragraph (2) and article 44 (trees subject to tree preservation orders) the undertaker may fell or lop any tree or shrub near the Order limits, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub from—

- (a) obstructing or interfering with the construction, maintenance, operation or decommissioning 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 vehicles to the extent necessary for the purposes of construction, maintenance, operation or decommissioning of the authorised development.

(2) In carrying out any activity authorised by paragraph (1) the undertaker must not do any 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, must be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

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

(5) Without prejudice to the generality of paragraph (4), the undertaker may, for the purposes of the authorised development or in connection with the authorised development remove the hedgerows specified in column (1) of the table in Part 1 of Schedule 12 (hedgerows to be removed) and shown on the vegetation removal plans.

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

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

### **Trees subject to tree preservation orders**

**44.—**(1) Subject to paragraph (2), the undertaker may fell, lop, prune, or cut back the roots of any tree which is the subject of a tree preservation order or that becomes subject to a tree preservation order which was made after the date this Order is made if it reasonably believes it to be necessary to do so in order to prevent the tree—

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or
- (b) from constituting a danger to persons using the authorised development.

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(a) S.I. 1997/1160.

- (2) In carrying out any activity authorised by paragraph (1)—
- (a) the undertaker will do no unnecessary damage to any tree and must pay compensation to any person for any loss or damage arising from such activity; and
  - (b) the duty contained in section 206(1) (replacement of trees) of the 1990 Act will not apply.
- (3) The authority given by paragraph (1) constitutes a deemed consent under the relevant tree preservation order.
- (4) Development consent granted by this Order is to be treated as planning permission in accordance with Part 3 of the 1990 Act for the purposes of regulation 14 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012 and the Forestry Act 1967.
- (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 of the 1961 Act.

### **Certification of documents, etc.**

- 45.**—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of all documents and plans referred to in Schedule 13 (documents to be certified) to this Order for certification that they are true copies of those documents.
- (2) Where any plan or document set out in Schedule 13 (documents to be certified) requires to be amended to reflect the terms of the Secretary of State's decision to make the Order, that plan or document in the form amended to the Secretary of State's satisfaction is the version of the plan or document required to be certified under paragraph (1).
- (3) 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.

### **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 (6) to (8), by electronic transmission.
- (2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.
- (3) For the purposes of section 7 (references to service by post) of the Interpretation Act 1978<sup>(a)</sup> as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address and otherwise—
- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body, and
  - (b) in any other case, the last known address of that person at that time of service.
- (4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having an interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—
- (a) addressing it to that person by the description of "owner", or as the case may be "occupier" of the land (describing it); and

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(a) 1978 c. 30.

- (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) 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.

## **Arbitration**

47.—(1) Except where otherwise expressly provided for in this Order and unless otherwise agreed in writing between the parties, any difference under any provision of this Order (other than a difference which falls to be determined by the tribunal or which falls to be determined under paragraph 22 (appeals) of Schedule 2 to this Order) must be resolved in accordance with this article.

(2) The parties must use reasonable endeavours to settle any difference to which paragraph (1) applies through negotiations undertaken in good faith by senior representatives of the parties.

(3) Any difference which is not resolved to the satisfaction of the parties under paragraph (2) within ten business days of the dispute arising (or such longer period as may be agreed) must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the President of the Institution of Civil Engineers.

(4) 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.

## **Requirements, appeals, etc.**

48.—(1) Where an application or request is submitted to a consenting authority for any consent, agreement or approval required or contemplated by any other provisions of the Order, such consent, agreement or approval, if given, must be given in writing and must not be unreasonably withheld or delayed.

(2) Part 2 (procedure for discharge of requirements) of Schedule 2 (requirements) has effect in relation to all agreements or approvals granted, refused or withheld in relation to requirements included in Part 1 of that Schedule, and any document referred to in any requirement in that Part 1.

(3) The procedure set out in Part 2 of Schedule 2 (requirements) has effect in relation to any other consent, agreement or approval required under this Order where such consent, agreement or approval is granted subject to any condition to which the undertaker objects or is refused or is withheld.

### **Protective provisions**

49. Schedule 11 (protective provisions) has effect.

### **Funding**

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

- (a) a guarantee and the amount of that guarantee approved by the Secretary of State in respect of the liabilities of the undertaker to pay compensation in accordance with the provisions referred to in paragraph (2) in relation to that land; or
- (b) an alternative form of security and the amount of that security for that purpose approved by the Secretary of State in respect of the liabilities of the undertaker to pay compensation in accordance with the provisions referred to in paragraph (2) in relation to that land.

(2) The provisions are—

- (a) article 22 (compulsory acquisition of land);
- (b) article 25 (compulsory acquisition of rights and imposition of restrictive covenants);
- (c) article 26 (private rights over land);
- (d) article 29 (acquisition of subsoil only);
- (e) article 32 (rights under or over streets); and
- (f) article 35 (statutory undertakers).

(3) A guarantee or alternative form of security given in respect of any liability of the undertaker to pay compensation in accordance with the provisions referred to in paragraph (2) is to be treated as enforceable against the guarantor or person providing the alternative form of security by any person to whom such compensation is payable and must be in such a form as to be capable of enforcement by such a person.

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

### **No double recovery**

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

Signed by Authority of the Secretary of State for Energy Security & Net Zero

Date

*Name*  
Head of Energy Infrastructure Planning  
Department for Energy Security & Net Zero

# SCHEDULES

## SCHEDULE 1

Article 3

### AUTHORISED DEVELOPMENT

**1. In this Schedule—**

“CCTV” means a closed circuit television security system;

“electrical cables” means—

- (a) cables of differing types and voltages installed for the purposes of conducting electricity, auxiliary cables, cables connecting to direct current (DC) boxes, earthing cables and optical fibre cables;
- (b) works connected with cable laying including excavations, storage of excavated material, jointing pits, hardstanding adjoining the jointing pits, combiner boxes, fibre bays, cable ducts, cable protections, joint protection, manholes, kiosks, marker posts, underground cable marker, tiles and tape, send and receive pits for horizontal directional drilling, trenching, lighting, and a pit or container to capture fluids associated with drilling;

“inverter” means electrical equipment required to convert direct current power generated by the solar modules to alternating current;

“mounting structure” means a frame or rack made of galvanised steel or other material designed to support the solar modules and inverters and mounted in piles driven into the ground;

“National Grid substation” means the National Grid Long Lane 400kV substation;

“permissive paths” means new access tracks providing restricted public access within the Order limits;

“power conversion station” means inverters, transformers and switchgear housed in an enclosure mounted placed on a permeable or concrete foundation;

“solar module” means a solar photovoltaic panel designed to convert solar irradiance to electrical energy fitted to mounting structures;

“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;

“transformer” means a structure containing electrical switch gear serving to transform electricity to a higher voltage;

“Whitestone 1” means the land that forms part of the authorised development, shown as Whitestone 1 on the Location Plan[s](#);

“Whitestone 2” means the land that forms part of the authorised development, shown as Whitestone 2 on the Location Plan[s](#); and

“Whitestone 3” means the land that forms part of the authorised development, shown as Whitestone 3 on the Location Plan[s](#).

**2.** In the east of Sheffield, South Yorkshire, within the administrative areas of the City of Doncaster Council and Rotherham Metropolitan Borough Council, a nationally significant infrastructure project as defined in sections 14 and 15 of the 2008 Act and associated development under section 115 of the 2008 Act as amended by the Infrastructure Planning (Offshore Wind and Solar Generation) Order 2025.

The nationally significant infrastructure project comprises all or part of the following works—

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

- (a) **Work No. 1-1**— works in Whitestone 1 comprising solar modules, as shown on sheets 1, 2, 3 and 4 of the Works Plans;
- (b) **Work No. 1-2A**— works in Whitestone 2 comprising solar modules as shown on sheet 8 of the Works Plans;
- (c) **Work No. 1-2B**— works in Whitestone 2 comprising solar modules as shown on sheets 12 and 16 of the Works Plans;
- (d) **Work No. 1-2C**— works in Whitestone 2 comprising solar modules as shown on sheets 10, 11 and 13 of the Works Plans;
- (e) **Work No. 1-2D**— works in Whitestone 2 comprising solar modules as shown on sheets 14, 17 and 18 of the Works Plans;
- (f) **Work No. 1-2E**— works in Whitestone 2 comprising solar modules as shown on sheets 14, 15, 18 and 19 of the Works Plans;
- (g) **Work No. 1-2F**— works in Whitestone 2 comprising solar modules as shown on sheets 19 and 20 of the Works Plans;
- (h) **Work No. 1-2G**— works in Whitestone 2 comprising solar modules as shown on sheets 20, 21 and 22 of the Works Plans;
- (i) **Work No. 1-3A**— works in Whitestone 3 comprising solar modules as shown on sheet 26 of the Works Plans;
- (j) **Work No. 1-3B**— works in Whitestone 3 comprising solar modules as shown on sheet 27 of the Works Plans;
- (k) **Work No. 1-3C**— works in Whitestone 3 comprising solar modules as shown on sheets 28 and 29 of the Works Plans,

and in connection with any of Work Nos. 1-1 to 1-3C—

- (i) power conversion stations;
- (ii) secondary construction compounds;
- (iii) cable crossings, including over watercourses,

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

**Work No. 2** — works to lay high voltage electrical cables and to facilitate the connection of the authorised development to the National Grid substation including—

- (a) **Work No. 2A**— electrical cables to connect two parts of Work No 1-1 to each other as shown on sheet 4 of the Works Plans;
- (b) **Work No. 2B**— electrical cables to connect Work Nos. 1-1 and 1-2A to each other as shown on sheets 4, 5, 6, 7 and 8 of the Works Plans;
- (c) **Work No. 2C**— electrical cables to connect Work Nos. 1-2A, 1-2C, 4-2A and 2D-1 to each other as shown on sheets 8, 10 and 11 of the Works Plans;
- (d) **Work No. 2D**— one of—
  - (i) Work No. 2D-1— electrical cables to connect Work Nos. 2C and 2E to each other as shown on sheets 9 and 10 of the Works Plans; or
  - (ii) Work No. 2D-2— electrical cables to connect Work Nos. 2E and 2F to each other as shown on sheets 9 and 12 of the Works Plans;
- (e) **Work No. 2E**— electrical cables to connect Work Nos. 2C and 2F to each other via either 2D-1 or 2D-2 as shown on sheet 9 of the Works Plans and electrical engineering works in and around the Long Land 400kV substation.
- (f) **Work No. 2F**— electrical cables to connect Work Nos. 1-2B, 2D-2 and 1-2C to each other as shown on sheets 12 and 13 of the Works Plans;
- (g) **Work No. 2G**— one of—

- (i) Work No. 2G-1— electrical cables to connect parts of Work No. 1-2B to each other as shown on sheet 12 of the Works Plans; or
  - (ii) Work No. 2G-2— electrical cables to connect parts of Work No. 1-2B to each other as shown on sheet 12 of the Works Plans;
  - (h) **Work No. 2H**— electrical cables to connect Work Nos. 1-2C and 1-2D to each other as shown on sheets 13 and 14 of the Works Plans;
  - (i) **Work No. 2I**—one of—
    - (i) Work No. 2I-1— electrical cables to connect Work Nos. 1-2D and 1-2E to each other as shown on sheets 14 and 15 of the Works Plans; or
    - (ii) Work No. 2I-2— electrical cables to connect Work Nos. 1-2E and 1-2D to each other as shown on sheet 18 of the Works Plans;
  - (j) **Work No. 2J**— electrical cables to connect Work Nos. 1-2F and 2K-1 or 2K-2 to each other as shown on sheet 20 of the Works Plans;
  - (k) **Work No. 2K**—one of—
    - (i) Work No. 2K-1— electrical cables to connect Work Nos. 1-2J and 1-2G to each other as shown on sheets 20 and 21 of the Works Plans; or
    - (ii) Work No. 2K-2— electrical cables to connect Work Nos. 2J and 1-2G to each other as shown on sheet 20 of the Works Plans;
  - (l) **Work No. 2L**— electrical cables to connect Work Nos. 1-2G and 1-3A to each other as shown on sheets 22, 23, 24, 25 and 26 of the Works Plans;
  - (m) **Work No. 2M**— electrical cables to connect Work Nos. 1-3A and 1-3C to each other as shown on sheets 26 and 28 of the Works Plans;
  - (n) **Work No. 2N**— electrical cables to connect Work Nos. 1-3B and 1-3C to each other as shown on sheets 27 and 29 of the Works Plans;
- and in connection with any of Work Nos. 2A to 2N—
- (i) works required for crossing, moving, re-rerouting or over/underground of existing utility assets (including water, gas, sewer pipes, electricity distribution/transmission cabling, telecommunications, drainage etc.);
  - (ii) earthworks;
  - (iii) power conversion stations;
  - (iv) secondary construction compounds; and
  - (v) cables crossings, including under watercourses.

**Work No. 3**— a battery energy storage system in Whitestone 2, as shown on sheets 10 and 11 of the Works Plans including—

- (a) battery energy storage cell;
- (b) electricity stabilizer units including inverters, transformers, DC-AC converters, power conversion stations and ancillary equipment;
- (c) monitoring and control systems;
- (d) heating, ventilation and air conditioning systems;
- (e) fire safety infrastructure and water connection or storage;
- (f) ancillary buildings;
- (g) containers or enclosures housing all or any of (a) to (f); and
- (h) access gates and track and security palisade fencing.

**Work No. 4** — development of onsite substations including—

- (a) **Work No. 4-2A**— works on Whitestone 2, as shown on sheets 10 and 11 of the Works Plans comprising—

- (i) primary substation, switch room buildings, concrete foundations and ancillary equipment including reactive power units;
  - (ii) power conversion system units including inverters, switch gear, transformers and ancillary equipment;
  - (iii) control building, storage containers and space, welfare facilities, waste storage within a fenced compound, hard standing areas and car parking;
  - (iv) communications infrastructure;
  - (v) monitoring and control systems;
  - (vi) harmonic filter compound;
  - (vii) deluge system including water tanks and fire suppression, and drainage and water containment features and associated infrastructure;
  - (viii) lighting rods;
  - (ix) electrical cables; and
  - (x) access gates and tracks, security palisade and electrified fencing, and bunding.
- (b) **Work No. 4-1A**— works on Whitestone 1, as shown on sheets 1, 3 and 4 of the Works Plans, comprising—
- (i) satellite substation, switch room buildings, concrete foundations and ancillary equipment including reactive power units;
  - (ii) power conversion system units including inverters, switch gear, transformers and ancillary equipment;
  - (iii) control building, storage containers and space, welfare facilities, waste storage within a fenced compound, hard standing areas and car parking;
  - (iv) communications infrastructure;
  - (v) harmonic filter compound;
  - (vi) deluge system including water tanks and fire suppression, and drainage and water containment features and associated infrastructure;
  - (vii) lighting rods;
  - (viii) electrical cables; and
  - (ix) access gates and tracks, security palisade and electrified fencing, and bunding.
- (c) **Work No. 4-2B**— works on Whitestone 2, as shown on sheets 19 and 20 of the Works Plans, comprising—
- (i) satellite substation, switch room buildings, concrete foundations and ancillary equipment including reactive power units;
  - (ii) power conversion system units including inverters, switch gear, transformers and ancillary equipment;
  - (iii) control building, storage containers and space, welfare facilities, and waste storage within a fenced compound, hard standing areas and car parking;
  - (iv) communications infrastructure;
  - (v) harmonic filter compound;
  - (vi) deluge system including water tanks and fire suppression, and drainage and water containment features and associated infrastructure;
  - (vii) lighting rods; and
  - (viii) electrical cables; and
  - (ix) access gates and tracks, security palisade and electrified fencing, and bunding.

**Work No. 5**— works to facilitate access to Work Nos. 1 to 4 and 6 to 9, as shown on sheets 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28 and 29 of the Works Plans including—

- (a) creation of accesses from the street;
- (b) enhancement of existing accesses from the street;
- (c) creation of visibility splays;
- (d) creating of passing places; and
- (e) works to widen and surface the street and private means of access.

**Work No. 6**— works to create and maintain areas of green infrastructure and habitat management, as shown on sheets 1, 2, 3, 4, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 25, 26, 27, 28 and 29 of the Works Plans, including—

- (a) landscape and biodiversity mitigation and enhancement measures including, tree and hedgerow planting;
- (b) habitat creation and management including, earth works including embankments, landscaping and construction of drainage infrastructure;
- (c) laying down of permissive paths, signage and information boards; and
- (d) fencing, screening, gates, boundary treatment and other means of enclosure.

**Work No. 7**— drainage pipeline for primary substation to the north of Upper Whiston, as shown on sheet 10 of the Works Plans including—

- (a) access track; and
- (b) laydown area.

**Work No. 8**— temporary primary construction compounds as shown on sheets 1, 8, 13, 14, 15, 20, 26, 27 and 29 of the Works Plans including—

- (a) areas of hardstanding;
- (b) car parking;
- (c) site and welfare offices, portacabins;
- (d) security infrastructure, including cameras, perimeter fencing and lighting;
- (e) site drainage and waste management infrastructure;
- (f) electricity, water, wastewater and telecommunications connections or storage;
- (g) storage of equipment, materials and waste;
- (h) wheel washing areas;
- (i) area for download and turning; and
- (j) works to reinforce ground with weight-bearing support infrastructure.

**Work No. 9**— works to create access track crossing structures, as shown on sheets 1, 3, 4, 8, 12, 14, 15, 17, 18, 19, 20, 21 and 26 of the Works Plans including—

- (a) works to allow installation of bridge or culvert crossings over watercourses and drains; and
- (b) works to alter, maintain, repair or replace existing crossing structures over watercourses and drains.

For the purposes of or in connection with the construction of any of the works and other development in the Order limits, ancillary or related works and other development which is not likely to give rise to any materially new or materially different environmental effects to those assessed in the environmental statement consisting of—

- (a) works to place, alter, remove or maintain street furniture or apparatus (including statutory undertakers' apparatus) in, under or above a street, including mains, sewers, drains, pipes, cables, cofferdams, lights, fencing and other boundary treatments;
- (b) laying down, maintenance and repair of internal access tracks, ramps, crossing of watercourses and roads, means of access, footpaths and permissive paths including the laying and construction of drainage infrastructure, signage and information boards;

- (c) glint and glare boarding;
- (d) bunds, embankments, trenching and swales;
- (e) fencing, gates, boundary treatments and other means of enclosure;
- (f) works, improvements or extensions to the existing drainage and irrigation system and works to alter the position and extent of such irrigation system;
- (g) surface water drainage systems and oil water separators;
- (h) 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;
- (i) works for the provision of security and monitoring measures such as control buildings, containers or structures, CCTV, columns, lighting, cameras, weather stations, perimeter fencing and communication infrastructure;
- (j) containers or structures to house spare parts and materials required for the day to day operation of the authorised development;
- (k) habitat creation and management, including earthworks, landscaping, means of enclosure, and the laying and construction of drainage infrastructure;
- (l) electrical and telecommunications cables, including crossings under watercourses;
- (m) works to alter the course of, or otherwise interfere with, non-navigable rivers, streams or watercourses;
- (n) landscaping and biodiversity mitigation and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised development;
- (o) working sites in connection with the construction of the authorised development, construction lay down areas and compounds, storage compounds and their restoration;
- (p) improvement, strengthening, reconstruction, maintenance and use of existing streets, private tracks and access roads;
- (q) temporary footpath diversions and footpath enhancement;
- (r) 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;
- (s) trenching, tunnelling, boring and drilling works;

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

## SCHEDULE 2 REQUIREMENTS

Article 3

### PART 1 REQUIREMENTS

#### Interpretation

**1.** In this Schedule—

“begin” means to carry out any material operation (as defined in section 155 (when development begins) of the 2008 Act) forming part, or carried out for the purposes, of the authorised development;

“DAD” means the document certified by the Secretary of State as the design approach document for the purposes of this Order;

“outline BSMP” means the document certified by the Secretary of State as the outline battery safety management plan for the purposes of this Order;

“outline CEMP” means the document certified by the Secretary of State as the outline construction environmental management plan for the purposes of this Order;

“outline CTMP” means the document of that description certified by the Secretary of State as the outline construction traffic management plan for the purposes of this Order;

“outline DEMP” means the document certified by the Secretary of State as the outline decommissioning environmental management plan for the purposes of this Order;

“outline LEMP” means the document certified by the Secretary of State as the outline landscape and ecology management plan for the purposes of the Order;

“outline OEMP” means the means the document certified by the Secretary of State as the outline operational environmental management plan for the purposes of the Order;

“outline PRoWMP” means the document certified by the Secretary of State as the outline Public Rights of Way Management Plan for the purposes of the Order;

“outline SWDS” means the document certified by the Secretary of State as the outline Surface Water Drainage Strategy for the purposes of the Order; and

“outline WSI” means the document certified by the Secretary of State as the outline Written Scheme of Investigation.

#### Time limits

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

(2) If any proceedings are begun to challenge the validity of this Order, the period specified in paragraph (1) is extended by—

(a) a period equivalent to the period beginning with the day the application is made and ending on the day it is withdrawn or finally determined; or

(b) if shorter, one year.

(3) An application is not finally determined for the purposes of paragraph (2)(a) if an appeal in respect of the application—

(a) could be brought (ignoring any possibility of an appeal out of time with permission); or

(b) has been made and not withdrawn or finally determined.

### **Detailed design approval**

3.—(1) No part of the authorised development may commence until details of—

- (a) the layout;
- (b) scale;
- (c) proposed finished ground levels;
- (d) external appearance;
- (e) hard surfacing materials;
- (f) vehicular and pedestrian access, junction improvements and passing places;
- (g) drainage, water, power and communications cables and pipelines;
- (h) road safety audits,

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

(2) The details submitted must accord with the principles and parameters contained in the design approach document and outline design parameters document unless it can be demonstrated to the satisfaction of the relevant planning authority that the subject matter of the approval sought would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.

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

(4) Sub-paragraph (1) does not apply to the matters listed under sub-paragraph (1)(f) if consent has already been given to the details of those works in accordance with articles 12 (power to alter layout, etc. of streets), 13 (construction and maintenance of altered streets) or 16 (access to works).

### **Construction environmental management plan**

4.—(1) No part of the authorised development may commence until a CEMP for that part has been submitted to and approved by the relevant planning authority, in consultation by the undertaker with the Environment Agency on matters related to their functions.

(2) Any CEMP submitted for approval under sub-paragraph (1) must be substantially in accordance with the outline CEMP and must include—

- (a) a site waste management plan;
- (b) a dust management plan;
- (c) a soil management plan;
- (d) an excavated materials management plan; and
- (e) an incident response plan.

(3) No phase of the authorised development may commence, and no part of the permitted preliminary works may begin for that phase comprising environmental surveys and monitoring, geotechnical surveys, intrusive archaeological surveys (including trenching) and other investigations for the purpose of assessing ground conditions (including the making of boreholes) may start, until a written strategy in relation to the identification and remediation of any risks associated with contamination for that phase has been submitted to and approved by the relevant planning authority, in consultation by the undertaker with the Environment Agency on matters related to their functions.

(4) The construction of any part of the authorised development must be carried out in accordance with the approved CEMP for that part.

### **Construction traffic management plan**

5.—(1) No part of the authorised development may commence until a CTMP for that part has been submitted to and approved by the relevant planning authority, following consultation by the undertaker with the relevant highway authority on matters related to their functions.

(2) Any CTMP submitted for approval under sub-paragraph (1) must be substantially in accordance with the outline CTMP.

(3) The construction of any part of the authorised development must be carried out in accordance with the approved CTMP for that part.

### **Battery safety management plan**

6.—(1) No part of the authorised development that contains Work No. 3 is to be commenced until a BSMP for that part has been submitted to and approved by the relevant planning authority, following consultation by the undertaker with the South Yorkshire Fire and Rescue Service on matters related to their functions.

(2) Any BSMP submitted for approval under sub-paragraph (1) must be substantially in accordance with the outline BSMP.

(3) A local planning authority in determining whether to approve a BSMP submitted under sub-paragraph (1) may only refuse to approve the BSMP where it establishes, acting reasonably, there would be an unacceptable safety risk, and in making its decision must give significant weight to any consultation representation from the South Yorkshire Fire and Rescue Service and the guidance on battery energy storage systems most recently published by the National Fire Chiefs Council or successor body, and act in accordance with any decisions in England relating to the approval of battery safety management plans unless there are compelling reasons otherwise.

(4) Any BSMP approved under sub-paragraph (1) must be implemented as approved.

### **Landscape and ecology management plan**

7.—(1) No part of the authorised development may commence until a LEMP for that part has been submitted to and approved by the relevant planning authority following consultation by the undertaker with the Environment Agency and Natural England on matters related to their respective functions.

(2) Any LEMP submitted for approval under sub-paragraph (1) must be substantially in accordance with the outline LEMP and for that part of the authorised development to which it relates must include details of how the plan proposals will contribute to the achievement of a minimum 28% biodiversity net gain for areas based habitat units, 30% biodiversity net gain for hedgerow units and 10% biodiversity net gain for watercourse units for all of the authorised development during the operation of the authorised development, using the Department for Environment, Food and Rural Affairs' 4.0 metric to calculate those percentages (or such other biodiversity metric approved by the relevant planning authority in consultation with the relevant statutory nature conservation body).

(3) Any LEMP approved under sub-paragraph (1) must be implemented as approved and maintained throughout the operation of the relevant part of the authorised development to which the LEMP relates.

### **Public rights of way**

8.—(1) No part of the authorised development is to be commenced until a public rights of way management plan for any sections of public rights of way shown to be temporarily closed or restricted on the Rights of Way, Streets and Access Plans for that part has been submitted to and approved by the relevant planning authority.

(2) The public rights of way management plan must be substantially in accordance with the [Outline Public Rights of Way Management Plan](#).

(3) The public rights of way management plan approved under sub-paragraph (1) must be implemented as approved.

### **Fencing and other means of enclosure**

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

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

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

(5) In the event that temporary fences, walls or other means of enclosure are required for the permitted preliminary works, no permitted preliminary works may take place until written details of all proposed temporary fences, walls or other means of enclosure required for such works have been submitted to and approved by the relevant planning authority.

(6) Prior to the date of final commissioning of the authorised development, any permanent fencing, walls or other means of enclosure approved under sub-paragraph (2) must be completed.

### **Archaeology**

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

(2) Any written scheme of investigation submitted for approval must be substantially in accordance with the outline written scheme of investigation.

(3) Any archaeological works or programme of archaeological investigation must be carried out in accordance with the written scheme of investigation approved under sub-paragraph (1) for the duration of the works on the part of the authorised development to which the written scheme of investigation relates.

(4) In this paragraph, “relevant planning authority” means the South Yorkshire Archaeology Service or any other successor to its functions.

(5) For the purposes of sub-paragraph (1) “commence” includes any intrusive archaeological surveys (including trenching).

### **Operational environmental management plan**

11.—(1) Prior to the date of final commissioning for any part of the authorised development, an OEMP must be submitted to and approved by the relevant planning authority.

(2) Any OEMP submitted for approval under sub-paragraph (1) must be substantially in accordance with the outline OEMP.

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

### **Surface and foul water drainage**

12.—(1) No part of the authorised development is to be commenced until written details of the surface water drainage strategy and (if any) foul water drainage system have been submitted to and approved by the relevant local drainage authority following consultation by the undertaker with the relevant planning authority and Environment Agency on matters related to their respective functions.

(2) The written details under sub-paragraph (1) must be substantially in accordance with the outline surface water drainage strategy.

(3) Any approved strategy pursuant to sub-paragraph (1) must be implemented as approved.

### **Decommissioning and restoration**

**13.**—(1) The date of decommissioning for any part of the authorised development must commence no later than 60 years following the date of final commissioning of the authorised development.

(2) Unless otherwise agreed with the relevant planning authority, no later than 3 months prior to the intended date of decommissioning of any part of the authorised development, the undertaker must submit to the relevant planning authority for that part a DEMP for approval.

(3) Any DEMP submitted for approval under sub-paragraph (2) must be substantially in accordance with the outline DEMP.

(4) No decommissioning works must be carried out until the relevant planning authority approves the DEMP submitted under sub-paragraph (2) in relation to such works.

(5) The DEMP must be implemented as approved.

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

### **Requirement for written approval**

**14.** Where under any of the requirements the approval, agreement or confirmation of the relevant planning authority is required that approval, agreement or confirmation must be given in writing.

### **Amendments to approved details**

**15.**—(1) The undertaker must 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 as approved under this paragraph.

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

(3) In this paragraph, “Approved Document” means any document certified under article 45 (certification of plans and documents, etc) and any plans, details or schemes which have been approved pursuant to any requirement.

### **Anticipatory steps towards compliance with any requirement**

**16.** If before the coming into force of this Order the undertaker or any other person has taken any steps that were intended to be steps towards compliance with any requirement in this Schedule, those steps may be taken into account for the purpose of determining compliance with that provision if they would have been valid steps for that purpose had they been taken after this Order came into force.

### **Consultation**

**17.** In relation to any provision of this Schedule requiring details to be submitted to the relevant planning authority for approval following consultation by the undertaker with another party, the undertaker must provide such other party with not less than 21 business days for any response to the consultation and thereafter the details submitted to the planning authority for approval must be accompanied by a summary report setting out the consultation undertaken by the undertaker to

inform the details submitted including copies of any representations made by a consultee about the proposed application and the undertaker's response to those representations.

## **PART 2**

### **PROCEDURE FOR DISCHARGE OF REQUIREMENTS**

#### **Applications made under Part 1**

**18.**—(1) Where an application has been made to the relevant planning authority for any consent, agreement or approval required by a requirement (including consent, agreement or approval in respect of part of a requirement included in this Order), the relevant planning authority must give notice to the undertaker of its decision on the application within a period of eight weeks beginning with the later of—

- (a) the day immediately following that on which the application is received by the relevant planning authority;
- (b) the day immediately following that on which further information has been supplied by the undertaker under paragraph 22 (further information regarding requirements); or
- (c) such other period that is agreed in writing between the undertaker and the relevant planning authority.

(2) In determining any application made to the relevant planning authority for any consent, agreement or approval required by a requirement included in this Order, the relevant planning authority may—

- (a) give or refuse its consent, agreement or approval; or
- (b) give its consent, agreement or approval subject to reasonable conditions,

and where consent, agreement or approval is refused or granted subject to conditions the discharging authority must provide its reasons for that decision with the notice of the decision.

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

#### **Further information regarding requirements**

**19.**—(1) In relation to any application made under this Schedule 2, the relevant planning authority may request such further information from the undertaker as it considers necessary to enable it to consider the application.

(2) In the event the relevant planning authority considers such further information to be necessary the relevant planning authority must, within ten business days of receipt of the application, notify the undertaker in writing specifying the further information required and (if applicable) to which part of the application it relates.

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

(4) Where further information is requested under this paragraph in relation to part only of an application, that part is treated as separate from the remainder of the application for the purposes of calculating the time periods referred to in paragraph 20 (applications made under Part 1) and in sub-paragraph (2).

#### **Appeals**

**20.**—(1) The undertaker may appeal to the Secretary of State in the event that the relevant planning authority—

- (a) refuses an application for any consent, agreement or approval required under this Order or grants it subject to conditions;
- (b) issues a notice further to sections 60 (control of noise on construction sites) or 61 (prior consent for work on construction sites) of the 1974 Act;
- (c) on receipt of a request for further information under paragraph 22, 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 under paragraph 22, the relevant planning authority notifies the undertaker that the information provided is inadequate and requests additional information which the applicant considers is not necessary for consideration of the application.

(2) The appeal process applicable under sub-paragraph (1) is as follows—

- (a) any appeal by the undertaker must be made within 42 days of the event under sub-paragraph (1);
- (b) the undertaker must submit the appeal documentation to the Secretary of State and must on the same day provide copies of the appeal documentation to the relevant planning authority;
- (c) the Secretary of State must appoint a suitably qualified person to consider the appeal (“the appointed person”) as soon as is practicable after the submission under sub-paragraph (b) but in any event no longer than 21 days from submission under that sub-paragraph and must notify the appeal parties of the identity of the appointed person, a start date and the address to which all correspondence for their attention should be sent;
- (d) the relevant planning authority must submit their written representations to the appointed person in respect of the appeal within 10 business days of the start date and must ensure that copies of their written representations and any other representations as sent to the appointed person are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;
- (e) the undertaker must make any counter-submissions to the appointed person within ten business days of receipt of written representations under sub-paragraph (d); and
- (f) the appointed person must make a decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable but in any event no longer than 10 business days from receipt of counter-submissions under sub-paragraph (e).

(3) The appointment of the appointed person under sub-paragraph (2)(c) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(4) In the event that the appointed person considers that further information is necessary to enable the appointed person to consider the appeal the appointed person must as soon as practicable notify the appeal parties in writing specifying the further information required, the appeal party from whom the information is sought, and the date by which the information is to be submitted.

(5) Any further information required under sub-paragraph (4) must be provided by the party from whom the information is sought to the appointed person and to the other appeal parties by the date specified by the appointed person.

(6) The appointed person must notify the appeal parties of the revised timetable for the appeal on or before that day.

(7) The revised timetable for the appeal must require submission of written representations to the appointed person within 10 business days of the agreed date but must otherwise be in accordance with the process and time limits set out in sub-paragraphs (2)(c) to (f).

(8) On an appeal under this paragraph, the appointed person may—

- (a) allow or dismiss the appeal; or
- (b) reverse or vary any part of the decision or request 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 the appointed person in the first instance.

(9) The appointed person may proceed to a decision on an appeal taking into account such written representations as have been sent within the relevant time limits and in the sole discretion of the appointed person such written representations as have been sent outside of the relevant time limits.

(10) 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 the appointed person that there is sufficient material to enable a decision to be made on the merits of the case.

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

(12) Except where a direction is given under sub-paragraph (13) requiring some or all 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.

(13) The appointed person may give directions as to the costs of the appeal and as to the parties by whom the costs are to be paid.

(14) 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 relevant guidance on the Planning Practice Guidance Appeals (March 2014) or any circular or such guidance which may from time to time replace it.

## **Fees**

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

(2) Any fee paid under this Schedule must be refunded to the undertaker within 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 20(1) unless—
  - (i) within that period the undertaker agrees, in writing, that the fee is to be retained by the relevant planning authority and credited in respect of a future application; or
  - (ii) a longer period of time for determining the application has been agreed pursuant to paragraph 20(1)(c) of this Schedule.

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<sup>(a)</sup> S.I. 2012/2920.

## SCHEDULE 3

Article 9

### LEGISLATION TO BE DISAPPLIED

1. The following local enactments and local byelaws do not apply insofar as they are inconsistent with a provision of, or a power conferred by, this Order—

- (a) South Yorkshire Act 1980**(a)**
- (b) Rotherham Corporation Act 1930**(b)**
- (c) South Yorkshire and Derbyshire Gas Act 1930**(c)**
- (d) Rotherham Corporation Act 1928**(d)**
- (e) Doncaster Corporation Act 1904**(e)**
- (f) Sheffield District Railway Act 1900**(f)**
- (g) Midland Railway Act 1898**(g)**
- (h) Midland Railway Act 1897**(h)**
- (i) Rotherham Corporation Act 1896**(i)**
- (j) Rotherham, Blyth and Sutton Railway Act 1892**(j)**
- (k) Rotherham, Blyth and Sutton Railway Act 1891**(k)**
- (l) Manchester, Sheffield and Lincolnshire Railway Act 1889**(l)**
- (m) Duke of Leeds Estate Act 1880**(m)**
- (n) Doncaster Corporation Waterworks Act 1880**(n)**
- (o) Manchester, Sheffield and Lincolnshire Railway Act 1874**(o)**
- (p) Doncaster Corporation Waterworks Act 1873**(p)**
- (q) Midland Railway (Branches, &c.) Act 1866**(q)**
- (r) Rotherham and Kimberworth Local Board of Health Act 1863**(r)**
- (s) Sheffield and Rotherham and Midland Railway Consolidation Act 1845**(s)**
- (t) byelaws of the City of Doncaster with respect to the burning of crop residues 1986
- (u) byelaws of the City of Doncaster with respect to the burning of straw and stubble 1986
- (v) byelaws of the City of Doncaster as to the nuisances from snow filth dust ashes and rubbish 1981
- (w) byelaws of the City of Doncaster with respect to the burning of straw and stubble 1979

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- (a) 1980 c.xxxvii
  - (b) 1930 c.clxxvi
  - (c) 1930 c.cxi
  - (d) 1928 c.cxi
  - (e) 1904 c.ciii
  - (f) 1900 c.xcii
  - (g) 1898 c.l
  - (h) 1897 c.clxxxiii
  - (i) 1896 c.xxvi
  - (j) 1892 c.clxxxi
  - (k) 1891 c.cxiv
  - (l) 1889 c.ciii
  - (m) 1880 c.5
  - (n) 1880 c.xxix
  - (o) 1874 c.cxxxii
  - (p) 1873 c.cxxix
  - (q) 1866 c.ccxcviii
  - (r) 1863 c.cxxvii
  - (s) 1845 c.xc

- (x) byelaws of the City of Doncaster with respect to the removal of mud etc from vehicles 1955
- (y) byelaws of the City of Doncaster with respect to the prevention of nuisances 1954
- (z) byelaws of the City of Doncaster with respect to building 1936
- (aa) byelaws of the City of Doncaster with respect to hoardings and advertisements 1940
- (bb) byelaws of the City of Doncaster with respect to nuisances 1921
- (cc) byelaws of the City of Doncaster with respect to the protection of wild plants 1929
- (dd) any other byelaws made under section 235 of the Local Government Act 1972(a)

# SCHEDULE 4

## ALTERATION OF STREETS

Article 12

### PART 1

#### PERMANENT ALTERATION OF LAYOUT

| (1)<br><i>Street subject to alteration of layout</i>                                | (2)<br><i>Description of alteration</i>                                                                                                                                                      |
|-------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Within the administrative area of the City of Doncaster Council</b>              |                                                                                                                                                                                              |
| Sheffield Road (A630)                                                               | Alteration of layout of Sheffield Road (A630) in the area depicted in solid green near the access marked 01/01 as shown on Sheet 1 of the Streets, Rights of Way and Access Plans.           |
| Park Lane                                                                           | Alteration of layout of Park Lane in the area depicted in solid green near the accesses marked 02/01 and 02/02 as shown on Sheets 1 and 2 of the Streets, Rights of Way and Access Plans.    |
| <b>Within the administrative area of the Rotherham Metropolitan Borough Council</b> |                                                                                                                                                                                              |
| Slacks Lane                                                                         | Alteration of layout of Slacks Lane in the area depicted in solid green near the accesses marked 08/01 and 08/02 as shown on Sheets 7 and 8 of the Streets, Rights of Way and Access Plans.  |
| Long Lane                                                                           | Alteration of layout of Long Lane in the area depicted in solid green near the access marked 09/04 as shown on Sheets 9 and 12 of the Streets, Rights of Way and Access Plans.               |
| Morthen Lane                                                                        | Alteration of layout of Morthen Lane in the area depicted in solid green near the access marked 10/03 as shown on Sheet 10 of the Streets, Rights of Way and Access Plans.                   |
| Field Lane                                                                          | Alteration of layout of Field Lane in the area depicted in solid green near the accesses marked 10/03 and 11/05 as shown on Sheets 10 and 11 of the Streets, Rights of Way and Access Plans. |
| Guilthwaite Common Lane                                                             | Alteration of layout of Guilthwaite Common Lane in the area depicted in solid green near the access marked 13/03 as shown on Sheet 13 of the Streets, Rights of Way and Access Plans.        |
| Penny Hill Lane                                                                     | Alteration of layout of Penny Hill Lane in the area depicted in solid green near the accesses marked 14/05 and 14/06 as shown on Sheet 14 of the Streets, Rights of Way and Access Plans.    |
| Brampton Lane                                                                       | Alteration of layout of Brampton Lane in the area depicted in solid green near the accesses marked 14/09 and 14/10 as shown on Sheet 14 of the Streets, Rights of Way and Access Plans.      |
| Common Lane                                                                         | Alteration of layout of Common Lane in the                                                                                                                                                   |

| (1)<br><i>Street subject to alteration of layout</i>                            | (2)<br><i>Description of alteration</i>                                                                                                                                                     |
|---------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                                 | area depicted in solid green near the accesses marked 15/01 and 15/02 as shown on Sheet 15 of the Streets, Rights of Way and Access Plans.                                                  |
| Hawk Hill Lane                                                                  | Alteration of layout of Hawk Hill Lane in the area depicted in solid green near the accesses marked 15/07 and 15/13 as shown on Sheet 15 of the Streets, Rights of Way and Access Plans.    |
| Long Road                                                                       | Alteration of layout of Long Road in the area depicted in solid green ear the accesses marked 15/05 and 19/01 as shown on Sheets 15 and 19 of the Streets, Rights of Way and Access Plans.  |
| Wood Lane (B6067)                                                               | Alteration of layout of Wood Lane (B6067) in the area depicted in solid green near the access marked 16/01 as shown on Sheet 16 of the Streets, Rights of Way and Access Plans.             |
| Ulley Lane                                                                      | Alteration of layout of Ulley Lane in the area depicted in solid green near the accesses marked 17/05 and 17/06 as shown on Sheet 17 of the Streets, Rights of Way and Access Plans.        |
| Carr Lane                                                                       | Alteration of layout of Carr Lane in the area depicted in solid green near the accesses marked 18/01 and 18/03 as shown on Sheets 17 and 18 of the Streets, Rights of Way and Access Plans. |
| Pocket Handkerchief Lane                                                        | Alteration of layout of Pocket Handkerchief Lane in the area depicted in solid green near the access marked 20/01 as shown on Sheet 20 of the Streets, Rights of Way and Access Plans.      |
| Sheffield Road (A57)                                                            | Alteration of layout of Sheffield Road A57 in the area depicted in solid green near the access marked 21/01 as shown on Sheets 20 and 21 of the Streets, Rights of Way and Access Plans.    |
| Hard Lane                                                                       | Alteration of layout of Hard Lane in the area depicted in solid green near the accesses marked 25/01 and 26/05 as shown on Sheets 25 and 26 of the Streets, Rights of Way and Access Plans. |
| Walseker Lane                                                                   | Alteration of layout of Walseker Lane in the area depicted in solid green near the accesses marked 26/01 and 26/03 as shown on Sheet 26 of the Streets, Rights of Way and Access Plans.     |
| Killamarsh Lane                                                                 | Alteration of layout of Killamarsh Lane in the area depicted in solid green near the accesses marked 27/01 and 27/04 as shown on Sheet 27 of the Streets, Rights of Way and Access Plans.   |
| Loverose Way                                                                    | Alteration of layout of Loverose Way in the area depicted in solid green near the access marked 29/03 as shown on Sheet 29 on the Streets, Rights of Way and Access Plans.                  |
| <b>Within the administrative area of North East Derbyshire District Council</b> |                                                                                                                                                                                             |
| Rotherham Road (A618)                                                           | Alteration of layout of Rotherham Road (A618) in the area depicted in solid green hatching near the access marked 29/01 as shown on Sheets 27                                               |

| <i>(1)</i><br><i>Street subject to alteration of layout</i> | <i>(2)</i><br><i>Description of alteration</i>         |
|-------------------------------------------------------------|--------------------------------------------------------|
|                                                             | and 29 of the Streets, Rights of Way and Access Plans. |

## PART 2

### TEMPORARY ALTERATION OF LAYOUT

| <i>(1)</i><br><i>Street subject to alteration of layout</i>                         | <i>(2)</i><br><i>Description of alteration</i>                                                                                                                                                          |
|-------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Within the administrative area of the City of Doncaster Council</b>              |                                                                                                                                                                                                         |
| Moor Lane                                                                           | Temporary alteration of layout of Moor Lane in the area depicted in solid yellow near the access marked 05/05 as shown on Sheet 5 of the Streets, Rights of Way and Access Plans.                       |
| <b>Within the administrative area of the Rotherham Metropolitan Borough Council</b> |                                                                                                                                                                                                         |
| Common Lane                                                                         | Temporary alteration of layout of Common Lane in the area depicted in solid yellow near the accesses marked 05/04 to 05/05 as shown on Sheet 5 of the Streets, Rights of Way and Access Plans.          |
| Bramley Lane                                                                        | Temporary alteration of layout of Bramley Lane in the area depicted in solid yellow near the access marked 05/06 as shown on Sheet 5 of the Streets, Rights of Way and Access Plans.                    |
| Lidget Lane                                                                         | Temporary alteration of layout of Lidget Lane in the area depicted in solid yellow near the accesses marked 06/01 to 06/04 as shown on Sheets 5 and 6 of the Streets, Rights of Way and Access Plans.   |
| Sandy Lane                                                                          | Temporary alteration of layout of Sandy Lane in the area depicted in solid yellow near the accesses marked 07/05 to 07/06 as shown on Sheet 7 of the Streets, Rights of Way and Access Plans.           |
| Morthen Road (B6060)                                                                | Temporary alteration of layout of Morthen Road (B6060) in the area depicted in solid near the accesses marked 08/05 to 08/06 as shown on Sheet 8 of the Streets, Rights of Way and Access Plans.        |
| Long Lane                                                                           | Temporary alteration of layout of Long Lane in the area depicted in solid yellow near the access marked 09/01 as shown on Sheet 9 of the Streets, Rights of Way and Access Plans.                       |
| Pleasley Road (A618)                                                                | Temporary alteration of layout of Pleasley Road (A618) in the area depicted in solid yellow near the accesses marked 09/02 to 09/03 as shown on Sheet 9 of the Streets, Rights of Way and Access Plans. |
| Morthen Lane                                                                        | Temporary alteration of layout of Morthen Lane in the area depicted in solid yellow near the accesses marked 11/01 to 11/02 as shown on Sheet 11 of the Streets, Rights of Way and                      |

| (1)<br><i>Street subject to alteration of layout</i>  | (2)<br><i>Description of alteration</i>                                                                                                                                                                       |
|-------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                       | Access Plans.                                                                                                                                                                                                 |
| Pleasley Road (A618)                                  | Temporary alteration of layout of Pleasley Road (A618) in the area depicted in solid yellow near the accesses marked 12/01 to 12/02 as shown on Sheet 12 of the Streets, Rights of Way and Access Plans.      |
| Unnamed private road adjacent to Sheffield Road (A57) | Temporary alteration of layout of unnamed Private Road in the area depicted in solid yellow near the accesses marked 20/05 and 20/06 as shown on Sheet 20 of the Streets, Rights of Way and Access Plans.     |
| Sheffield Road (A57)                                  | Temporary alteration of layout of Sheffield Road A57 in the area depicted in solid yellow near the access marked 22/01 as shown on Sheet 22 of the Streets, Rights of Way and Access Plans.                   |
| Dog Kennels Hill (B6059)                              | Temporary alteration of layout of Dog Kennels Hill (B6059) in the area depicted in solid yellow near the accesses marked 22/02 and 22/03 as shown on Sheet 22 of the Streets, Rights of Way and Access Plans. |
| Unnamed private road off Dog Kennels Hill (B6059)     | Temporary alteration of layout of Private Road in the area depicted in solid yellow near the accesses marked 23/01 and 23/02 as shown on Sheets 22 and 23 of the Streets, Rights of Way and Access Plans.     |
| Unnamed private road off Dog Kennels Hill (B6059)     | Temporary alteration of layout of Private Road in the area depicted in solid yellow near the accesses marked 23/03 and 23/04 as shown on Sheet 23 of the Streets, Rights of Way and Access Plans.             |
| Lady Field Lane                                       | Temporary alteration of layout of Ladyfield Road in the area depicted in solid yellow near the accesses marked 23/05 and 23/06 as shown on Sheet 23 of the Streets, Rights of Way and Access Plans.           |
| Packman Lane                                          | Temporary alteration of layout of Packman Lane in the area depicted in solid yellow near the accesses marked 24/01 and 24/02 as shown on Sheets 23 and 24 of the Streets, Rights of Way and Access Plans.     |
| Manor Road                                            | Temporary alteration of layout of Manor Road in the area depicted in solid yellow near the accesses marked 25/02 and 25/03 as shown on Sheet 25 of the Streets, Rights of Way and Access Plans.               |
| Woodall Lane                                          | Temporary alteration of layout of Woodall Lane in the area depicted in solid yellow near the accesses marked 28/02 and 28/03 as shown on Sheet 28 of the Streets, Rights of Way and Access Plans.             |

## SCHEDULE 5

Articles 14 and 15

### STREETS AND PUBLIC RIGHTS OF WAY TO BE TEMPORARILY OR PERMANENTLY CLOSED OR RESTRICTED

#### PART 1

##### STREETS TO BE TEMPORARILY CLOSED OR RESTRICTED

| (1)<br><i>Street to be temporarily closed</i>                                   | (2)<br><i>Extent of temporary closure or restriction</i>                                                                                                         |
|---------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Within the administrative area of City of Doncaster Council</b>              |                                                                                                                                                                  |
| Sheffield Road (A630)                                                           | Temporarily closed or restricted for the length depicted in solid green and green hatching on Sheet 1 of the Streets, Rights of Way and Access Plans.            |
| Park Lane                                                                       | Temporarily closed or restricted for the length depicted in solid green on Sheets 1 and 2 of the Streets, Rights of Way and Access Plans.                        |
| Moor Lane                                                                       | Temporarily closed or restricted for the length depicted in solid yellow and/or green hatching on Sheet 5 of the Streets, Rights of Way and Access Plans.        |
| <b>Within the administrative area of Rotherham Metropolitan Borough Council</b> |                                                                                                                                                                  |
| Common Lane                                                                     | Temporarily closed or restricted for the length depicted in solid yellow and/or green hatching on Sheet 5 of the Streets, Rights of Way and Access Plans.        |
| Bramley Lane                                                                    | Temporarily closed or restricted for the length depicted in solid yellow and/or green hatching on Sheet 5 of the Streets, Rights of Way and Access Plans.        |
| Lidget Lane                                                                     | Temporarily closed or restricted for the length depicted in solid yellow and/or green hatching on Sheets 5 and 6 of the Streets, Rights of Way and Access Plans. |
| Sherbourne Avenue                                                               | Temporarily restricted for the length depicted in green hatching on Sheet 7 of the Streets, Rights of Way and Access Plans.                                      |
| Broadlands                                                                      | Temporarily closed or restricted for the length depicted in green hatching on Sheet 7 of the Streets, Rights of Way and Access Plans.                            |
| Sandy Lane                                                                      | Temporarily closed or restricted for the length depicted in solid yellow and/or green hatching on Sheet 7 of the Streets, Rights of Way and Access Plans.        |
| Slacks Lane                                                                     | Temporarily closed or restricted for the length depicted in solid green and/or green hatching on Sheets 7 and 8 of the Streets, Rights of Way and Access Plans.  |
| Second Lane                                                                     | Temporarily closed or restricted for the length depicted in green hatching on Sheet 8 of the                                                                     |

|                         |                                                                                                                                                                   |
|-------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                         | Streets, Rights of Way and Access Plans.                                                                                                                          |
| Moat Lane               | Temporarily closed or restricted for the length depicted in green hatching on Sheet 8 of the Streets, Rights of Way and Access Plans.                             |
| Green Lane              | Temporarily closed or restricted for the length depicted in green hatching on Sheet 8 of the Streets, Rights of Way and Access Plans.                             |
| Morthen Road (B6060)    | Temporarily closed or restricted for the length depicted in solid yellow and/or green hatching on Sheet 8 of the Streets, Rights of Way and Access Plans.         |
| Long Lane               | Temporarily closed or restricted for the length depicted in solid yellow and green hatching on Sheet 9 of the Streets, Rights of Way and Access Plans.            |
| Long Lane               | Temporarily closed or restricted for the length depicted in solid green and/or green hatching on Sheets 9 and 12 of the Streets, Rights of Way and Access Plans.  |
| Pleasley Road (A618)    | Temporarily closed or restricted for the length depicted in solid yellow and/or green hatching on Sheet 9 of the Streets, Rights of Way and Access Plans.         |
| Morthen Lane            | Temporarily closed or restricted for the length depicted in solid green and/or green hatching on Sheet 10 of the Streets, Rights of Way and Access Plans.         |
| Field Lane              | Temporarily closed or restricted for the length depicted in solid green and green hatching on Sheets 10 and 11 of the Streets, Rights of Way and Access Plans.    |
| Morthen Lane            | Temporarily closed or restricted for the length depicted in solid yellow and/or green hatching on Sheet 11 of the Streets, Rights of Way and Access Plans.        |
| Pleasley Road (A618)    | Temporarily closed or restricted for the length depicted in solid yellow and green hatching on Sheet 12 of the Streets, Rights of Way and Access Plans.           |
| Guilthwaite Common Lane | Temporarily closed or restricted for the length depicted in solid green and/or green hatching on Sheets 12 and 13 of the Streets, Rights of Way and Access Plans. |
| Brampton Lane           | Temporarily closed or restricted for the length depicted in solid green and/or hatching on Sheet 14 of the Streets, Rights of Way and Access Plans.               |
| Penny Hill Lane         | Temporarily closed or restricted for the length depicted in solid green and/or green hatching on Sheets 14 and 15 of the Streets, Rights of Way and Access Plans. |
| Common Lane             | Temporarily closed or restricted for the length depicted in solid green and green hatching on Sheet 15 of the Streets, Rights of Way and Access Plans.            |

|                                                       |                                                                                                                                                                    |
|-------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Hawk Hill Lane                                        | Temporarily closed or restricted for the length depicted in solid green and green hatching on Sheet 15 of the Streets, Rights of Way and Access Plans.             |
| Long Road                                             | Temporarily closed or restricted for the length depicted in solid green and green hatching on Sheets 15 and 19 of the Streets, Rights of Way and Access Plans.     |
| Wood Lane (B6067)                                     | Temporarily closed or restricted for the length depicted in solid green and green hatching on Sheet 16 of the Streets, Rights of Way and Access Plans.             |
| Ulley Lane                                            | Temporarily closed or restricted for the length depicted in solid green and/or green hatching on Sheet 17 of the Streets, Rights of Way and Access Plans.          |
| Carr Lane                                             | Temporarily closed or restricted for the length depicted in solid green and/or green hatching on Sheets 17 and 18 of the Streets, Rights of Way and Access Plans   |
| Pocket Handkerchief Lane                              | Temporarily closed or restricted for the length depicted in solid green and/or green hatching on Sheet 20 of the Streets, Rights of Way and Access Plans.          |
| Todwick Road                                          | Temporarily closed or restricted for the length depicted in green hatching on Sheet 20 of the Streets, Rights of Way and Access Plans.                             |
| Unnamed private road adjacent to Sheffield Road (A57) | Temporarily closed or restricted for the length coloured in solid yellow on Sheet 20 of the Streets, Rights of Way and Access Plans.                               |
| Sheffield Road (A57)                                  | Temporarily closed or restricted for the length depicted in solid green and/or green hatching on Sheets 20 and 21 of the Streets, Rights of Way and Access Plans   |
| Sheffield Road (A57)                                  | Temporarily closed or restricted for the length depicted in solid yellow and/or green hatching on Sheets 21 and 22 of the Streets, Rights of Way and Access Plans  |
| Crowgate                                              | Temporarily closed or restricted for the length depicted in green hatching on Sheet 22 of the Streets, Rights of Way and Access Plans.                             |
| Dog Kennels Hill (B6059)                              | Temporarily closed or restricted for the length depicted in solid yellow and/or green hatching on Sheets 22 and 23 of the Streets, Rights of Way and Access Plans. |
| Unnamed private road off Dog Kennels Hill             | Temporarily closed or restricted for the length coloured in solid yellow on Sheets 22 and 23 of the Streets, Rights of Way and Access Plans.                       |
| Unnamed private road off Dog Kennels Hill             | Temporarily closed or restricted for the length coloured in solid yellow on Sheet 23 of the Streets, Rights of Way and Access Plans.                               |
| Lady Field Lane                                       | Temporarily closed or restricted for the length depicted in solid yellow and/or green hatching on Sheets 23 and 24 of the Streets, Rights of Way and Access Plans. |

|                                                                                 |                                                                                                                                                                    |
|---------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Packman Lane                                                                    | Temporarily closed or restricted for the length depicted in solid yellow and/or green hatching on Sheets 23 and 24 of the Streets, Rights of Way and Access Plans. |
| Manor Road                                                                      | Temporarily closed or restricted for the length coloured in solid yellow and/or green hatching on Sheet 25 of the Streets, Rights of Way and Access Plans.         |
| Hard Lane                                                                       | Temporarily closed or restricted for the length coloured in solid green and/or green hatching on Sheets 25 and 26 of the Streets, Rights of Way and Access Plans.  |
| Walseker Lane                                                                   | Temporarily closed or restricted for the length coloured in solid green and/or green hatching on Sheet 26 of the Streets, Rights of Way and Access Plans.          |
| Killamarsh Lane                                                                 | Temporarily closed or restricted for the length coloured in solid green and/or green hatching on Sheet 27 of the Streets, Rights of Way and Access Plans.          |
| Woodall Lane                                                                    | Temporarily closed or restricted for the length coloured in solid yellow and/or green hatching on Sheet 28 of the Streets, Rights of Way and Access Plans.         |
| Loverose Way                                                                    | Temporarily closed or restricted for the length coloured in green hatching on Sheets 28 and 29 of the Streets, Rights of Way and Access Plans.                     |
| <b>Within the administrative area of North East Derbyshire District Council</b> |                                                                                                                                                                    |
| Rotherham Road (A618)                                                           | Temporarily closed or restricted for the length coloured in solid green and/or green hatching on Sheets 27 and 29 of the Streets, Rights of Way and Access Plans.  |

## PART 2

### PUBLIC RIGHTS OF WAY TO BE TEMPORARILY CLOSED OR RESTRICTED WITH DIVERSION

| <i>(1)</i><br><i>Public Right of Way to be temporarily closed</i>      | <i>(2)</i><br><i>Extent of temporary closure or restriction</i>                                                                                                               |
|------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Within the administrative area of the City of Doncaster Council</b> |                                                                                                                                                                               |
| Conisbrough Parks – 3                                                  | Public right of way to be temporarily closed and diverted between points PRoW 01/01 and PRoW 01/02 as shown on Sheet 1 of the Streets, Rights of Way and Access Plans.        |
| Conisbrough Parks – 3                                                  | Public right of way to be temporarily closed and diverted between points PRoW 01/03 and PRoW 01/04 as shown on Sheet 1 of the Streets, Rights of Way and Access Plans.        |
| Conisbrough Parks – 5                                                  | Public right of way to be temporarily closed and diverted between points PRoW 02/01 and PRoW 04/01 as shown on Sheets 2 and 4 of the Streets, Rights of Way and Access Plans. |
| Conisbrough Parks – 14                                                 | Public right of way to be temporarily closed                                                                                                                                  |

| (1)<br><i>Public Right of Way to be temporarily closed</i>                      | (2)<br><i>Extent of temporary closure or restriction</i>                                                                                                                                                        |
|---------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                                 | and diverted between points PRoW 03/01 and PRoW 03/02 as shown on Sheet 3 of the Streets, Rights of Way and Access Plans.                                                                                       |
| Conisbrough Parks – 14                                                          | Public right of way to be temporarily closed and diverted between points PRoW 04/02 and PRoW 04/03 as shown on Sheet 4 of the Streets, Rights of Way and Access Plans.                                          |
| Conisbrough Parks – 4                                                           | Public right of way to be temporarily closed and diverted between points PRoW 04/04 and PRoW 04/05 as shown on Sheet 4 of the Streets, Rights of Way and Access Plans.                                          |
| Conisbrough Parks – 15                                                          | Public right of way to be temporarily closed and diverted between points PRoW 04/06 and PRoW 05/01 as shown on Sheets 4 and 5 of the Streets, Rights of Way and Access Plans.                                   |
| <b>Within the administrative area of Rotherham Metropolitan Borough Council</b> |                                                                                                                                                                                                                 |
| Bramley Footpath no.7                                                           | Public right of way to be temporarily closed and diverted between points PRoW 07/01 and PRoW 07/02 as shown on Sheet 7 of the Streets, Rights of Way and Access Plans.                                          |
| Whiston Footpath no.10                                                          | Public right of way to be temporarily closed and diverted between points PRoW 09/01 and PRoW 09/02 as shown on Sheet 9 of the Streets, Rights of Way and Access Plans.                                          |
| Whiston Footpath no.10                                                          | Public right of way to be temporarily closed between points PRoW 09/02 and PRoW 09/03 and diverted between points PRoW 09/02 and PRoW 09/04 as shown on Sheet 9 of the Streets, Rights of Way and Access Plans. |
| Whiston Footpath no.12                                                          | Public right of way to be temporarily closed between points PRoW 09/03 and PRoW 09/04 and diverted between points PRoW 09/02 and PRoW 09/04 as shown on Sheet 9 of the Streets, Rights of Way and Access Plans. |
| Whiston Footpath no.12                                                          | Public right of way to be temporarily closed and diverted between points PRoW 09/07 and PRoW 09/09 as shown on Sheet 9 of the Streets, Rights of Way and Access Plans.                                          |
| Whiston Footpath no.12                                                          | Public right of way to be temporarily closed and diverted between points PRoW 09/05 and PRoW 09/06 as shown on Sheet 9 of the Streets, Rights of Way and Access Plans.                                          |
| Whiston Footpath no.12                                                          | Public right of way to be temporarily closed and diverted between points PRoW 09/08 and PRoW 09/10 as shown on Sheet 9 of the Streets, Rights of Way and Access Plans.                                          |
| Whiston Footpath no.13                                                          | Public right of way to be temporarily closed and diverted between points PRoW 09/07 and PRoW 09/10 as shown on Sheet 9 of the Streets, Rights of Way and Access Plans.                                          |
| Whiston Footpath no.13                                                          | Public right of way to be temporarily closed and diverted between points PRoW 09/08 and PRoW 09/11 as shown on Sheet 9 of the                                                                                   |

| <i>(1)</i><br><i>Public Right of Way to be temporarily closed</i> | <i>(2)</i><br><i>Extent of temporary closure or restriction</i>                                                                                                         |
|-------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                   | Streets, Rights of Way and Access Plans.                                                                                                                                |
| Whiston Bridleway no.27                                           | Public right of way to be temporarily closed and diverted between points PRoW 10/01 and PRoW 10/02 as shown on Sheet 10 of the Streets, Rights of Way and Access Plans. |
| Whiston Footpath no.6                                             | Public right of way to be temporarily closed and diverted between points PRoW 10/03 and PRoW 10/04 as shown on Sheet 10 of the Streets, Rights of Way and Access Plans. |
| Whiston Footpath no.16                                            | Public right of way to be temporarily closed and diverted between points PRoW 10/05 and PRoW 10/06 as shown on Sheet 10 of the Streets, Rights of Way and Access Plans. |
| Whiston Footpath no.23                                            | Public right of way to be temporarily closed and diverted between points PRoW 11/01 and PRoW 11/02 as shown on Sheet 11 of the Streets, Rights of Way and Access Plans. |
| Whiston Footpath no.24                                            | Public right of way to be temporarily closed and diverted between points PRoW 11/03 and PRoW 11/04 as shown on Sheet 11 of the Streets, Rights of Way and Access Plans. |
| Treeton Footpath no.4                                             | Public right of way to be temporarily closed and diverted between points PRoW 12/01 and PRoW 12/02 as shown on Sheet 12 of the Streets, Rights of Way and Access Plans. |
| Whiston Footpath no.14                                            | Public right of way to be temporarily closed and diverted between points PRoW 12/03 and PRoW 12/04 as shown on Sheet 12 of the Streets, Rights of Way and Access Plans. |
| Whiston Footpath no.19                                            | Public right of way to be temporarily closed and diverted between points PRoW 13/01 and PRoW 13/02 as shown on Sheet 13 of the Streets, Rights of Way and Access Plans. |
| Whiston Bridleway no.20                                           | Public right of way to be temporarily closed and diverted between points PRoW 13/03 and PRoW 13/04 as shown on Sheet 13 of the Streets, Rights of Way and Access Plans. |
| Thurcroft Footpath no.8                                           | Public right of way to be temporarily closed and diverted between points PRoW 15/01 and PRoW 15/02 as shown on Sheet 15 of the Streets, Rights of Way and Access Plans. |
| Thurcroft Bridleway no.9                                          | Public right of way to be temporarily closed and diverted between points PRoW 15/03 and PRoW 15/04 as shown on Sheet of the Streets, Rights of Way and Access Plans.    |
| Ulley Footpath no.5                                               | Public right of way to be temporarily closed and diverted between points PRoW 17/01 and PRoW 17/02 as shown on Sheet 17 of the Streets, Rights of Way and Access Plans. |
| Thurcroft Bridleway no.9                                          | Public right of way to be temporarily closed and diverted between points PRoW 18/01 and PRoW 18/02 as shown on Sheet 18 of the Streets, Rights of Way and Access Plans. |

| <i>(1)</i><br><i>Public Right of Way to be temporarily closed</i> | <i>(2)</i><br><i>Extent of temporary closure or restriction</i>                                                                                                         |
|-------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Aston Bridleway no.18                                             | Public right of way to be temporarily closed and diverted between points PRoW 18/03 and PRoW 18/04 as shown on Sheet 18 of the Streets, Rights of Way and Access Plans. |
| Aston Footpath no.17                                              | Public right of way to be temporarily closed and diverted between points PRoW 19/01 and PRoW 19/02 as shown on Sheet 19 of the Streets, Rights of Way and Access Plans. |
| Todwick Footpath no.6                                             | Public right of way to be temporarily closed and diverted between points PRoW 20/01 and PRoW 20/02 as shown on Sheet 20 of the Streets, Rights of Way and Access Plans. |
| Aston Bridleway no.7                                              | Public right of way to be temporarily closed and diverted between points PRoW 22/01 and PRoW 22/02 as shown on Sheet 22 of the Streets, Rights of Way and Access Plans. |
| Aston Bridleway no.8                                              | Public right of way to be temporarily closed and diverted between points PRoW 22/03 and PRoW 22/04 as shown on Sheet 22 of the Streets, Rights of Way and Access Plans. |
| Harthill Bridleway no.16                                          | Public right of way to be temporarily closed and diverted between points PRoW 26/01 and PRoW 26/02 as shown on Sheet 26 of the Streets, Rights of Way and Access Plans. |
| Harthill Bridleway no.15                                          | Public right of way to be temporarily closed and diverted between points PRoW 26/03 and PRoW 26/04 as shown on Sheet 26 of the Streets, Rights of Way and Access Plans. |
| Harthill Footpath no.15                                           | Public right of way to be temporarily closed and diverted between points PRoW 26/05 and PRoW 26/06 as shown on Sheet 26 of the Streets, Rights of Way and Access Plans. |
| Harthill Footpath no.17                                           | Public right of way to be temporarily closed and diverted between points PRoW 28/01 and PRoW 28/02 as shown on Sheet 28 of the Streets, Rights of Way and Access Plans. |
| Harthill Bridleway no.4                                           | Public right of way to be temporarily closed and diverted between points PRoW 29/01 and PRoW 29/02 as shown on Sheet 29 of the Streets, Rights of Way and Access Plans. |

### PART 3

#### PUBLIC RIGHTS OF WAY TO BE TEMPORARILY CLOSED OR RESTRICTED

| <i>(1)</i><br><i>Public Right of Way to be temporarily closed</i>               | <i>(2)</i><br><i>Extent of temporary closure or restriction</i>                                                                                           |
|---------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Within the administrative area of Rotherham Metropolitan Borough Council</b> |                                                                                                                                                           |
| Whiston Footpath No. 12                                                         | Public right of way to be temporarily closed between points PRoW 09/03 and PRoW 09/07 as shown on Sheet 9 of the Streets, Rights of Way and Access Plans. |

## PART 4

### PUBLIC RIGHTS OF WAY TO BE PERMANENTLY CLOSED WITH DIVERSIONS

| <i>(1)</i><br><i>Public Right of Way to be temporarily closed</i>               | <i>(2)</i><br><i>Extent of closure</i>                                                                                                                     | <i>(3)</i><br><i>New public right of way to be substituted</i>                                                                    |
|---------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------|
| <b>Within the administrative area of Rotherham Metropolitan Borough Council</b> |                                                                                                                                                            |                                                                                                                                   |
| Anston Footpath No. 16                                                          | Public right of way to be permanently closed between points PRoW 18/05 and PRoW 18/06 as shown on Sheet 18 of the Streets, Rights of Way and Access Plans. | Permanent diversion between points PRoW 18/05 and PRoW 18/06 as shown on Sheet 18 of the Streets, Rights of Way and Access Plans. |

# SCHEDULE 6

## ACCESS TO WORKS

Article 16

### PART 1

#### PERMANENT MEANS OF ACCESS TO WORKS

| <i>(1)</i><br><i>Street</i>                                                     | <i>(2)</i><br><i>Description of means of access</i>                                                                                           |
|---------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Within the administrative area of City of Doncaster Council</b>              |                                                                                                                                               |
| Sheffield Road (A630),<br>Westbound                                             | Permanent means of access to the authorised development at the point marked 01/01 on Sheet 1 of the Streets, Rights of Way and Access Plans.  |
| Park Lane, Northbound                                                           | Permanent means of access to the authorised development at the point marked 02/01 on Sheet 2 of the Streets, Rights of Way and Access Plans.  |
| Park Lane, Southbound                                                           | Permanent means of access to the authorised development at the point marked 02/02 on Sheet 2 of the Streets, Rights of Way and Access Plans.  |
| <b>Within the administrative area of Rotherham Metropolitan Borough Council</b> |                                                                                                                                               |
| Slacks Lane, Southbound                                                         | Permanent means of access to the authorised development at the point marked 08/01 on Sheet 8 of the Streets, Rights of Way and Access Plans.  |
| Slacks Lane, Northbound                                                         | Permanent means of access to the authorised development at the point marked 08/02 on Sheet 8 of the Streets, Rights of Way and Access Plans.  |
| Second Lane, Eastbound                                                          | Permanent means of access to the authorised development at the point marked 08/03 on Sheet 8 of the Streets, Rights of Way and Access Plans.  |
| Second Lane, Westbound                                                          | Permanent means of access to the authorised development at the point marked 08/04 on Sheet 8 of the Streets, Rights of Way and Access Plans.  |
| Long Lane, Southbound                                                           | Permanent means of access to the authorised development at the point marked 09/04 on Sheet 9 of the Streets, Rights of Way and Access Plans.  |
| Field Lane, Eastbound                                                           | Permanent means of access to the authorised development at the point marked 10/03 on Sheet 10 of the Streets, Rights of Way and Access Plans. |
| Field Lane, Westbound                                                           | Permanent means of access to the authorised development at the point marked 10/04 on Sheet 10 of the Streets, Rights of Way and Access Plans. |
| Field Lane, Eastbound                                                           | Permanent means of access to the authorised development at the point marked 11/05 on Sheet 11 of the Streets, Rights of Way and Access Plans. |
| Guilthwaite Common Lane,<br>Westbound                                           | Permanent means of access to the authorised development at the point marked 13/03 on Sheet 13 of the Streets, Rights of Way and Access Plans. |
| Penny Hill Lane, Westbound                                                      | Permanent means of access to the authorised development at the point marked 14/05 on Sheet 14 of the Streets, Rights of Way and Access Plans. |
| Penny Hill Lane, Eastbound                                                      | Permanent means of access to the authorised development at                                                                                    |

| <i>(1)</i><br><i>Street</i>          | <i>(2)</i><br><i>Description of means of access</i>                                                                                           |
|--------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------|
|                                      | the point marked 14/06 on Sheet 14 of the Streets, Rights of Way and Access Plans.                                                            |
| Brampton Lane, Westbound             | Permanent means of access to the authorised development at the point marked 14/09 on Sheet 14 of the Streets, Rights of Way and Access Plans. |
| Brampton Lane, Eastbound             | Permanent means of access to the authorised development at the point marked 14/10 on Sheet 14 of the Streets, Rights of Way and Access Plans. |
| Common Lane, Northbound              | Permanent means of access to the authorised development at the point marked 15/01 on Sheet 15 of the Streets, Rights of Way and Access Plans. |
| Common Lane, Northbound              | Permanent means of access to the authorised development at the point marked 15/02 on Sheet 15 of the Streets, Rights of Way and Access Plans. |
| Long Road, Northbound                | Permanent means of access to the authorised development at the point marked 15/06 on Sheet 15 of the Streets, Rights of Way and Access Plans. |
| Hawk Hill Lane, Eastbound            | Permanent means of access to the authorised development at the point marked 15/09 on Sheet 15 of the Streets, Rights of Way and Access Plans. |
| Hawk Hill Lane, Westbound            | Permanent means of access to the authorised development at the point marked 15/10 on Sheet 15 of the Streets, Rights of Way and Access Plans. |
| Hawk Hill Lane, Westbound            | Permanent means of access to the authorised development at the point marked 15/13 on Sheet 15 of the Streets, Rights of Way and Access Plans. |
| Wood Lane, Eastbound                 | Permanent means of access to the authorised development at the point marked 16/01 on Sheet 16 of the Streets, Rights of Way and Access Plans. |
| Ulley Lane, Northbound               | Permanent means of access to the authorised development at the point marked 17/05 on Sheet 17 of the Streets, Rights of Way and Access Plans. |
| Ulley Lane, Southbound               | Permanent means of access to the authorised development at the point marked 17/06 on Sheet 17 of the Streets, Rights of Way and Access Plans. |
| Carr Lane, Southbound                | Permanent means of access to the authorised development at the point marked 18/02 on Sheet 18 of the Streets, Rights of Way and Access Plans. |
| Carr Lane, Northbound                | Permanent means of access to the authorised development at the point marked 18/03 on Sheet 18 of the Streets, Rights of Way and Access Plans. |
| Pocket Handkerchief Lane, Northbound | Permanent means of access to the authorised development at the point marked 20/01 on Sheet 20 of the Streets, Rights of Way and Access Plans. |
| Sheffield Road (A57), Southbound     | Permanent means of access to the authorised development at the point marked 21/01 on Sheet 21 of the Streets, Rights of Way and Access Plans. |
| Hard Land, Northbound                | Permanent means of access to the authorised development at the point marked 25/01 on Sheet 25 of the Streets, Rights of Way and Access Plans. |
| Walseker Lane, Southbound            | Permanent means of access to the authorised development at the point marked 26/02 on Sheet 26 of the Streets, Rights of Way and Access Plans. |

| <i>(1)</i><br><i>Street</i>                                                     | <i>(2)</i><br><i>Description of means of access</i>                                                                                           |
|---------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------|
| Walseker Lane, Northbound                                                       | Permanent means of access to the authorised development at the point marked 26/03 on Sheet 26 of the Streets, Rights of Way and Access Plans. |
| Killamarsh Lane, Westbound                                                      | Permanent means of access to the authorised development at the point marked 27/03 on Sheet 27 of the Streets, Rights of Way and Access Plans. |
| Killamarsh Lane, Eastbound                                                      | Permanent means of access to the authorised development at the point marked 27/04 on Sheet 27 of the Streets, Rights of Way and Access Plans. |
| Loverose Way, Southbound                                                        | Permanent means of access to the authorised development at the point marked 29/03 on Sheet 29 of the Streets, Rights of Way and Access Plans. |
| <b>Within the administrative area of North East Derbyshire District Council</b> |                                                                                                                                               |
| Rotherham Road (A618), Eastbound                                                | Permanent means of access to the authorised development at the point marked 29/01 on Sheet 29 of the Streets, Rights of Way and Access Plans. |

## PART 2

### TEMPORARY MEANS OF ACCESS TO WORKS

| <i>(1)</i><br><i>Street</i>                                                     | <i>(2)</i><br><i>Description of means of access</i>                                                                                          |
|---------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Within the administrative area of City of Doncaster Council</b>              |                                                                                                                                              |
| Common Lane, Eastbound                                                          | Temporary means of access to the authorised development at the point marked 05/05 on Sheet 5 of the Streets, Rights of Way and Access Plans. |
| <b>Within the administrative area of Rotherham Metropolitan Borough Council</b> |                                                                                                                                              |
| Common Lane, Westbound                                                          | Temporary means of access to the authorised development at the point marked 05/04 on Sheet 5 of the Streets, Rights of Way and Access Plans. |
| Bramley Lane, Southbound                                                        | Temporary means of access to the authorised development at the point marked 05/06 on Sheet 5 of the Streets, Rights of Way and Access Plans. |
| Lidget Lane, Southbound                                                         | Temporary means of access to the authorised development at the point marked 06/01 on Sheet 6 of the Streets, Rights of Way and Access Plans. |
| Lidget Lane, Southbound                                                         | Temporary means of access to the authorised development at the point marked 06/04 on Sheet 6 of the Streets, Rights of Way and Access Plans. |
| Sandy Lane, Eastbound                                                           | Temporary means of access to the authorised development at the point marked 07/05 on Sheet 7 of the Streets, Rights of Way and Access Plans. |
| Morthen Road (B6060), Northbound                                                | Temporary means of access to the authorised development at the point marked 08/05 on Sheet 8 of the Streets, Rights of Way and Access Plans. |
| Morthen Road (B6060), Southbound                                                | Temporary means of access to the authorised development at the point marked 08/06 on Sheet 8 of the Streets, Rights of Way and Access Plans. |
| Long Lane, Southbound                                                           | Temporary means of access to the authorised development at the point marked 09/01 on Sheet 9 of the Streets, Rights of                       |

| <i>(1)</i><br><i>Street</i>                                       | <i>(2)</i><br><i>Description of means of access</i>                                                                                           |
|-------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                   | Way and Access Plans.                                                                                                                         |
| Pleasley Road (A618),<br>Southbound                               | Temporary means of access to the authorised development at the point marked 09/03 on Sheet 9 of the Streets, Rights of Way and Access Plans.  |
| Morthen Lane, Eastbound                                           | Temporary means of access to the authorised development at the point marked 11/01 on Sheet 11 of the Streets, Rights of Way and Access Plans. |
| Morthen Lane, Westbound                                           | Temporary means of access to the authorised development at the point marked 11/02 on Sheet 11 of the Streets, Rights of Way and Access Plans. |
| Pleasley Road, Northbound                                         | Temporary means of access to the authorised development at the point marked 12/01 on Sheet 12 of the Streets, Rights of Way and Access Plans. |
| Pleasley Road, Southbound                                         | Temporary means of access to the authorised development at the point marked 12/02 on Sheet 12 of the Streets, Rights of Way and Access Plans. |
| Unnamed private road adjacent to Sheffield Road (A57), Northbound | Temporary means of access to the authorised development at the point marked 20/05 on Sheet 20 of the Streets, Rights of Way and Access Plans. |
| Unnamed private road adjacent to Sheffield Road (A57), Southbound | Temporary means of access to the authorised development at the point marked 20/06 on Sheet 20 of the Streets, Rights of Way and Access Plans. |
| Sheffield Road (A57), Westbound                                   | Temporary means of access to the authorised development at the point marked 22/01 on Sheet 22 of the Streets, Rights of Way and Access Plans. |
| Dog Kennels Hill (B6059) , Northbound                             | Temporary means of access to the authorised development at the point marked 22/02 on Sheet 22 of the Streets, Rights of Way and Access Plans. |
| Dog Kennels Hill (B6059), Southbound                              | Temporary means of access to the authorised development at the point marked 22/03 on Sheet 22 of the Streets, Rights of Way and Access Plans. |
| Unnamed private road off Dog Kennels Hill (B6059), Northbound     | Temporary means of access to the authorised development at the point marked 23/01 on Sheet 23 of the Streets, Rights of Way and Access Plans. |
| Unnamed private road off Dog Kennels Hill (B6059), Southbound     | Temporary means of access to the authorised development at the point marked 23/02 on Sheet 23 of the Streets, Rights of Way and Access Plans. |
| Unnamed private road off Dog Kennels Hill (B6059), Eastbound      | Temporary means of access to the authorised development at the point marked 23/03 on Sheet 23 of the Streets, Rights of Way and Access Plans. |
| Unnamed private road off Dog Kennels Hill (B6059), Eastbound      | Temporary means of access to the authorised development at the point marked 23/04 on Sheet 23 of the Streets, Rights of Way and Access Plans. |
| Lady Field Road, Southbound                                       | Temporary means of access to the authorised development at the point marked 23/05 on Sheet 23 of the Streets, Rights of Way and Access Plans. |
| Lady Field Road, Northbound                                       | Temporary means of access to the authorised development at the point marked 23/06 on Sheet 23 of the Streets, Rights of Way and Access Plans. |
| Packman Lane, Northbound                                          | Temporary means of access to the authorised development at the point marked 24/01 on Sheet 24 of the Streets, Rights of Way and Access Plans. |
| Packman Lane, Southbound                                          | Temporary means of access to the authorised development at                                                                                    |

| <i>(1)</i><br><i>Street</i> | <i>(2)</i><br><i>Description of means of access</i>                                                                                           |
|-----------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------|
|                             | the point marked 24/02 on Sheet 24 of the Streets, Rights of Way and Access Plans.                                                            |
| Manor Road, Northbound      | Temporary means of access to the authorised development at the point marked 25/02 on Sheet 25 of the Streets, Rights of Way and Access Plans. |
| Manor Road, Southbound      | Temporary means of access to the authorised development at the point marked 25/03 on Sheet 25 of the Streets, Rights of Way and Access Plans. |
| Hard Lane, Southbound       | Temporary means of access to the authorised development at the point marked 26/05 on Sheet 26 of the Streets, Rights of Way and Access Plans. |
| Woodall Lane, Eastbound     | Temporary means of access to the authorised development at the point marked 28/02 on Sheet 28 of the Streets, Rights of Way and Access Plans. |
| Woodall Lane, Eastbound     | Temporary means of access to the authorised development at the point marked 28/03 on Sheet 28 of the Streets, Rights of Way and Access Plans. |

# SCHEDULE 7

Article 18

## TRAFFIC REGULATION MEASURES

### PART 1

#### TRAFFIC SIGNAL AND BANKSPERSON CONTROL AREAS

| <i>(1)</i><br><i>Street</i>                                                     | <i>(2)</i><br><i>Extent of temporary traffic signal and banksman control area</i>                                     |
|---------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------|
| <b>Within the administrative area of the City of Doncaster Council</b>          |                                                                                                                       |
| Sheffield Road (A630)                                                           | Extent of traffic signals and banksman control as shown on Sheet 1 of the Traffic Regulation Measures Plans.          |
| Moor Lane                                                                       | Extent of traffic signals and banksman control as shown on Sheet 5 of the Traffic Regulation Measures Plans.          |
| <b>Within the administrative area of Rotherham Metropolitan Borough Council</b> |                                                                                                                       |
| Common Lane                                                                     | Extent of traffic signals and banksman as shown on Sheet 5 of the Traffic Regulation Measures Plans.                  |
| Bramley Lane                                                                    | Extent of traffic signals and banksman control as shown on Sheet 5 of the Traffic Regulation Measures Plans.          |
| Lidget Lane                                                                     | Extent of traffic signals and banksman control as shown on Sheets 5 and 6 of the Traffic Regulation Measures Plans.   |
| Sandy Lane                                                                      | Extent of traffic signals and banksman control as shown on Sheet 7 of the Traffic Regulation Measures Plans.          |
| Broadlands                                                                      | Extent of traffic signals and banksman control as shown on Sheet 7 of the Traffic Regulation Measures Plans.          |
| Sherbourne Avenue                                                               | Extent of traffic signals and banksman control as shown on Sheet 7 of the Traffic Regulation Measures Plans.          |
| Slacks Lane                                                                     | Extent of traffic signals and banksman control as shown on Sheets 7 and 8 of the Traffic Regulation Measures Plans.   |
| Second Lane                                                                     | Extent of traffic signals and banksman control as shown on Sheet 8 of the Traffic Regulation Measures Plans.          |
| Moat Lane                                                                       | Extent of traffic signals and banksman control as shown on Sheet 8 of the Traffic Regulation Measures Plans.          |
| Green Lane                                                                      | Extent of traffic signals and banksman control as shown on Sheet 8 of the Traffic Regulation Measures Plans.          |
| Morthen Road (B6060)                                                            | Extent of traffic signals and banksman control as shown on Sheet 8 of the Traffic Regulation Measures Plans.          |
| Pleasley Road (A618)                                                            | Extent of traffic signals and banksman control as shown on Sheets 9 and 12 of the Traffic Regulation Measures Plans.  |
| Long Lane                                                                       | Extent of traffic signals and banksman control as shown on Sheets 9 and 12 of the Traffic Regulation Measures Plans.  |
| Morthen Lane                                                                    | Extent of traffic signals and banksman control as shown on Sheet 10 of the Traffic Regulation Measures Plans.         |
| Field Lane                                                                      | Extent of traffic signals and banksman control as shown on Sheets 10 and 11 of the Traffic Regulation Measures Plans. |
| Morthen Lane                                                                    | Extent of traffic signals and banksman control as shown on Sheet 11 of the Traffic Regulation Measures Plans.         |
| Guilthwaite Common Lane                                                         | Extent of traffic signals and banksman control as shown on Sheets 12 and 13 of the Traffic Regulation Measures Plans. |

|                                                                                 |                                                                                                                           |
|---------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------|
| Brampton Lane                                                                   | Extent of traffic signals and banksman control as shown on Sheet 14 of the Traffic Regulation Measures Plans.             |
| Penny Hill Lane                                                                 | Extent of traffic signals and banksman control as shown on Sheets 14 and 15 of the Traffic Regulation Measures Plans.     |
| Common Lane                                                                     | Extent of traffic signals and banksman control as shown on Sheet 15 of the Traffic Regulation Measures Plans.             |
| Hawk Hill Lane                                                                  | Extent of traffic signals and banksman control as shown Sheet 15 of the Traffic Regulation Measures Plans.                |
| Long Road                                                                       | Extent of traffic signals and banksman control as shown on Sheets 15 and 19 of the Traffic Regulation Measures Plans.     |
| Wood Lane (B6067)                                                               | Extent of traffic signals and banksman control as shown on Sheet 16 of the Traffic Regulation Measures Plans.             |
| Ulley Lane                                                                      | Extent of traffic signals and banksman control as shown on Sheet 17 of the Traffic Regulation Measures Plans.             |
| Carr Lane                                                                       | Extent of traffic signals and banksman control as shown on Sheets 17 and 18 of the Traffic Regulation Measures Plans.     |
| Pocket Handkerchief Lane                                                        | Extent of traffic signals and banksman control as shown on Sheet 20 of the Traffic Regulation Measures Plans.             |
| Todwick Road                                                                    | Extent of traffic signals and banksman control as shown on Sheet 20 of the Traffic Regulation Measures Plans.             |
| Sheffield Road (A57)                                                            | Extent of traffic signals and banksman control as shown on Sheets 20, 21 and 22 of the Traffic Regulation Measures Plans. |
| Crowgate                                                                        | Extent of traffic signals and banksman control as shown on Sheet 22 of the Traffic Regulation Measures Plans.             |
| Dog Kennels Hill (B6059)                                                        | Extent of traffic signals and banksman control as shown Sheets 22 and 23 of the Traffic Regulation Measures Plans.        |
| Lady Field Road                                                                 | Extent of traffic signals and banksman control as shown Sheets 23 and 24 of the Traffic Regulation Measures Plans.        |
| Packman Lane                                                                    | Extent of traffic signals and banksman control as shown on Sheets 23 and 24 of the Traffic Regulation Measures Plans.     |
| Manor Road                                                                      | Extent of traffic signals and banksman control as shown on Sheet 25 of the Traffic Regulation Measures Plans.             |
| Hard Lane                                                                       | Extent of traffic signals and banksman control as shown on Sheets 25 and 26 of the Traffic Regulation Measures Plans.     |
| Walseker Lane                                                                   | Extent of traffic signals and banksman control as shown on Sheet 26 of the Traffic Regulation Measures Plans.             |
| Killamarsh Lane                                                                 | Extent of traffic signals and banksman control as shown on Sheet 27 of the Traffic Regulation Measures Plans.             |
| Woodall Lane                                                                    | Extent of traffic signals and banksman control as shown on Sheet 28 of the Traffic Regulation Measures Plans.             |
| Loverose Way                                                                    | Extent of traffic signals and banksman control as shown on Sheets 28 and 29 of the Traffic Regulation Measures Plans.     |
| <b>Within the administrative area of North East Derbyshire District Council</b> |                                                                                                                           |
| Rotherham Road (A618)                                                           | Extent of traffic signals and banksman control as shown on Sheets 27 and 29 of the Traffic Regulation Measures Plans.     |

## PART 2

### TEMPORARY SPEED LIMIT

|     |     |
|-----|-----|
| (1) | (2) |
|-----|-----|

| <i>Street</i>                                                                   | <i>Extent of temporary speed limit</i>                                                                               |
|---------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------|
| <b>Within the administrative area of Rotherham Metropolitan Borough Council</b> |                                                                                                                      |
| Bramley Lane                                                                    | Temporary 30mph speed limit for the length shown on Sheets 5 and 6 of the Traffic Regulation Measures Plans.         |
| Lidget Lane                                                                     | Temporary 30mph speed limit for the length shown on Sheets 5 and 6 of the Traffic Regulation Measures Plans.         |
| Sandy Lane                                                                      | Temporary 30mph speed limit for the length shown on Sheet 7 of the Traffic Regulation Measures Plans.                |
| Long Lane                                                                       | Temporary 30mph speed limit for the length shown on Sheets 9 and 12 of the Traffic Regulation Measures Plans.        |
| Crowgate                                                                        | Temporary 30mph speed limit for the length shown Sheet 22 of the Traffic Regulation Measures Plans.                  |
| Dog Kennels Hill (B6059)                                                        | Temporary 30mph speed limit for the length shown Sheets 22 and 23 of the Traffic Regulation Measures Plans.          |
| Lady Field Road                                                                 | Temporary 30mph speed limit for the length shown on Sheets 23 and 24 of the Traffic Regulation Measures Plans.       |
| Packman Lane                                                                    | Temporary 30mph speed limit for the length shown on Sheets 23 and Sheet 24 of the Traffic Regulation Measures Plans. |
| Manor Road                                                                      | Temporary 30mph speed limit for the length shown on Sheet 25 of the Traffic Regulation Measures Plans.               |

# SCHEDULE 8

Article 25, 33 and 34

## LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN AND NEW RIGHTS ETC. MAY BE ACQUIRED

| (1)<br><i>Plot reference number shown on the Land Plans</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | (2)<br><i>Purpose for which temporary possession and rights may be acquired or restrictive covenants may be imposed</i> |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------|
| 1-1, 6-2, 7-11, 7-16, 7-17, 7-20, 7-21, 7-22, 8-21, 8-23, 9-2, 9-4, 9-8, 9-9, 9-10, 9-13, 9-14, 9-15, 9-16, 11-18, 11-19, 12-1, 12-2, 12-3, 12-5, 12-14, 12-16, 13-10, 13-11, 13-12, 14-9, 14-10, 15-1, 15-2, 15-3, 15-6, 16-2, 16-3, 16-4, 16-5, 16-6, 16-7, 16-8, 20-3, 21-14, 22-6, 22-7, 22-9, 22-10, 22-11, 23-10, 23-11, 23-12, 23-14, 23-15, 23-16, 23-19, 23-20, 24-1-24-2, 25-2, 25-4, 25-5, 25-6, 25-10, 25-11, 26-2, 26-3, 26-6, 26-7, 26-8, 26-9, 26-29, 27-7, 27-8, 27-9, 27-12, 28-3, 28-4, 28-6, 28-7, 28-8, 28-15, 28-16, 29-11                                                                                                                                                                                                                                                                                               | Work No. 5                                                                                                              |
| 1-4, 2-2, 2-4, 3-5, 5-5, 5-6, 5-7, 5-8, 5-9, 6-3, 6-6, 7-1, 7-3, 7-4, 7-15, 8-2, 8-3, 8-6, 8-7, 8-8, 8-9, 8-16, 8-22, 9-3, 10-2, 11-7, 11-12, 11-13, 11-14, 11-15, 11-17, 12-15, 13-2, 13-3, 13-8, 14-3, 14-4, 14-6, 14-14, 14-16, 14-17, 14-19, 14-21, 14-24, 14-26, 14-30, 14-31, 17-1, 17-3, 17-6, 18-14, 18-10, 18-12, 18-22, 20-5, 22-1, 22-8, 23-13, 23-21, 26-4, 26-5, 26-19, 26-21, 27-6, 27-10, 27-11, 28-5, 28-13, 29-2, 29-4, 29-6                                                                                                                                                                                                                                                                                                                                                                                                 | Work Nos. 2 and 5                                                                                                       |
| 1-8, 3-1, 12-9, 26-24, 26-25, 26-26, 26-27, 26-28                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Work Nos. 5 and 6                                                                                                       |
| 1-9, 19-5                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Work Nos. 2 and 6                                                                                                       |
| 3-9, 4-4, 5-1, 5-2, 5-3, 5-4, 5-10, 5-11, 5-12, 5-13, 5-14, 5-15, 6-1, 6-4, 6-5, 6-7, 7-2, 7-5, 7-6, 7-7, 7-8, 7-9, 7-10, 7-12, 7-13, 7-14, 7-18, 7-19, 7-23, 7-24, 7-25, 8-11, 8-12, 8-13, 8-14, 8-15, 8-17, 8-18, 8-19, 8-20, 8-24, 8-25, 8-26, 8-27, 8-28, 8-29, 9-1, 9-5, 9-6, 9-7, 9-11, 9-12, 10-1, 10-3, 10-4, 10-5, 10-6, 10-7, 10-8, 11-1, 11-2, 11-3, 11-4, 11-5, 11-6, 11-8, 11-9, 11-10, 11-11, 12-7, 12-8, 12-10, 12-11, 12-12, 12-13, 12-17, 13-6, 13-7, 13-9, 14-11, 14-12, 17-5, 18-3, 18-16, 18-17, 18-18, 18-19, 18-20, 20-, 20-6, 20-7, 20-8, 20-9, 20-10, 21-7, 21-8, 22-2, 22-3, 22-4, 22-5, 22-12, 22-13, 22-14, 23-1, 23-2, 23-3, 23-4, 23-5, 23-6, 23-7, 23-8, 23-9, 23-17, 23-18, 25-1, 25-3, 25-7, 25-8, 25-9, 26-10, 26-11, 26-12, 26-15, 26-16, 27-1, 27-2, 27-3, 28-1, 28-2, 29-3, 29-5, 29-7, 29-8, 29-9, 29-10 | Work No. 2                                                                                                              |
| 26-13, 28-9, 28-10                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Work Nos. 2 and 9                                                                                                       |
| 4-6, 4-7, 4-8, 4-9, 4-10, 4-11, 15-9, 16-9, 18-5, 18-6, 21-12                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Work No. 6                                                                                                              |
| 10-11, 10-12, 10-13, 10-14, 10-15                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Work No. 7                                                                                                              |
| 14-25, 18-8, 18-9, 19-6, 19-7, 21-10, 21-11                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Work No. 9                                                                                                              |

**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 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 limiting paragraph 1, the Land Compensation Act 1973(a) has effect subject to the modifications set out in sub-paragraphs (2).

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

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

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

(2) For section 5A(5A) (relevant valuation date) of the 1961 Act, after “if” substitute—

- “(a) the acquiring authority enters on land for the purpose of exercising a right in accordance with a notice of entry under section 11(1) of the 1965 Act;
  - (b) the acquiring authority is subsequently required by a determination under paragraph 13 of Schedule 2A to the 1965 Act (as substituted by paragraph 10 of Schedule 8 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of restrictive covenants) to the Whitestone 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 the 1965 Act*

4. The 1965 Act has effect with the modifications necessary to make it apply to the compulsory acquisition under this Order of a right by the creation of a new right, or to the imposition under this Order of a restrictive covenant, as it applies to the compulsory acquisition under this Order of land, so that, in appropriate contexts, references in that Act to land are read (according to the requirements of the particular context) as referring to, or as including references—

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

---

(a) 1973 c. 26.

(2) Without limiting sub-paragraph (1), Part 1 of the 1965 Act applies in relation to the compulsory acquisition under this Order of a right by the creation of a new right or, in relation to the imposition of a restrictive covenant, with the modifications specified in the following provisions of this Schedule.

**5.** For section 7 (measure of compensation) of the 1965 Act 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.”.

**6.** 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 so as 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.

**7.** Section 11(a) (powers of entry) of the 1965 Act is modified so as to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right 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 12(b) (penalty for unauthorised entry) and 13(c) (entry on warrant in the event of obstruction) of the 1965 Act are modified correspondingly.

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

**9.** Section 22 (interests omitted from purchase) of the 1965 Act is modified so 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, subject to compliance with that section as respects compensation.

**10.** For Schedule 2A of the 1965 Act substitute—

- 
- (a) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No.1) and S.I. 2009/1307.
  - (b) Section 12 was amended by section 56(2) of, and Part 1 of Schedule 9 to, the Courts Act 1971 (c. 23).
  - (c) 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).
  - (d) Section 20 was amended by paragraph 4 of Schedule 15 to the Planning and Compensation Act 1991 (c. 34) and S.I. 2009/1307.

## “SCHEDULE 2A

### COUNTER-NOTICE REQUIRING PURCHASE OF LAND

#### *Introduction*

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 has not executed a general vesting declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981<sup>(a)</sup> as applied by article 28 (application of the 1981 Act) and article 31 (modification of the 2017 Regulations) in respect of the land to which the notice to treat relates.

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 acquiring 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 acquiring authority must serve notice of their decision on the owner within the period of 3 months beginning with the day on which the counter-notice is served (“the decision period”).

7. If the acquiring authority decides to refer the counter-notice to the Upper Tribunal it must do so within the decision period.

8. If the acquiring authority does not serve notice of a decision within the decision period it is to be treated as if it had served notice of a decision to withdraw the notice to treat at the end of that period.

9. If the acquiring 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 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) 1981 c. 66, as amended by Part 7 of the Housing and Planning Act 2016 (c. 22).

- (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 acquiring authority ought to be required to take.

**13.** If the Upper Tribunal determines that the acquiring 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 acquiring authority ought to be required to take some or all of the house, building or factory, the acquiring authority may at any time within the period of 6 weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.

(2) If the acquiring authority withdraws the notice to treat under this paragraph it must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawal of the notice.

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

#### *Application of the 2017 Regulations*

**11.** References in Schedule 1 to the 2017 Regulations to land are, in the appropriate contexts, to be read (according to the requirements of the context) as referring to, or as including references to—

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

## ACQUISITION OF WAYLEAVES, EASEMENTS AND OTHER RIGHTS

## PART 1

## ON BEHALF OF LICENCE HOLDERS

*Acquisition of necessary wayleaves*

1.—(1) This paragraph applies where—

- (a) a licence holder has agreed in writing with the undertaker that it is necessary or expedient to remove an electric line within the Order limits and to install and keep installed an electric line in substitution for it on, under or over specified land;
- (b) the licence holder has agreed in writing that the undertaker may seek a necessary wayleave on behalf of the licence holder in respect of the specified land; and
- (c) the owner or occupier of the specified land, having been given a notice by the undertaker or the licence holder requiring him to give the necessary wayleave to the licence holder within a period (not being less than 21 days) specified in the notice—
  - (i) has failed to give the wayleave before the end of that period; or
  - (ii) has given the wayleave subject to terms and conditions to which the undertaker, following consultation with the licence holder, objects.

(2) Subject to sub-paragraphs (3) and (4), the Secretary of State may, on the application of the undertaker, himself grant the necessary wayleave to the licence holder subject to such terms and conditions as he thinks fit; and a necessary wayleave so granted shall, unless previously terminated in accordance with a term contained in the wayleave, continue in force for such period as may be specified in the wayleave.

(3) The Secretary of State must not entertain an application under sub-paragraph (2) in any case where—

- (a) the specified land is covered by a dwelling, or will be so covered on the assumption that any planning permission which is in force is acted on; and
- (b) the line is to be installed on or over the specified land.

(4) Before granting the necessary wayleave to the licence holder, the Secretary of State must afford—

- (a) the occupier of the specified land; and
- (b) where the occupier is not also the owner of the specified land, the owner, an opportunity of being heard by a person appointed by the Secretary of State.

(5) A necessary wayleave granted to the licence holder under this paragraph—

- (a) is not subject to the provisions of any enactment requiring the registration of interests in, charges over or other obligations affecting land; but
- (b) binds any person who is at any time the owner or occupier of the specified land.

(6) Where in pursuance of a necessary wayleave granted under this paragraph a licence holder has erected on any land supports for an electric line, the licence holder is deemed to have an

interest in that land for the purposes of section 7 of the Mines (Working Facilities and Support) Act 1966<sup>(a)</sup>.

(7) Where a wayleave is granted to a licence holder under this paragraph—

- (a) the occupier of the specified land; and
- (b) the owner (where the occupier is not also the owner of the specified land),

may recover from the undertaker compensation in respect of the grant.

(8) Where in the exercise of any right conferred by such a wayleave any damage is caused to the specified land or to movables, any person interested in the specified land or movables may recover from the undertaker compensation in respect of that damage, and where, in consequence of the exercise of such a right, a person is disturbed in their enjoyment of any land or movables he may recover from the undertaker compensation in respect of that disturbance.

(9) Compensation under this paragraph may be recovered as a lump sum or by periodical payments or partly in one way and partly in the other.

(10) Any question of disputed compensation under this paragraph will be determined by the Tribunal, and section 4 of the Land Compensation Act 1961<sup>(b)</sup> applies to any such determination.

#### *Compulsory acquisition of easements or other rights*

2.—(1) This paragraph applies where—

- (a) a licence holder has agreed in writing with the undertaker that it is necessary or expedient to remove an electric line within the Order limits and to install and keep installed an electric line in substitution for it, or to otherwise install an electric line in connection with the authorised development on, under or over specified land; and
- (b) the licence holder has agreed in writing that the undertaker may seek an easement or other right in land on behalf of the licence holder in respect of the specified land.

(2) Subject to sub-paragraph (3) and (4), where a compulsory purchase order is sought by the undertaker in accordance with sub-paragraph (1), the Secretary of State may authorise the relevant licence holder to purchase compulsorily an easement or right over the specified land where the Secretary of State is satisfied that it is required for any purpose connected with the carrying on of the activities which he is authorised by his licence to carry on.

(3) Part I (paragraphs 2 onwards) and Part II of Schedule 3 of the Electricity Act 1989<sup>(c)</sup> applies in respect of powers of compulsory purchase sought in accordance with this paragraph except that where consent is provided under sub-paragraph (1), the consent required under paragraph 2(1) of Schedule 3 of the Electricity Act 1989 is deemed to have been provided.

(4) Unless otherwise agreed between the undertaker and the licence holder in writing, where the undertaker seeks a compulsory purchase order on behalf of a licence holder in accordance with this paragraph, the negotiation of consideration and compensation will be undertaken by the undertaker and any consideration or compensation agreed or determined is payable by the undertaker and Schedule 3 of the Electricity Act 1989 as applied by this paragraph is interpreted accordingly.

#### *Interpretation*

3. In this Part of this Schedule—

“dwelling” means a building or part of a building occupied, or (if not occupied) last occupied or intended to be occupied, as a private dwelling and includes any garden, yard, outhouses and appurtenances belonging to or usually enjoyed with that building or part;

“licence holder” means a person holding a licence under section 6 of the Electricity Act 1989;

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(a) 1966 c. 4.  
(b) 1961 c. 33.  
(c) 1989 c. 29.

“necessary wayleave” means consent for the licence holder to install and keep installed the electric line on, under or over the specified land and to have access to the specified land for the purpose of inspecting, maintaining, adjusting, repairing, altering, replacing or removing the electric line;

“specified land” means the land within or outside the Order limits on, under or over which a licence holder agrees, in accordance with paragraph 1 or 2, that an electric line should either be relocated in substitution for an existing electric line or, installed; and

“Tribunal” means the Upper Tribunal in relation to England and Wales.

## PART 2

### ON BEHALF OF CODE OPERATORS

#### *Court imposition of code rights*

4.—(1) This paragraph applies where—

- (a) a code operator has agreed in writing with the undertaker that for the purpose of the authorised development it is necessary or expedient to remove electronic communications apparatus owned by the code operator within the Order limits and to install and keep installed electronic communications apparatus in substitution for it on, under or over specified land;
- (b) the code operator has agreed in writing that the undertaker may seek code rights on behalf of the code operator in respect of the specified land, including all of the other terms of the agreement sought; and
- (c) the code operator or the undertaker has given the relevant person a notice in writing—
  - (i) setting out the code rights, and all of the other terms of the agreement sought; and
  - (ii) (stating that the person’s agreement to those terms is sought.

(2) The undertaker may apply to the court for an order under this paragraph if the relevant person does not, before the end of 28 days beginning with the day on which the notice in sub-paragraph (1)(c) is given, agree to confer or be otherwise bound by the code rights.

(3) An order under this paragraph is one which imposes on the code operator and the relevant person an agreement between them which—

- (a) confers the code rights on the operator; or
- (b) provides for the code rights to bind the relevant person.

(4) Where the undertaker makes an application to the court under sub-paragraph (2), paragraph 21, 22, 23, 24 and 26 of Part 4 of Schedule 3A (The Electronic Communications Code) and Part 14 (Compensation under The Code) of the Communications Act 2003<sup>(a)</sup> applies as if—

- (a) reference to the making of an “order under paragraph 20” were substituted for the making of an “order under Schedule 10 of the Whitestone Solar Farm Order 20[ ]”; and
- (b) (unless otherwise agreed on a case-by-case basis in writing between the undertaker and the code operator, all references to “consideration” or “compensation” provided for in any agreement or order or otherwise to be determined is to be read as being payable by the undertaker.

#### *Compulsory acquisition of easements or other rights*

5.—(1) The undertaker may seek a compulsory purchase order on behalf of a code operator where—

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(a) 2003 c. 21.

- (a) the code operator has agreed in writing with the undertaker that for the purpose of the authorised development it is necessary or expedient to remove electronic communications apparatus owned by the operator within the Order limits and to install and keep installed electronic communications apparatus in substitution for it on, under or over specified land;
  - (b) the code operator has agreed in writing that the undertaker may seek an easement or other rights over land on behalf of the code operator in respect of the specified land.
- (2) Subject to sub-paragraph (3) and (4), where a compulsory purchase order is sought by the undertaker in accordance with sub-paragraph (1), the Secretary of State may authorise the relevant code operator to purchase compulsorily the specified land or an easement or right over the specified land if the Secretary of State is satisfied that it is required by the code operator—
- (a) for, or in connection with, the establishment or running of the code operator’s network; or
  - (b) as to which it can reasonably be foreseen that it will be so required.
- (3) Subject to sub-paragraph (4), paragraphs 3(2) to 3(7) of Schedule 4 of the Communications Act 2003 apply in respect of powers of compulsory purchase sought pursuant to this paragraph.
- (4) Unless otherwise agreed between the undertaker and the licence holder in writing, where the undertaker seeks a compulsory purchase order on behalf of a code operator pursuant to this paragraph, all negotiations of compensation will be undertaken by the undertaker and any consideration or compensation agreed or determined in respect of any easements or rights acquired will be payable by the undertaker and Schedule 4 of the Communications Act 2003 will be interpreted accordingly as it applies to this paragraph.

#### *Interpretation*

6. In this paragraph, the following terms have the following meaning—

“code operator” has the meaning given for an “operator” in paragraph 2 of Schedule 3A of the Communications Act 2003;

“code operator’s network” has the meaning given for “operator’s network” in paragraph 6 of Schedule 3A of the Communications Act 2003;

“code rights” has the meaning given in paragraph 3 of Schedule 3A of the Communications Act 2003;

“court” has the meaning given in paragraph 94 of Schedule 3A of the Communications Act 2003;

“electronic communications apparatus” has the meaning given in paragraph 5 of Schedule 3A of the Communications Act 2003;

“relevant person” means the person in respect of whose interest in land a code right is required;

“specified land” means the land within or outside the Order limits on, under or over which an operator agrees, in accordance with sub-paragraph (1), that electronic communications apparatus should be relocated in substitution for existing electronic communications apparatus.

## PART 3

### ON BEHALF OF WATER AND SEWERAGE UNDERTAKERS

#### *Compulsory acquisition of easement or other rights*

7.—(1) The undertaker may seek a compulsory purchase order on behalf of a water or sewerage undertaker where—

- (a) the water or sewerage undertaker has agreed in writing with the undertaker that for the purpose of the authorised development it is necessary or expedient to remove water or

sewerage apparatus owned by the water or sewerage undertaker within the Order limits and to install and keep installed alternative apparatus in substitution for it on, under or over specified land;

- (b) the water or sewerage undertaker has agreed in writing that the undertaker may seek an easement or other rights over land on behalf of the water or sewerage undertaker in respect of the specified land.

(2) Subject to sub-paragraph (3), where a compulsory purchase order is sought by the undertaker in accordance with sub-paragraph (1), the Secretary of State may authorise the relevant water or sewerage undertaker to purchase compulsorily the specified land or an easement or right over the specified land where the Secretary of State is satisfied that it is required by the water or sewerage undertaker for the purposes of, or in connection with, the carrying out of its functions.

(3) Section 155(3) to (6) of the Water Industry Act 1991<sup>(a)</sup> applies in respect of powers of compulsory purchase sought in accordance with this paragraph.

(4) Unless otherwise agreed between the undertaker and the water or sewerage undertaker in writing, where the undertaker seeks a compulsory purchase order on behalf of a water or sewerage undertaker in accordance with this paragraph, all negotiations of compensation will be undertaken by the undertaker and any consideration or compensation agreed or determined in respect of any easements or rights acquired is payable by the undertaker.

(5) In this paragraph—

“alternative apparatus” means alternative water or sewerage apparatus adequate to enable the water or sewerage undertaker in question to fulfil its statutory functions in a manner not less efficient than previously;

“specified land” means the land within or outside the Order limits on, under or over which a water or sewerage undertaker agrees, in accordance with sub-paragraph (1), that alternative apparatus should be relocated in substitution for existing relevant water or sewerage apparatus;

“water or sewerage undertaker” means “water undertaker” or “sewerage undertaker” as defined in the Water Industry Act 1991; and

“water or sewerage apparatus” means—

- (a) mains, pipes or other water apparatus belonging to or maintained by a water undertaker for the purposes of water supply; and
- (b) any drain or works vested in a sewerage undertaker, and any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of the Water Industry Act 1991 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 in each case includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus.

## PART 4

### ON BEHALF OF GAS TRANSPORTERS

#### *Compulsory acquisition of easements or other rights*

8.—(1) The undertaker may seek a compulsory purchase order on behalf of a gas transporter where—

- (a) the gas transporter has agreed in writing with the undertaker that for the purpose of the authorised development it is necessary or expedient to remove gas apparatus owned by

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(a) 1991 c. 56.

the gas transporter within the Order limits and to install and keep installed gas apparatus in substitution for it on, under or over specified land;

- (b) the gas transporter has agreed in writing that the undertaker may seek an easement or other rights over land on behalf of the gas transporter in respect of the specified land.

(2) Subject to sub-paragraph (3) and (4), where a compulsory purchase order is sought by the undertaker in accordance with sub-paragraph (1), the Secretary of State may authorise the relevant gas transporter to purchase compulsorily an easement or right over the specified land.

(3) Schedule 3 of the Gas Act 1986<sup>(a)</sup> applies in respect of powers of compulsory purchase sought in accordance with this paragraph.

(4) Where the undertaker seeks a compulsory purchase order on behalf of a gas transporter in accordance with this paragraph, all negotiations of compensation will be undertaken by the undertaker, unless otherwise agreed with the gas transporter, and any consideration or compensation agreed or determined in respect of any easements or rights acquired will be payable by the undertaker only (unless otherwise agreed with the operator).

(5) In this paragraph—

“alternative apparatus” means alternative gas apparatus adequate to enable the gas transporter in question to fulfil its statutory functions in a manner not less efficient than previously;

“gas apparatus” means any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purpose of gas supply;

“gas transporter” has the meaning given in Part 1 of the Gas Act 1986; and

“specified land” means land within or outside the Order limits on, under or over which a gas transporter agrees, in accordance with sub-paragraph (1), that alternative apparatus should be relocated in substitution for existing gas apparatus.

# SCHEDULE 11

## PROTECTIVE PROVISIONS

Article 49

### PART 1

#### FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWAGE UNDERTAKERS

1. For the protection of the utility undertakers referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and the utility undertaker 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 no less efficient than previously;

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989(a)), belonging to or maintained by that undertaker;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter within the meaning of Part 1 of the Gas Act 1986(b) for the purposes of gas supply;
- (c) in the case of a water undertaker, mains, pipes or other apparatus belonging to or maintained by that undertaker for the purposes of water supply; and
- (d) in the case of a sewerage undertaker—
  - (i) any drain or works vested in the undertaker under the Water Industry Act 1991(c); and
  - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) (adoption of sewers and disposal of works) of that Act or an agreement to adopt made under section 104 (agreements to adopt sewer, drain or sewage disposal works, at a future date) of that Act,

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

“functions” includes powers and duties;

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

“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;

“utility undertaker” means—

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

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(a) 1989 c. 29.

(b) 1986 c. 44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c. 45), and was further amended by section 76 of the Utilities Act 2000 (c. 27).

(c) 1991 c. 56.

- (b) a gas transporter within the meaning of Part 1 of the Gas Act 1986;
  - (c) a water undertaker within the meaning of the Water Industry Act 1991; and
  - (d) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991;
- for the area of the authorised development, and in relation to any apparatus, means the undertaker to whom it belongs or by whom it is maintained.

#### *On street apparatus*

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 (street works in England and Wales) of the 1991 Act.

#### *Apparatus in stopped up public rights of way*

4. Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 14 (temporary or permanent closure or restriction 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.

#### *Acquisition of land*

5. 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*

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 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 must not be extinguished, until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the utility undertaker in question in accordance with sub-paragraphs (2) to (6).

(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 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 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 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 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 47 (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 47 (arbitration),

and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraphs (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 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 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.

(8) If the utility undertaker 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, provided that the undertaker has first taken all reasonable steps to contact the relevant representatives of the utility undertaker in order to elicit such a response.

(9) Any deemed approval under sub-paragraph (8) does not extend to the actual undertaking of the removal works, which remains the sole responsibility of the utility undertaker or its contractors.

#### *Facilities and rights for alternative 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 of the utility 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 the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 47 (arbitration).

(2) In settling those terms and conditions in respect of alternative apparatus to be constructed in the land of the undertaker, the arbitrator will—

- (a) give effect to all reasonable requirements of the undertaker for ensuring the safety and efficient operation of the authorised development and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with the proposed works of the undertaker; and
- (b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions, if any, applicable to the apparatus constructed in or on the land for which the alternative apparatus is to be substituted.

(3) 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.

#### *Retained apparatus*

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 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 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 under sub-paragraph (1) is 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 3, 6 and 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 unless otherwise agreed with the utility undertaker, 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 the utility undertaker in question 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.

#### *Expenses and costs*

9.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker all expenses reasonably 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 must be deducted from any sum payable under subparagraph (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 47 (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) 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 an inspection chamber 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 such works referred to in paragraph 6(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 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 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 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.

### *Cooperation*

**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 undertaker 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(a);

“electronic communications apparatus” has the same meaning as in the electronic communications code;

“the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act(b);

“electronic communications code network” means—

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(a) 2003 c. 21.

(b) See section 106.

(a) so much of an electronic communications network or infrastructure 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 (application of the electronic communications code) of the 2003 Act; and

(b) an electronic communications network which the undertaker 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 (application of the electronic communications code) of the 2003 Act; and

“operator” means the operator of an electronic communications code network.

**14.** The exercise of the powers conferred by article 35 (statutory undertakers) is subject to Part 10 (undertaker’s 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 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.

(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 47 (arbitration).

(5) 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 damages, or any interruptions, caused by electro-magnetic interference arising from the construction or use of the authorised development.

(6) In respect of the acquisition of rights under or over or use of the utility undertaker’s property, the utility undertaker must co-operate with the undertaker with a view to avoiding undue delay

(7) 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 THE DRAINAGE AUTHORITIES

**16.** The provisions of this Part have effect for the protection of a drainage authority unless otherwise agreed in writing between the undertaker and the drainage authority.

**17. In this Part—**

“commence” has the same meaning as in article 2 (interpretation) of this Order and commencement shall be construed to have the same meaning;

“construction” includes execution, placing, altering, replacing, relaying and removal; and  
“construct” and “constructed” must be construed accordingly;

“drainage authority” means in relation to an ordinary water course—

- (a) the drainage board concerned within the meaning of section 23 of the Land Drainage Act 1991(a); and
- (b) in the case of any area for which there is no such drainage board, the lead local flood authority within the meaning of section (6) other definitions of the Flood and Water Management Act 2010(b);

“drainage work” means any ordinary watercourse and includes any land that provides or is expected to provide flood storage capacity for any ordinary watercourse and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage, or flood defence;

“ordinary watercourse” has the meaning given by section 72 (interpretation) of the Land Drainage Act 1991(c);

“plans” includes sections, drawings, specifications and method statements;

“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 or is otherwise likely to—

- (a) affect the total volume or volumetric rate of flow of water in or flowing to or from any drainage work; or
- (b) affect the conservation, distribution or use of water resources.

**18.—(1)** Before beginning to construct any specified work, the undertaker must submit to the drainage authority plans of the specified work and such further particulars available to it as the drainage authority may within 28 days of the submission of the plans reasonably require.

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the drainage authority or determined under sub-paragraph (1).

(3) 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 2 months of the submission of the plans for approval (or submission of further particulars if required by the drainage authority under sub-paragraph (1)) or, in the case of a refusal, if it is not accompanied by a statement of the grounds of refusal; and
- (c) may be given subject to such reasonable requirements as the drainage authority may make for the protection of any drainage work taking into account the terms of this Order.

(4) The drainage authority 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).

**19.** Without limiting paragraph 18, 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; or

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(a) 1991 c. 59

(b) 2010 c. 29.

(c) 1991 c. 59, section 72(1).

(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.

**20.**—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the drainage authority under paragraph 19, must be constructed—

- (a) without unreasonable delay in accordance with the plans approved or deemed to have been approved or settled under this Part; 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 on which it is brought into use.

(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.

(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, the drainage authority may by notice in writing require the undertaker at the undertaker's expense to comply with the requirements of this Part 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 required, 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), if within a reasonable period, being not less than 56 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 expenditure reasonably 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 emergency exercise the powers conferred by sub-paragraph (4) until the dispute has been finally determined under paragraph 25.

**21.** 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 the drainage work is otherwise damaged, the 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 the expense reasonably incurred by it in doing so.

**22.** The undertaker must make reasonable compensation to the drainage authority in respect of all reasonable costs, charges and expenses that the drainage authority may reasonably incur, have to pay or may sustain—

- (a) in the examination or approval of plans under this Part;
- (b) in inspecting the construction of any specified work or any protective works required by the drainage authority under this Part; and
- (c) in carrying out of any surveys or tests by the drainage authority that are reasonably required in connection with the construction of the specified work.

**23.—**(1) Without limiting the other provisions of this Part, the undertaker must make reasonable compensation to the drainage authority in respect of all reasonable claims, demands, proceedings, costs, damages, expenses or loss that may be made or taken against, reasonably recovered from or incurred by, the drainage authority by reason of—

- (a) any damage to any drainage work so as to impair its efficiency for the purposes of flood defence; or
- (b) any flooding or increased flooding of any such land,

that is caused by the construction of any specified work or any act or omission of the undertaker, its contractors, agents or employees whilst engaged on the work.

(2) The drainage authority must give to the undertaker reasonable notice of any such claim or demand, and no settlement or compromise may be made without the agreement of the undertaker (such agreement not to be unreasonably withheld or delayed).

(3) The drainage authority must use its reasonable endeavours to mitigate in whole or in part and to minimise any claims, demands, proceedings, costs, damages, expenses or loss to which this paragraph applies.

(4) If requested to do so by the undertaker, the drainage authority must provide an explanation of how the claim has been minimised.

(5) The undertaker is only liable under this paragraph for claims reasonably incurred by the drainage authority.

(6) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage to the extent that it is attributable to the act, neglect or default of the drainage authority or the breach of a statutory duty of the drainage authority, its officers, servants, contractors or agents.

**24.** 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.

**25.** Any dispute between the undertaker and the drainage authority under this Part, unless otherwise agreed, must be determined by arbitration under article 47 (arbitration).

## PART 4

### FOR THE PROTECTION OF CADENT GAS LIMITED

#### *Application*

**26.—**(1) The following provisions apply for the protection of Cadent Gas Limited unless otherwise agreed in writing between the undertaker and Cadent Gas Limited.

#### *Interpretation*

**27.** In this Part of this Schedule—

“alternative apparatus” means appropriate alternative apparatus to the reasonable satisfaction of Cadent Gas Limited to enable Cadent Gas Limited to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means any gas mains, pipes, pressure governors, ventilators, cathodic protections, cables or other apparatus belonging to or maintained by Cadent Gas Limited for the purpose of its undertaking together with any replacement apparatus and such other apparatus constructed pursuant to this Order that becomes operational apparatus of Cadent Gas Limited for the purposes of its undertaking and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“Cadent Gas Limited” means Cadent Gas Limited (company number 10080864), whose registered office is at Pilot Way, Ansty, Coventry, England, CV7 9JU and includes any successor in title or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986(a);

“commence” and “commencement” include any surveys, monitoring, work operations, remedial work in respect of any contamination or other adverse ground conditions, the receipt and erection of construction plant and equipment, and non-intrusive investigations for the purpose of assessing ground conditions;

“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;

“facilities and rights” for construction and for maintenance include any appropriate working areas required to reasonably and safely undertake that construction or maintenance, and any necessary rights of access;

“functions” includes powers and duties;

“gas supply” means the transmission, transportation, supply or storage of gas;

“ground mitigation scheme” means a scheme approved by Cadent Gas Limited (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 the subject of 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 requires the undertaker to submit for Cadent Gas Limited’s approval a ground mitigation scheme;

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

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

“maintain” and “maintenance” have effect as if Cadent Gas Limited’s existing apparatus was authorised development and as if the term maintain includes protect and use;

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

“rights” includes restrictive covenants and in relation to de-commissioned apparatus the surrender of rights, release of liabilities and transfer of de-commissioned apparatus;

“specified works” means any of the authorised development or activities (including maintenance) 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 sub-paragraph 32(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 sub-paragraph 32(2) or otherwise; and

“Cadent Gas Limited’s undertaking” means the rights, duties and obligations of Cadent Gas Limited as a public gas transporter within the meaning of Section 7(a) of the Gas Act 1986 (as amended by the Gas Act 1995).

*On street apparatus*

**28.**—(1) This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and Cadent Gas Limited are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act, except for—

- (a) paragraphs 29 (apparatus of Cadent Gas Limited in stopped up streets), 34 (retained apparatus: protection of Cadent Gas Limited), 35 (expenses) and 36 (indemnity); and
- (b) where sub-paragraph (2) applies, paragraphs 32 (removal of apparatus) and 33 (facilities and rights for alternative apparatus).

(2) This sub-paragraph applies where any apparatus is diverted from an alignment within the existing adopted public highway but not wholly replaced within the existing adopted public highway, notwithstanding that any diversion may be carried out under the provisions of Part 3 of the 1991 Act.

(3) Paragraph 35 (expenses) does not apply to any part of the authorised development that affects Cadent Gas Limited’s apparatus in a street and which constitutes major highway works, major bridge works or major transport works for the purposes of Part 3 of the 1991 Act, but instead—

- (a) any allowable costs of the measures needing to be taken in relation to that apparatus in consequence of the authorised development, or in order to facilitate their execution, must be determined in accordance with Part 3 and section 85 (sharing of cost of necessary measures) of that Act, and any regulations for the time being having effect under that section; and
- (b) any allowable costs are to be borne by the undertaker and Cadent Gas Limited in such proportions as may be prescribed by any such regulations.

*Apparatus of Cadent Gas Limited in stopped up streets*

**29.** Notwithstanding the temporary closure, alteration, diversion or restriction of use of any street under the powers of article 14 (temporary closure or restriction of use of streets and public rights of way), Cadent Gas Limited will be at liberty at all times to take all necessary access across any such closed restricted altered or diverted street and to execute and do all such works and things in, upon or under any such street as it would have been entitled to do immediately before such temporary closure, alteration, diversion or restriction of use in respect of any apparatus which at the time of the stopping up or diversion was in that street.

*Protective works to buildings*

**30.** The undertaker must exercise the powers conferred by article 20 (protective work to buildings and land) so as not to obstruct or render less convenient the access to any apparatus without the written consent of Cadent Gas Limited (such consent not to be unreasonably withheld or delayed).

*Acquisition of land*

**31.**—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not appropriate or acquire any interest in land or appropriate, acquire, extinguish, interfere with or override any easement or other interest in land of Cadent Gas Limited otherwise than by agreement.

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(a) Section 7 was substituted by section 5 of the Gas Act 1995 (c. 45) and the term “gas transporter” was substituted by section 76(2) of the Utilities Act 2000 (c. 27).

(2) As a condition of agreement between the parties in sub-paragraph (1), prior to the carrying out or maintenance of any part of the authorised development (or in such other timeframe as may be agreed between Cadent Gas Limited 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 Cadent Gas Limited or affect the provisions of any enactment or agreement regulating the relations between Cadent Gas Limited and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as Cadent Gas Limited reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between Cadent Gas Limited and the undertaker acting reasonably and which must be no less favourable on the whole to Cadent Gas Limited unless otherwise agreed by Cadent Gas Limited, and it will be the responsibility of the undertaker to procure or secure the consent to and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised development or maintenance thereof.

(3) The undertaker and Cadent Gas Limited 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 Cadent Gas Limited and other enactments relied upon by Cadent Gas Limited as of right or other use in relation to the apparatus, then the provisions in this Schedule prevail.

(4) Any agreement or consent granted by Cadent Gas Limited under paragraph 34 (retained apparatus: protection of Cadent Gas Limited) or any other paragraph of this Part of this Schedule, is not to be taken to constitute agreement under sub-paragraph (1).

(5) As a condition of an agreement under sub-paragraph (1) that involves de-commissioned apparatus being left in situ the undertaker must accept a surrender of any existing easement or other interest of Cadent Gas Limited in such de-commissioned apparatus and release cadent gas from all liabilities in respect of such de-commissioned apparatus from the date of such surrender.

(6) Where an undertaker acquires land which is subject to any right or interest of Cadent Gas Limited (including, without limitation, easements and agreements relating to rights or other interests) and the provisions of paragraph 32 (removal of apparatus) do not apply, the undertaker must, unless Cadent Gas Limited agrees otherwise—

- (a) retain any notice of Cadent Gas Limited's easement, right or other interest on the title to the relevant land when registering the undertaker's title to such acquired land; and
- (b) (where no such notice of Cadent Gas Limited's easement right or other interest exists in relation to such acquired land or any such notice is registered only on the Land Charges Register) include (with its application to register title to the undertaker's interest in such acquired land at the Land Registry) a notice of Cadent Gas Limited's easement, right or other interest in relation to such acquired land.

#### *Removal of apparatus*

**32.—**(1) If, in the exercise of the powers conferred by this Order, including pursuant to any agreement reached in accordance with paragraph 31 (acquisition of land), the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be de-commissioned or removed under this Part of this Schedule and any right of Cadent Gas Limited to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, is in operation, and the facilities and rights referred to in sub-paragraph (2) have been provided, to the reasonable satisfaction of Cadent Gas Limited and in accordance with sub-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to Cadent Gas Limited advance written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the

exercise of any of the powers conferred by this Order Cadent Gas Limited reasonably needs to move or remove any of its apparatus) the undertaker must afford to Cadent Gas Limited to its satisfaction (taking into account paragraph 33(1) (facilities and rights for alternative apparatus)) the necessary facilities and rights—

- (a) for the construction of alternative apparatus; and
- (b) subsequently for the maintenance of that apparatus.

(3) If the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, Cadent Gas Limited must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to assist the undertaker in obtaining the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation does not extend to the requirement for Cadent Gas Limited to use its compulsory purchase powers to this end unless it (in its absolute discretion) elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between Cadent Gas Limited and the undertaker.

(5) Cadent Gas Limited must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the prior grant to Cadent Gas Limited of such facilities and rights as are referred to in sub-paragraph (2) or (3), then proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to decommission or remove any apparatus required by the undertaker to be de-commissioned or removed under the provisions of this Part of this Schedule.

#### *Facilities and rights for alternative apparatus*

33.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for Cadent Gas Limited facilities and rights in land for the access to construction and maintenance of alternative apparatus in substitution for apparatus to be de-commissioned or removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and Cadent Gas Limited and must be no less favourable on the whole to Cadent Gas Limited than the facilities and rights enjoyed by it in respect of the apparatus to be de-commissioned or removed unless otherwise agreed by Cadent Gas Limited.

(2) If the facilities and rights to be afforded by the undertaker and agreed with Cadent Gas Limited under sub-paragraph (1) in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to Cadent Gas Limited than the facilities and rights enjoyed by it in respect of the apparatus to be de-commissioned or removed then the terms and conditions to which those facilities and rights are subject may be referred to arbitration in accordance with paragraph 40 of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to Cadent Gas Limited as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

#### *Retained apparatus: protection of Cadent Gas Limited*

34.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to Cadent Gas Limited a plan and, if reasonably required by Cadent Gas Limited a ground monitoring scheme in respect of those works.

(2) The plan to be submitted to Cadent Gas Limited under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;

- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc.;
- (d) the position of all apparatus;
- (e) by way of detailed drawings every alteration proposed to be made to or close to any such apparatus; and
- (f) any intended maintenance regimes.

(3) The undertaker must not commence any specified works until Cadent Gas Limited has given written approval of the plan so submitted (and the ground monitoring scheme if required).

(4) Any approval of Cadent Gas Limited required 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 and Cadent Gas Limited must meaningfully engage with the undertaker within 28 days of the date of submission of the plan under sub-paragraph (1).

(5) Cadent Gas Limited 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 only be executed in accordance with—

- (a) the plan submitted under sub-paragraph (1) (and the ground monitoring scheme if required), as approved or as amended from time to time by agreement between the undertaker and Cadent Gas Limited; and
- (b) all conditions imposed under sub-paragraph (4)(a), and Cadent Gas Limited will be entitled to watch and inspect the execution of those works.

(7) Where Cadent Gas Limited requires any protective pro works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to Cadent Gas Limited's satisfaction prior to the commencement of any specified works (or any relevant part thereof) for which protective works are required prior to commencement.

(8) If Cadent Gas Limited, 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 26 to 28 and 31 to 33 apply as if the removal of the apparatus had been required by the undertaker under sub-paragraph 32(2) (removal of apparatus).

(9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time but in no case less than 56 days before commencing the execution of the specified works a new plan (and the ground monitoring scheme if required), instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan (and the ground monitoring scheme if required).

(10) (9) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development (including such an event attributable to its maintenance)—

- (a) the undertaker must implement an appropriate ground mitigation scheme; and
- (b) Cadent Gas Limited retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 47 (expenses).

(11) The undertaker is not required to comply with sub-paragraph (1) where it needs to carry out emergency works but in that case it must give to Cadent Gas Limited notice as soon as is reasonably practicable and a plan of those works and must comply with the conditions imposed under sub-paragraph 4(a) in so far as is reasonably practicable in the circumstances.

(12) In this paragraph, “emergency works” means works whose execution at the time when they are executed is required in order to put an end to, or to prevent the occurrence of, circumstances

then existing or imminent (or which the person responsible for the works believes on reasonable grounds to be existing or imminent) which are likely to cause danger to persons or property.

### *Expenses*

**35.**—(1) Subject to the following provisions of this paragraph, the undertaker must pay to Cadent Gas Limited on demand, all charges, costs and expenses reasonably anticipated or reasonably incurred by Cadent Gas Limited 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 development including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by Cadent Gas Limited in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs (including professional fees) incurred by Cadent Gas Limited as a consequence of Cadent Gas Limited—
  - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 32(3) (removal of apparatus) if it elects to do so; or
  - (ii) exercising any compulsory purchase powers under this Order transferred to or benefitting Cadent Gas Limited;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule; and
- (g) any watching brief pursuant to sub-paragraph 34(6) (retained apparatus: protection of Cadent Gas Limited).

(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,

(4) 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 40 (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 Cadent Gas Limited 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 (or it would be unlawful due to a statutory or regulatory change) 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.

(5) 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.

(6) An amount which apart from this sub-paragraph would be payable to Cadent Gas Limited 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 Cadent Gas Limited 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*

**36.—**(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Part of this Schedule (including without limitation relocation, diversion, decommissioning, construction and maintenance of apparatus or alternative apparatus) or in consequence of the construction, use, maintenance or failure of any of the authorised development (including works carried out under article 20 (protective work to buildings)) by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by the undertaker) in the course of carrying out such works, including without limitation works carried out by the undertaker under this 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 development) or property of Cadent Gas Limited, or there is any interruption in any service provided, or in the supply of any goods, by Cadent Gas Limited, or Cadent Gas Limited 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 Cadent Gas Limited, the cost reasonably incurred by Cadent Gas Limited in making good such damage or restoring the supply; and
- (b) indemnify Cadent Gas Limited for any other expenses, loss, demands, proceedings, damages, claims, penalty, compensation or costs properly incurred or paid by or recovered from Cadent Gas Limited, by reason or in consequence of any such damage or interruption or Cadent Gas Limited becoming liable to any third party as aforesaid other than arising from any default of Cadent Gas Limited.

(2) The fact that any act or thing may have been done by Cadent Gas Limited on behalf of the undertaker or in accordance with a plan approved by Cadent Gas Limited or in accordance with any requirement of Cadent Gas Limited or under its supervision including under any watching brief will not (unless sub-paragraph (3) applies) excuse the undertaker from liability under the provisions of sub-paragraph (1) unless Cadent Gas Limited fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker in respect of—

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of Cadent Gas Limited, its officers, servants, contractors or agents;
- (b) any part of the authorised development carried out by Cadent Gas Limited in the exercise of any functions conferred by this Order pursuant to a grant or transfer under article 8 (consent to transfer benefit of Order); and
- (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) Cadent Gas Limited 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.

#### *Enactments and agreement*

**37.** Except where this Part of this Schedule provides otherwise, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Cadent Gas Limited 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*

**38.—**(1) Where in consequence of the proposed construction of any part of the authorised development, the undertaker or Cadent Gas Limited requires the removal of apparatus under paragraph 32(2) (removal of apparatus) or Cadent Gas Limited makes requirements for the protection or alteration of apparatus under paragraph 34 (retained apparatus: protection of Cadent Gas Limited), 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 Cadent Gas Limited's undertaking and Cadent Gas Limited must use its best endeavours to cooperate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever Cadent Gas Limited'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*

**39.** If in consequence of any agreement reached in accordance with paragraph 31(1) (acquisition of land) or the powers conferred by this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative rights and means of access to such apparatus as will enable Cadent Gas Limited to maintain or use the apparatus no less effectively than was possible before such obstruction.

#### *Arbitration*

**40.** Save for differences or disputes arising under sub-paragraphs 32(2) and 32(4) (removal of apparatus) any difference or dispute arising between the undertaker and Cadent Gas Limited under this Part of this Schedule must unless otherwise agreed in writing between the undertaker and Cadent Gas Limited be determined by arbitration in accordance with article 47 (arbitration).

#### *Notices*

**41.** Notwithstanding article 46 (service of notices) any plans submitted to Cadent Gas Limited by the undertaker pursuant to paragraph 34(1) (retained apparatus: protection of Cadent Gas Limited) must be sent via email and post to such email and postal addresses as Cadent Gas Limited may from time to time appoint for that purpose and notify to the undertaker in writing.

## **PART 5**

### **FOR THE PROTECTION OF THE CANAL & RIVER TRUST**

### *Application*

42. For the protection of the Canal & River Trust the following provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and the Canal & River Trust.

### *Interpretation*

43.—(1) In this Part of this Schedule—

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

“Canal & River Trust’s network” means the Canal & River Trust’s network of waterways;

“Code of Practice” means the Code of Practice for Works Affecting the Canal & River Trust (April 2023) or any updates or amendments thereto;

“construction”, in relation to any specified work or protective work, includes—

- (a) the execution and placing of that work; and
- (b) any relaying, renewal, or maintenance of that work as may be carried out during the period of 24 months from the completion of that work and “construct” and “constructed” have corresponding meanings;

“detriment” means any damage to the waterway or any other property of the Canal & River Trust caused by the presence of the authorised development and, without prejudice to the generality of that meaning, includes—

- (a) any obstruction of, or interference with, or hindrance or danger to, navigation or to any use of the waterway (including towing paths);
- (b) the erosion of the bed or banks of the waterway, or the impairment of the stability of any works, lands or premises forming part of the waterway;
- (c) the deposit of materials or the siltation of the waterway so as to damage the waterway;
- (d) the pollution of the waterway;
- (e) any significant alteration in the water level of the waterway, or significant interference with the supply of water thereto, or drainage of water therefrom;
- (f) any harm to the ecology of the waterway; and
- (g) any interference with the exercise by any person of any lawful rights over the Canal & River Trust’s network.

“the engineer” means an engineer appointed by the Canal & River Trust for the purpose in question;

“plans” includes navigational risk assessments, sections, designs, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction) and programmes;

“practical completion” means practical completion of all of the specified work notwithstanding that items which would ordinarily be considered snagging items remain outstanding, and the expression “practically complete” and “practically completed” is to be construed accordingly;

“protective work” means a work constructed under paragraph 45(4)(a) (approval of plans, protective works etc.);

“specified work” means so much of the authorised development as is, may be, or takes place in, on, under or over the surface of land below the water level forming part of the waterway, or may affect the waterway or any function of the Canal & River Trust, including any projection over the waterway by those works or any plant or machinery; and

“the waterway” means each and every part of the Chesterfield Canal within the Order limits and includes any works, land or premises belonging to the Canal & River Trust, or under its management or control, and held or used by the Canal & River Trust in connection with its statutory functions as they relate to that canal.

(2) Where the Code of Practice applies to any works or matters that are part of the authorised development or that form part of the protective works and there is an inconsistency between these protective provisions and the Code of Practice, the part of the Code of Practice that is inconsistent with these protective provisions will not apply and these protective provisions will apply. The undertaker will identify and agree with the Canal & River Trust those parts of the Code of Practice which are not applicable to the construction of the specified works and for the avoidance of doubt the undertaker will not be required to comply with those agreed parts of the Code of Practice.

#### *Powers requiring the Canal & River Trust's consent*

**44.—**(1) The undertaker must not in the exercise of the powers conferred by this Order obstruct or interfere with pedestrian or vehicular access to the waterway unless such obstruction or interference with such access is with the consent of the Canal & River Trust.

(2) The undertaker must not exercise any power conferred by this Order to discharge water into the waterway under article 19 (discharge of water) or in any way interfere with the supply of water to or the drainage of water from the waterway unless such exercise is with the consent of the Canal & River Trust, save as to surface water discharge which will not require the consent of the Canal & River Trust.

(3) The undertaker must not exercise the powers conferred by article 21 (authority to survey and investigate the land) or section 11(3) of the 1965 Act, in relation to the waterway unless such exercise is with the consent of the Canal & River Trust.

(4) The undertaker must not exercise any power conferred by article 34 (temporary use of land for carrying out the authorised development) or article 35 (temporary use of land for maintaining the authorised development) in respect of the waterway unless such exercise is with the consent of the Canal & River Trust.

(5) The undertaker must not exercise any power conferred by article 22 (compulsory acquisition of land), article 25 (compulsory acquisition of rights and restrictive covenants), 29 (acquisition of subsoil only) or 35 (statutory undertakers) in respect of the Canal & River Trust's interests in the waterway unless such exercise is with the consent of the Canal & River Trust.

(6) The consent of the Canal & River Trust pursuant to sub-paragraphs (1) to (5) must not be unreasonably withheld or delayed but may be given subject to reasonable terms and conditions provided that it will not be reasonable for the Canal & River Trust to withhold or delay consent or impose terms and conditions that would prevent the undertaker from complying with the protective provisions in this Part of this Schedule or any condition contained in Schedule 2 (requirements) to this Order.

#### *Approval of plans, protective works etc.*

**45.—**(1) The undertaker must before commencing construction of any specified work including any temporary works supply to the Canal & River Trust proper and sufficient plans of that work, on the Canal & River Trust forms, having regard to the Canal & River Trust's Code of Practice and such further particulars available to it as the Canal & River Trust may within 15 working days of the submission of the plans reasonably require for the approval of the engineer and must not commence such construction of a specified work until plans of that work have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld or delayed, and if within 25 working days after such plans (including any other particulars reasonably required under sub-paragraph (1)) have been received by the Canal & River Trust the engineer has not intimated disapproval of those plans and the grounds of disapproval, the engineer is deemed to have approved the plans as submitted.

(3) An approval of the engineer under this paragraph 45 is not deemed to have been unreasonably withheld if approval within the time limited by sub-paragraph (2) has not been given pending the outcome of any consultation on the approval in question that the Canal & River Trust is obliged to carry out in the proper exercise of its functions, provided prior written notice of such consultation has been provided by the Canal & River Trust to the undertaker within 5 working days of having received submission of the undertakers relevant plans for approval.

(4) When signifying approval of the plans the engineer may specify on land held or controlled by the Canal & River Trust or the undertaker and subject to such works being authorised by this Order or being development permitted by an Act of Parliament or general development order made under the 1990 Act—

- (a) any protective work (whether temporary or permanent) which in the reasonable opinion of the engineer should be carried out before the commencement of a specified work to prevent detriment; and
- (b) such other requirements as may be reasonably necessary to prevent detriment; and such protective works must be constructed by the undertaker or by the Canal & River Trust at the undertaker's request with all reasonable dispatch and the undertaker must not commence the construction of a specified work until the engineer has notified the undertaker that the protective works have been completed to the engineer's reasonable satisfaction such consent not to be unreasonably withheld or delayed.

(5) The withholding of an approval of the engineer under this paragraph 45 will be deemed to be unreasonable if it would prevent the undertaker from complying with any condition contained in Schedule 2 (requirements) to this Order.

(6) The undertaker must pay to the Canal & River Trust a capitalised sum representing any reasonably increased and additional cost of maintaining and, when necessary, renewing any works, including any permanent protective works provided under sub-paragraph (4) above, and of carrying out any additional dredging of the waterway reasonably necessitated by the exercise of any of the powers under this Order but if the cost of maintaining the waterway, or of works of renewal of the waterway, is reduced in consequence of any such works, a capitalised sum representing such reasonable saving is to be set off against any sum payable by the undertaker to the Canal & River Trust under this paragraph.

(7) In the event that the undertaker fails to complete the construction of, or part of, the specified works the Canal & River Trust may, if it is reasonably required in order to avoid detriment, serve on the undertaker a notice in writing requesting that construction be completed. Any notice served under this sub-paragraph must state the works that are to be completed by the undertaker and lay out a reasonable timetable for the works' completion. If the undertaker fails to comply with this notice within 35 working days, the Canal & River Trust may construct any of the specified works, or part of such works, (together with any adjoining works) in order to complete the construction of, or part of, the specified works or make such works and the undertaker must reimburse the Canal & River Trust all costs, fees, charges and expenses it has reasonably incurred in carrying out such works.

#### *Design of works*

**46.** Without prejudice to its obligations under the foregoing provisions of this Part of this Schedule the undertaker must consult, collaborate and respond constructively to any reasonable approach, suggestion, proposal or initiative made by the Canal & River Trust on—

- (a) the design and appearance of the specified works;
- (b) the environmental effects of those works; and must have regard to such views as may be expressed by the Canal & River Trust in response to such consultation pursuant in particular to the requirements imposed on the Canal & River Trust by section 22 (general environmental and recreational duties) of the British Waterways Act 1995(a) and to the interest of the Canal & River Trust in preserving and enhancing the environment of its waterways; and

- (c) amendments or alterations to the construction environmental management plan, landscape and biodiversity management and enhancement plan, and decommissioning environmental management plan (as may be approved pursuant to Schedule 2 (requirements)) in respect of a specified work or a protective work or otherwise in connection with the waterway.

#### *Fencing*

47. Where so required by the engineer acting reasonably the undertaker must, to the reasonable satisfaction of the engineer, fence off a specified work or a protective work or take such other steps as the engineer may require to be taken for the purpose of separating a specified work or a protective work from the waterway, whether on a temporary or permanent basis or both.

#### *Notice of works*

48. The undertaker must give to the engineer 30 days' notice of its intention to commence the construction of any of the specified works or protective works (other than permitted preliminary works), or, in the case of repair carried out in an emergency, such notice as may be reasonably practicable so that, in particular, the Canal & River Trust may where appropriate arrange for the publication of notices bringing those works to the attention of users of the Canal & River Trust's network.

#### *Lighting*

49. The undertaker must provide and maintain at its own expense in the vicinity of the specified or protective works such temporary lighting and such signal lights for the control of navigation as the engineer may reasonably require during the construction or failure of the specified or protective works.

#### *Survey of waterway*

50.—(1) Before the commencement of any part of the specified works (other than permitted preliminary works) and again following practical completion of the specified works the undertaker must bear the reasonable and proper cost of the carrying out by a qualified engineer (the "surveyor"), to be approved by the Canal & River Trust and the undertaker, of a survey to measure the navigational depth of the waterway and profile of the riverbed (the "survey") of so much of the waterway and of any land which may provide support for the waterway as will or may be affected by the specified works.

(2) The design of, and methods proposed to be used for, the survey, to be approved by the Canal & River Trust and the undertaker.

(3) For the purposes of the survey the undertaker must—

- (a) on being given reasonable notice (save in case of emergency, when immediate access must be afforded) afford reasonable facilities to the surveyor for access to the site of the specified works and to any land of the undertaker which may provide support for the waterway as will or may be affected by the specified works; and
- (b) supply the surveyor as soon as reasonably practicable with all such information as they may reasonably require and which the undertaker holds with regard to the specified works or the method of their construction.

(4) Copies of the survey results must be provided to both the Canal & River Trust and the undertaker at no cost to the Canal & River Trust.

#### *Construction of specified works*

51.—(1) Any specified works or protective works must, when commenced, be constructed—

- (a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled as aforesaid and with any specifications made under paragraph 57(3) (approval of plans, protective works etc.) and paragraph 46(a) (design of works) of this Part;
- (b) under the supervision (if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little detriment as is reasonably practicable;
- (d) in such manner as to cause as little inconvenience as is reasonably practicable to the Canal & River Trust, its officers and agents and all other persons lawfully using the waterways, except to the extent that temporary obstruction has otherwise been agreed by the Canal & River Trust;
- (e) in such a manner as to ensure that no materials are discharged or deposited into the waterway otherwise than in accordance with article 19 (discharge of water); and
- (f) in compliance with the Code of Practice (where appropriate and where consistent with the exercise of powers pursuant to this Order and for the timely, safe, economic and efficient delivery of the authorised works).

(2) Nothing in this Order authorises the undertaker to make or maintain any permanent works in or over the waterway so as to impede or prevent (whether by reducing the width of the waterway or otherwise) the passage of any vessel which is of a kind (as to its dimensions) for which the Canal & River Trust is required by section 105(1)(b) and (2) of the Transport Act 1968(a) to maintain the waterway,

(3) Following the completion of the construction of the specified works the undertaker must restore the waterway to a condition no less satisfactory than its condition immediately prior to the commencement of those works unless otherwise agreed between the undertaker and the Canal & River Trust and save to the extent that any deterioration to the condition of the waterway is not caused by the construction of the specified works.

(4) In assessing whether the condition of the waterway is no less satisfactory than immediately prior to the works pursuant to sub-paragraph (3), the Canal & River Trust and the undertaker must take account of any survey issued pursuant to paragraph 50 (survey of waterway) and any other information agreed between them pursuant to this Part.

#### *Prevention of pollution*

**52.** The undertaker must not in the course of constructing a specified work or a protective work or otherwise in connection therewith do or permit anything which may result in the pollution of the waterway or the deposit of materials therein (unless otherwise permitted by this Order or the protective provisions in this Part of this Schedule) and must take such steps as the engineer may reasonably require to avoid or make good any breach of its obligations under this paragraph.

#### *Access to work – provision of information*

**53.—**(1) The undertaker on being given reasonable notice must—

- (a) at all reasonable times allow reasonable facilities to the engineer for access to a specified work during its construction; and
- (b) supply the engineer with all such information as the engineer may reasonably require with regard to a specified work or the method of constructing it.

(2) The Canal & River Trust on being given reasonable notice must—

- (a) at all reasonable times afford reasonable facilities to the undertaker and its agents for access to any works carried out by the Canal & River Trust under this Part during their construction; and

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(a) 1968 c. 73. Sections 105(1) and (2) were amended by paragraph 39 of Schedule 2 to S.I. 2012/1659.

- (b) supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them and the undertaker must reimburse the Canal & River Trust's reasonable costs in relation to the supply of such information.

*Alterations to the waterway*

**54.—**(1) If during the construction of a specified work or a protective work or during a period of 24 months after the completion of those works any alterations or additions, either permanent or temporary, to the waterway are reasonably necessary in consequence of the construction of the specified work or the protective work in order to avoid detriment, and the Canal & River Trust gives to the undertaker reasonable notice of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to the Canal & River Trust the reasonable costs of those alterations or additions including, in respect of any such alterations or additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by the Canal & River Trust in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If the cost of maintaining, working or renewing the waterway is reduced in consequence of any such alterations or additions a capitalised sum representing such saving is to be set off against any sum payable by the undertaker to the Canal & River Trust under this paragraph.

*Repayment of the Canal & River Trust's fees, etc.*

**55.—**(1) The undertaker must repay to the Canal & River Trust in accordance with the Code of Practice all fees, costs, charges and expenses reasonably incurred by the Canal & River Trust—

- (a) in constructing any protective works under the provisions of paragraph 45(4)(a) (approval of plans, protective works etc);
- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction or repair of a specified work and any protective works;
- (c) in respect of the employment during the construction of the specified works or any protective works of any inspectors, watchmen and other persons whom it is reasonably necessary to appoint for inspecting, watching and lighting any waterway and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of the specified works or any protective works;
- (d) in bringing the specified works or any protective works to the notice of users of the Canal & River Trust's network; and
- (e) in constructing and/or carrying out any measures related to any specified works or protective works which are reasonably required by the Canal & River Trust to ensure the safe navigation of the waterway save that nothing is to require the Canal & River Trust to construct and/or carry out any measures.

(2) If the Canal & River Trust considers that a fee, charge, cost or expense will be payable by the undertaker pursuant to sub-paragraph (1), the Canal & River Trust will first provide an estimate of that fee, charge, cost or expense and supporting information in relation to the estimate to the undertaker along with a proposed timescale for payment for consideration and the undertaker may, within a period of 15 working days—

- (a) provide confirmation to the Canal & River Trust the estimate is agreed and pay to the Canal & River Trust, by the date stipulated, that fee, charge, cost or expense; or
- (b) provide confirmation to the Canal & River Trust that the estimate is not accepted along with a revised estimate and a proposal as to how or why the undertaker considers that the estimate can be reduced and/or paid at a later date.

(3) The Canal & River Trust must take into account any representations made by the undertaker in accordance with this paragraph 55 and must, within 15 working days of receipt of the

information pursuant to sub-paragraph (1), confirm the amount of the fee, charge, cost or expense to be paid by the undertaker (if any) and the date by which it is to be paid.

(4) The Canal & River Trust must, when estimating and incurring any charge, cost or expense pursuant this paragraph 55, do so with a view to being reasonably economic and acting as if the Canal & River Trust were itself to fund the relevant fee, charge, cost or expense.

*Making good of detriment, compensation and indemnity, etc.*

**56.**—(1) If any detriment is caused by the construction or failure of the specified works or the protective works if carried out by the undertaker, the undertaker (if so required by the Canal & River Trust) must make good such detriment and must pay to the Canal & River Trust all reasonable expenses incurred by the Canal & River Trust, and in compensation for any loss sustained by the Canal & River Trust in making good or otherwise by reason of the detriment.

**57.** The undertaker must be responsible for and make good to the Canal & River Trust all costs, charges, damages, expenses and losses not otherwise provided for in this Part which may be occasioned to and reasonably incurred by the Canal & River Trust—

- (a) by reason of the construction of a specified work or a protective work or the failure of such a work or
- (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon the construction of a specified work or protective work, and subject to sub-paragraph (4), the undertaker must effectively indemnify and hold harmless the Canal & River Trust from and against all claims and demands arising out of or in connection with any of the matters referred to in sub-paragraphs (a) and (b) (provided that the Canal & River Trust is not entitled to recover from the undertaker any consequential losses which are not reasonably foreseeable).

**58.** The fact that any act or thing may have been done by the Canal & River Trust on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision or in accordance with any directions or awards of an arbitrator is not to (if it was done without negligence on the part of the Canal & River Trust or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this paragraph.

**59.** Nothing in sub-paragraph (2) imposes any liability on the undertaker with respect to any detriment, loss or interruption to the extent that it is attributable to the act, neglect or default of the Canal & River Trust, its officers, servants, contractors or agents.

**60.** The Canal & River Trust must give the undertaker reasonable notice of any such claim or demand as aforesaid and no settlement or compromise of such a claim or demand is to be made without the prior consent of the undertaker.

**61.** The Canal & River Trust must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands and penalties to which the indemnity under this paragraph 61 applies. If requested to do so by the undertaker, the Canal & River Trust must provide an explanation of how the claim has been minimised.

**62.** The aggregate cap of the undertaker's gross liability for consequential losses shall be limited to £15,000,000 (fifteen million pounds) for any one occurrence or all occurrences of a series arising out of the one original cause.

*Arbitration*

**63.** Any difference arising between the undertaker and the Canal & River Trust under this Part (other than a difference as to the meaning or construction of this Part) must be referred to and settled by arbitration in accordance with article 47 (arbitration) of this Order.

#### *Capitalised sums*

**64.** Any capitalised sum which is required to be paid under this Part must be calculated by multiplying the cost of the maintenance or renewal works to the waterway necessitated as a result of the operation of the authorised development by the number of times that the maintenance or renewal work will be required during the operation of the authorised development.

#### *As built drawings*

**65.** As soon as reasonably practicable following the completion of the construction of the authorised development, the undertaker must provide to the Canal & River Trust as built drawings of any specified works in a form and scale to be agreed between the undertaker and the Canal & River Trust to show the position of those works in relation to the waterway.

#### *Decommissioning*

**66.** Where the decommissioning environmental management plan identifies activities which may impact the waterway, the protective provisions in this Part 6 of Schedule 11 will, so far as appropriate, apply to those activities as if they were a specified work.

## **PART 6**

### **FOR THE PROTECTION OF NATIONAL GRID ELECTRICITY TRANSMISSION PLC**

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

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and National Grid Electricity Transmission Plc, where the benefit of this Order is transferred or granted to another person under article 8 (consent to transfer benefit of Order) —

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

(3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to National Grid Electricity Transmission Plc (but without prejudice to paragraph 77(3)(b) (indemnity)).

#### *Interpretation*

**68.** In this Part of this Schedule—

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

“acceptable insurance” means general third party liability insurance effected and maintained by the undertaker with a combined property damage and bodily injury limit of indemnity of not less than £50,000,000.00 (fifty million pounds) per occurrence or series of occurrences arising out of one event unless otherwise agreed between the undertaker and National Grid Electricity Transmission Plc. Such insurance shall be maintained (a) during the construction period of the authorised works; and (b) after the construction period of the authorised works in respect of any use and maintenance of the authorised works by or on behalf of the undertaker which constitute specified works and arranged with an insurer whose security/credit rating meets the same requirements as an “acceptable credit provider”, such insurance shall include (without limitation) —

- (a) a waiver of subrogation and an indemnity to principal clause in favour of National Grid Electricity Transmission Plc; and
- (b) pollution liability for third party property damage and third party bodily damage arising from any pollution/contamination event with a (sub)limit of indemnity of not less than £10,000,000.00 (ten million pounds) per occurrence or series of occurrences arising out of one event or £20,000,000.00 (twenty million pounds) in aggregate;

“acceptable security” means either—

- (a) a parent company guarantee from a parent company in favour of National Grid Electricity Transmission Plc to cover the undertaker’s liability to National Grid Electricity Transmission Plc to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to National Grid Electricity Transmission Plc and where required by National Grid Electricity Transmission Plc, 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 Electricity Transmission Plc to cover the undertaker’s liability to National Grid Electricity Transmission Plc for an amount of not less than £10,000,000.00 (ten million pounds) per asset per event up to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to National Grid Electricity Transmission Plc);

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

“apparatus” means—

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

“authorised works” has the same meaning as is given to the term “authorised development” in article 2(1) (interpretation) of this Order;

“commence” and “commencement” in this Part of this Schedule has the same meaning as in article 2(1) (interpretation) of this Order but will include any below ground surveys and monitoring, site clearance (including vegetation removal, demolition of existing buildings and structures) or the receipt and erection of construction plant and equipment.

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

“functions” includes powers and duties;

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

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

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

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

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

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

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

“parent company” means a parent company of the undertaker acceptable to and which will have been approved by National Grid Electricity Transmission Plc acting reasonably;

“Whitestone Solar Project works” means any part of Work Nos. 1 to 9 described in Schedule 1 of this Order (authorised development);

“specified works” means any of the authorised works which—

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 75(6) (Whitestone Solar Project works) or otherwise; and/or
  - (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 69(6) (Whitestone Solar Project works) or otherwise; and/or
  - (c) includes any of the activities that are referred to in development near overhead lines EN43-8 and HSE’s guidance note 6 “Avoidance of Danger from Overhead Lines”; and
- “undertaker” means the undertaker as defined in article 2(1) (interpretation) of this Order.

#### *Whitestone Solar Project Works*

**69.—**(1) The undertaker must not construct any Whitestone Solar Project works, or any part of it, without consulting National Grid Electricity Transmission Plc on the proposed plans of the relevant Whitestone Solar Project works (or part of it) and considering their representations.

(2) National Grid Electricity Transmission Plc must employ reasonable endeavours to respond to the submission of any plans within a period of 56 days from the date of submission of the plans. If National Grid Electricity Transmission Plc require further particulars, such particulars must be requested by National Grid Electricity Transmission Plc no later than 21 days from the submission of plans and thereafter National Grid Electricity Transmission Plc must employ reasonable endeavours to respond to the submission within 56 days from receipt of the further particulars.

(3) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Grid Electricity Transmission Plc notice as soon as is reasonably practicable and a plan of those works.

(4) The undertaker must give to National Grid Electricity Transmission Plc not less than 14 days’ notice in writing of its intention to commence construction of any Whitestone Solar Project works and provide a copy of the final plans for the Whitestone Solar Project works and National Grid Electricity Transmission Plc will be entitled by its officer to watch and inspect the construction of such works.

(5) The undertaker must give to National Grid Electricity Transmission Plc notice in writing of its completion of any Whitestone Solar Project works not later than 7 days after the date on which it is completed.

(6) If any part of the Whitestone Solar Project works is constructed otherwise than in accordance with the final plans provided under sub-paragraph (1) above, National Grid Electricity Transmission Plc may by notice in writing identify the extent to which the Whitestone Solar Project works do not comply with the final plans provided and request the undertaker at the undertaker's own expense carry out remedial works so as to comply with the final plans provided or such alternative works as may be agreed with National Grid Electricity Transmission Plc or as otherwise may be agreed between the parties.

(7) Subject to sub-paragraph (8), if within a reasonable period, being not less than 28 days beginning with the date when a notice under sub-paragraph (6) 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, National Grid Electricity Transmission Plc may execute the works specified in the notice and any reasonable expenditure incurred by National Grid Electricity Transmission Plc in so doing will be recoverable from the undertaker.

(8) In the event of any dispute as to whether sub-paragraph (6) 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, National Grid Electricity Transmission Plc will not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (7) until the dispute has been finally determined in accordance with paragraph 81 (arbitration).

#### *On street apparatus*

70. Except for paragraphs 71 (apparatus of National Grid Electricity Transmission Plc in temporarily closed or restricted streets), 75 (retained apparatus protection), 76 (expenses) and 77 (indemnity) of this Schedule which will apply in respect of the exercise of all or any powers under this Order affecting the rights and apparatus of National Grid Electricity Transmission Plc, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Grid Electricity Transmission Plc are regulated by the provisions of Part 3 of the 1991 Act.

#### *Apparatus of National Grid Electricity Transmission Plc in temporarily closed or restricted streets*

71. Where any street is temporarily closed or restricted under the powers of article 14 (temporary closure or restriction of streets and public rights of way), National Grid Electricity Transmission Plc is at liberty at all times to take all necessary access across any such temporarily closed or restricted 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 stopping up or diversion was in that street.

#### *Protective works to buildings*

72. Except in an emergency the undertaker, in the case of the powers conferred by article 20 (protective work to buildings and land), must exercise those powers so as not to obstruct or render materially less convenient the access to any apparatus without the prior written consent of National Grid Electricity Transmission Plc which must not unreasonably be withheld or delayed.

#### *Removal of apparatus*

73.—(1) If, in the exercise of the powers conferred by this Order, the undertaker has any interest in or possesses temporarily any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of National Grid Electricity Transmission Plc to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Grid Electricity Transmission Plc in accordance with sub-paragraph (1) 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 Electricity Transmission Plc a minimum of 56 days' advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid Electricity Transmission Plc reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), secure any necessary consents for the alternative apparatus and afford to National Grid Electricity Transmission Plc to its reasonable satisfaction (taking into account paragraph 74(1) (facilities and rights for alternative apparatus) below) the necessary facilities and rights—

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

(3) If alternative or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Grid Electricity Transmission Plc will, 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 must not extend to the requirement for National Grid Electricity Transmission Plc to use its compulsory purchase powers to this end unless it elects to so do.

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

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

(6) The provisions of this paragraph 73 only apply to the extent that the apparatus to be removed by the undertaker forms part of National Grid Electricity Transmission Plc's undertaking and has not already been abandoned or decommissioned by National Grid Electricity Transmission Plc's and any existing rights in respect of the abandoned or decommissioned apparatus have been surrendered subject always to the undertaker having received written confirmation from National Grid Electricity Transmission Plc that such apparatus has been abandoned or decommissioned.

#### *Facilities and rights for alternative apparatus*

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

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid Electricity Transmission Plc than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and

conditions to which those facilities and rights are subject the matter may be referred to arbitration in accordance with paragraph 81 (arbitration) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to National Grid Electricity Transmission Plc as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

*Retained apparatus: protection of National Grid Electricity Transmission Plc as Electricity Undertaker*

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

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

- (a) the exact position of the 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 Electricity Transmission Plc's engineers; and
- (h) evidence that trench bearing capacity is to be designed to support overhead line construction traffic of up to and including 26 tonnes in weight.

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

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

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (6) or (8) provided that any conditions are communicated to the undertaker within a period of 28 days beginning with the date on which a plan is submitted to National Grid Electricity Transmission Plc in accordance with sub-paragraph (1); and,

(b) must not be unreasonably withheld or delayed.

(6) Works executed under sub-paragraphs (2) or (3) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (10), as approved or as amended from time to time by agreement between the undertaker and National Grid Electricity Transmission Plc and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5), (6), (8) or (9) by National Grid Electricity Transmission Plc for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid Electricity Transmission Plc will be entitled to watch and inspect the execution of those works.

(7) Where National Grid Electricity Transmission Plc 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, such protective works must be carried out to National Grid Electricity Transmission Plc's reasonable satisfaction prior to the commencement of any specified works (or any relevant part thereof) for which protective works are required and National Grid Electricity Transmission Plc must give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(8) If National Grid Electricity Transmission Plc in accordance with sub-paragraphs (6) or (8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, 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 73(2) (removal of apparatus) .

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

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

(11) At all times when carrying out any works authorised under this Order, the undertaker must comply with National Grid Electricity Transmission Plc's policies for development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".

### *Expenses*

**76.—**(1) Save where otherwise agreed in writing between National Grid Electricity Transmission Plc and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to National Grid Electricity Transmission Plc within 30 days of receipt of an itemised invoice or claim from National Grid Electricity Transmission Plc all charges, costs and expenses (but always excluding any consequential or indirect loss) or reasonably and properly incurred by National Grid Electricity Transmission Plc in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any specified works including without limitation—

(2) any costs reasonably incurred by or compensation properly paid by National Grid Electricity Transmission Plc in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Grid Electricity Transmission Plc as a consequence of National Grid Electricity Transmission Plc—

- (a) using its own compulsory purchase powers to acquire any necessary rights under paragraph 73(3) (removal of apparatus); or
- (b) exercising any compulsory purchase powers in this Order transferred to or benefitting National Grid Electricity Transmission Plc;
- (c) 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
- (d) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (e) the approval of plans;
- (f) the carrying out of protective works, quote plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (g) 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.

(3) 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.

(4) 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,
- (c) 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 81 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Grid Electricity Transmission Plc by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(5) 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.

(6) Any amount which apart from this sub-paragraph would be payable to National Grid Electricity Transmission Plc in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on National Grid Electricity Transmission Plc any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

### *Indemnity*

77.—(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 specified works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the specified works) or property of National Grid Electricity Transmission Plc, or there is any interruption in any service provided, or in the supply of any goods, by National Grid Electricity Transmission Plc, or National Grid Electricity Transmission Plc becomes liable to pay any amount to any third party, the undertaker will—

- (a) bear and pay on demand accompanied by an invoice or claim from National Grid Electricity Transmission Plc the cost reasonably and properly incurred by National Grid Electricity Transmission Plc in making good such damage or restoring the supply; and
- (b) indemnify National Grid Electricity Transmission Plc for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Grid Electricity Transmission Plc, by reason or in consequence of any such damage or interruption or National Grid Electricity Transmission Plc becoming liable to any third party as aforesaid other than arising from any default of National Grid Electricity Transmission Plc.

(2) The fact that any act or thing may have been done by National Grid Electricity Transmission Plc on behalf of the undertaker or in accordance with a plan approved by National Grid Electricity Transmission Plc or in accordance with any requirement of National Grid Electricity Transmission Plc or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (2) unless National Grid Electricity Transmission Plc fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) 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 National Grid Electricity Transmission Plc, its officers, servants, contractors or agents;
- (b) any specified works and/or any other works authorised by this Part of this Schedule carried out by National Grid Electricity Transmission Plc as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article 8 (consent to transfer benefit of Order) subject to the proviso that once such works become apparatus (“new apparatus”), any specified works yet to be executed and not falling within this sub-paragraph (3)(b) will be subject to the full terms of this Part of this Schedule including this paragraph in respect of such apparatus; and/or
- (c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable.

(4) National Grid Electricity Transmission Plc must give the undertaker reasonable written notice of any such third party claim or demand as soon as reasonably practicable after National Grid Electricity PLC became aware of any such claims or demands, and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without the prior consent of the undertaker (which must not be unreasonably withheld or delayed) (which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceeding necessary to resist the claim or demand).

(5) National Grid Electricity Transmission Plc must use all 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 requested to do so by the undertaker, National Grid Electricity Transmission Plc must provide an explanation of how the claim has been minimised,

where relevant. The undertaker will only be liable under this paragraph for claims reasonably and properly incurred by National Grid Electricity Transmission Plc.

(6) National Grid Electricity Transmission Plc must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(7) The undertaker shall not commence construction (and not to permit the commencement of such construction) of the authorised works on any land owned by National Grid Electricity Transmission Plc or in respect of which National Grid Electricity Transmission Plc has an easement or wayleave for its apparatus or any other interest or to carry out any works within 15 metres of National Grid Electricity Transmission Plc's apparatus until the following conditions are satisfied—

- (a) unless and until National Grid Electricity Transmission Plc is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has first provided the acceptable security (and provided evidence that it shall maintain such acceptable security for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and National Grid Electricity Transmission Plc has confirmed the same to the undertaker in writing; and
- (b) unless and until National Grid Electricity Transmission Plc is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to National Grid Electricity Transmission Plc that it shall maintain such acceptable insurance for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and National Grid Electricity Transmission Plc has confirmed the same in writing to the undertaker.

(8) In the event that the undertaker fails to comply with sub-paragraph (7) of this Part of this Schedule, nothing in this Part of this Schedule shall prevent National Grid Electricity Transmission Plc from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

#### *Enactments and agreements*

**78.** Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between National Grid Electricity Transmission Plc and the undertaker, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and National Grid Electricity Transmission Plc in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

#### *Co-operation*

**79.—**(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or National Grid Electricity Transmission Plc requires the removal of apparatus under paragraph 73 (removal of apparatus) or National Grid Electricity Transmission Plc makes requirements for the protection or alteration of apparatus under paragraph 74 (facilities and rights for further apparatus), the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of National Grid Electricity Transmission Plc's undertaking and National Grid Electricity Transmission Plc must use its best endeavours to co-operate with the undertaker for that purpose.

(2) Whenever National Grid Electricity Transmission Plc's consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

### *Access*

**80.** If in consequence of the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must to the extent consistent with, and authorised by, this Order provide such alternative means of access to such apparatus as will enable National Grid Electricity Transmission Plc to access, maintain or use the apparatus no less effectively than was possible before such obstruction.

### *Arbitration*

**81.** Any difference or dispute arising between the undertaker and National Grid Electricity Transmission Plc under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Grid Electricity Transmission Plc, be determined by arbitration in accordance with article 47 (arbitration) of this Order.

### *Notices*

**82.** Notwithstanding article 46 (service of notice), any plans submitted to National Grid Electricity Transmission Plc by the undertaker pursuant to this Part must be submitted using the LSBUD system (<https://lsbud.co.uk/>) or to such other address as National Grid Electricity Transmission Plc may from time to time appoint instead for that purpose and notify to the undertaker in writing.

## **PART 7**

### **FOR THE PROTECTION OF RAILWAY INTERESTS**

### *Application*

**83.** The provisions of this Part of this Schedule have affect, unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 92 of this Part of this Schedule any other person on whom rights or obligations are conferred by that paragraph.

### *Interpretation*

**84.** In this Part of this Schedule—

“basic asset protection agreement” means an agreement to regulate the construction and maintenance of the specified work in a form prescribed from time to time by Network Rail;

“construction” includes execution, placing, alteration and reconstruction and “construct” and “constructed” have corresponding meanings;

“the engineer” means an engineer appointed by Network Rail for the purposes of this Order;

“network licence” means the network licence, as the same is amended from time to time, granted to Network Rail Infrastructure Limited by the Secretary of State in exercise of their powers under section 8 (licences) of the Railways Act 1993;

“Network Rail” means Network Rail Infrastructure Limited (company number 02904587, whose registered office is at Waterloo General Office, London SE1 8SW) and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition “associated company” means any company which is (within the meaning of section 1159 of the Companies Act 2006) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited and any successor to Network Rail Infrastructure Limited’s railway undertaking;

“plans” includes sections, designs, data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging

proposals programmes and details of the extent, timing and duration of any proposed occupation of railway property;

“railway operational procedures” means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

“railway property” means any railway belonging to Network Rail and—

- (a) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and
- (b) any easement or other property interest held or used by Network Rail or a tenant or licensee of Network Rail identified in the book of reference for the purposes of such railway or works, apparatus or equipment;

“regulatory consents” means any consent or approval required under—

- (a) the Railways Act 1993;
- (b) the network licence; and/or
- (c) any other relevant statutory or regulatory provisions;
- (d) by either the Office of Rail and Road or the Secretary of State for Transport or any other competent body including change procedures that may be required in relation to the authorised development.

“specified work” means so much of any of the authorised development as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property.

#### *Railway operational procedures*

**85.—**(1) Where under this Part of this Schedule Network Rail is required to give its consent, agreement or approval in respect of any matter, that consent, agreement or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail must—

- (a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and
- (b) use their reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development pursuant to this Order.

**86.** The undertaker must enter into a basic asset protection agreement prior to the carrying out of any specified work.

#### *Submission and approval of plans*

**87.—**(1) The undertaker must before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration under article 47 (arbitration).

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld or delayed, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated disapproval of those plans and the grounds of such disapproval the undertaker may serve upon the engineer written notice requiring the engineer to intimate approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further 28 days the engineer has not intimated approval or disapproval, the engineer is deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the reasonable opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed (together with any adjoining part of the specified work which the undertaker reasonably requires to be constructed with that work), Network Rail must construct it without unreasonable delay on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.

(4) When signifying their approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's reasonable opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation decommissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes must be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works must be carried out at the reasonable expense of the undertaker in either case without unreasonable delay and the undertaker must not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to the engineer's reasonable satisfaction.

(5) Network Rail must have regard to the proposed programme of works for the authorised development as may be made available to Network Rail by the undertaker and ensure that it does not unreasonably impede, interfere with or delay the authorised development.

(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 Network Rail notice as soon as is reasonably practicable.

(7) Any specified work and any protective works to be constructed by virtue of paragraph 87(4) must, when commenced, be constructed—

- (a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 87(1);
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage as possible to railway property; and
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

(8) If any damage to railway property or any such interference or obstruction is caused by the carrying out of, or in direct consequences of the construction of a specified work, the undertaker must, notwithstanding any such approval, make good such damage and must pay to Network Rail all reasonable expenses properly incurred to which Network Rail may be put and compensation for any direct loss which it may sustain by reason of any such damage, interference or obstruction.

(9) Nothing in this Part of this Schedule imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its employees, servants, contractors or agents or any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

(10) The undertaker must—

- (a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and
- (b) supply the engineer with all such information as the engineer may reasonably require with regard to a specified work or the method of constructing it.

### *Access*

**88.** Network Rail must at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by Network Rail under this Part of this Schedule during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

### *Alterations and additions*

**89.**—(1) If any permanent or temporary alterations or additions to railway property are reasonably necessary in consequence of the construction or completion of a specified work during a period of 12 months after the completion of that work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the undertaker 56 days' notice (or in the event of an emergency or safety critical issue such notice as is reasonable in the circumstances) of its intention to carry out such alterations or additions (which must be specified in the notice including details of the reasonable cost of carrying out, and where applicable in maintaining, working and, when necessary, renewing, those alterations or additions), the undertaker must pay to Network Rail the reasonable and proper cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably and properly incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work by the undertaker Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work which in the reasonable opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work is to be constructed, Network Rail must assume construction of that part of the specified work and the undertaker must, notwithstanding any such approval of specified work under paragraph 87(3), pay to Network Rail all properly and reasonably incurred expenses to which Network Rail may be put and compensation for any direct loss which it may suffer by reason of the execution by Network Rail of that specified work provided that at all times Network Rail will be under an obligation to take reasonable steps to mitigate its loss and always excluding any consequential loss or indirect loss.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 90(a) (expenses) provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

(4) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving must be set off against any sum payable by the undertaker to Network Rail under this paragraph.

### *Expenses*

**90.** The undertaker must repay to Network Rail all reasonable fees, costs, charges and expenses agreed in advance with the undertaker and reasonably and properly incurred by Network Rail—

- (a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 87(3) (submission and approval of plans) or in constructing any protective works under the provisions of paragraph 87(4) (submission and approval of plans) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the reasonable approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work;
- (c) in respect of the employment or procurement of the services of any inspectors, signallers, watch-persons and other persons whom it is reasonably necessary to appoint for

inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;

- (d) in respect of any special traffic working resulting from any speed restrictions which may in the reasonable opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and
- (e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

#### *Electromagnetic interference*

##### **91.—(1) In this paragraph—**

“EMI” means, subject to sub-paragraph (2), electromagnetic interference with Network Rail apparatus generated by the operation of the authorised development where such interference is of a level which adversely affects the safe operation of Network Rail’s apparatus; and

“Network Rail’s apparatus” means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised development) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail’s apparatus carried out after approval of plans under paragraph 87(1) (submission and approval of plans) for the relevant part of the authorised development giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the undertaker must in the design and construction of the authorised development take all measures necessary to prevent EMI and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) In order to facilitate the undertaker’s compliance with sub-paragraph (3) —

- (a) the undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail’s apparatus which may be at risk of EMI, and thereafter must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 87(1) (submission and approval of plans)) in order to identify all potential causes of EMI and the measures required to eliminate them;
- (b) Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail’s apparatus identified pursuant to sub-paragraph (a); and
- (c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail’s apparatus identified pursuant to sub-paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail’s apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail’s apparatus, but the means of prevention and the method of their execution must be selected in the reasonable discretion of Network Rail, and in relation to such modifications, paragraph 87(1) (submission and approval of plans) has effect subject to this sub-paragraph.

(6) The undertaker shall use reasonable endeavours not to allow the use or operation of the authorised development in a manner that causes EMI and which introduces an intolerable risk to the operation of the railway or the safety of the track workers (such intolerable risk would include introducing exposure to electric and magnetic fields in excess of the requirements of the Control of Electromagnetic Fields at Work Regulations 2016, unacceptable transferred voltage potentials

and interference impacting the safe operation of the signalling equipment), until measures have been taken in accordance with this paragraph to reduce the risk to tolerable levels of EMI.

(7) In the event of EMI having occurred—

- (a) the undertaker must afford reasonable facilities to Network Rail for access to the undertaker's apparatus in the investigation of such EMI;
- (b) Network Rail must afford reasonable facilities to the undertaker for access to Network Rail's apparatus in the investigation of such EMI; and
- (c) Network Rail must make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail's apparatus or such EMI.

(8) (7) Where Network Rail approves modifications to Network Rail's apparatus pursuant to sub paragraphs (5) or (6)—

- (a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus; and
- (b) any modifications to Network Rail's apparatus approved pursuant to those sub-paragraphs must be carried out and completed by the undertaker in accordance with paragraph 88.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 95(1) (indemnity) applies to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.

(10) For the purpose of paragraph 97(a)(expenses) any modifications to Network Rail's apparatus under this paragraph are deemed to be protective works referred to in that paragraph.

#### *Adverse impact on railway property*

**92.** If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.

#### *Signage*

**93.** The undertaker must not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail unless it has first consulted Network Rail and it must comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

**94.** Any additional expenses which Network Rail may reasonably and properly incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work must, provided that 50 six days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to Network Rail.

#### *Indemnity*

**95.—(1)** The undertaker must pay to Network Rail all reasonable and properly incurred costs, charges, damages and expenses (but always excluding any consequential or indirect loss) not otherwise provided for in this Part of this Schedule (subject to the remaining provisions of this

Part of this Schedule and to article 51 (no double recovery)) which may be occasioned to or reasonably incurred by Network Rail—

- (a) by reason of the construction, maintenance or operation of a specified work or the failure thereof; or
- (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon specified work;
- (c) in respect of costs incurred by Network Rail in complying with any railway operational procedures or obtaining any regulatory consents which procedures are required to be followed or consents obtained to facilitate the carrying out or operation of the authorised development;

and the undertaker must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission provided Network Rail will be under an obligation to take reasonable steps to mitigate its loss and always excluding any consequential loss or indirect loss: and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision does not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

96. Network Rail must—

- (a) give the undertaker reasonable written notice of any such claims or demands as soon as reasonably practicable after Network Rail became aware of any such claims or demands;
- (b) not admit liability or make any settlement or compromise of any such a claim or demand without the prior 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);
- (c) take all such reasonable steps to mitigate any liabilities relating to such claims or demands; and
- (d) keep the undertaker informed in relation to the progress of any such claims and demands and have due regard to the undertaker's representations in relation to them.

(2) The sums payable by the undertaker under sub-paragraph (1) must include if relevant a sum equivalent to the relevant costs.

(3) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(4) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs shall, in the event of default, be enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-paragraph (4).

(5) In this paragraph—

“the relevant costs” means the costs, direct losses and expenses (including loss of revenue) reasonably and properly incurred by each train operator as a consequence of any specified work including but not limited to any restriction of the use of Network Rail's railway network as a direct result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in sub-paragraph (1); and “train operator” means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

#### *Estimated ongoing expenses*

97.—(1) Network Rail must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and

other liabilities for which the undertaker is or will become liable under this Part of this Schedule (including the amount of the relevant costs mentioned in paragraph 95 (indemnity)) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Part of this Schedule (including any claim relating to those relevant costs).

**98.** Network Rail must provide an itemised invoice to the undertaker of all charges, costs, fees, damages and expenses which are claimed under this Part of this Schedule and any payment due to Network Rail under this Part of this Schedule must be made within 30 days of receipt of the itemised invoice.

#### *Assessment of expenses*

**99.** In the assessment of any sums payable to Network Rail under this Part of this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part of this Schedule or increasing the sums so payable.

#### *Transfer of property, land and rights*

**100.** The undertaker and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the undertaker of—

- (a) any railway property shown on the works and land plans and described in the book of reference;
- (b) any lands, works or other property held in connection with any such railway property; and
- (c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

#### *Part I of the Railways Act 1993*

**101.** Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part I of the Railways Act 1993.

#### *Application under article 8 (consent to transfer benefit of Order)*

**102.** The undertaker must give written notice to Network Rail if any application is proposed to be made by the undertaker for the Secretary of State's consent, under article 8 (consent to transfer benefit of Order) of this Order and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

- (a) the nature of the application to be made;
- (b) the extent of the geographical area to which the application relates; and
- (c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

#### *Certification of plans*

**103.** The undertaker must no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 45 (certification of documents etc.) are certified by the Secretary of State, provide a set of those plans to Network Rail in a format specified by Network Rail.

*Application of article 47 (arbitration)*

**104.** Any difference under the provisions of this Part of this Schedule must be, unless otherwise agreed in writing between the undertaker and Network Rail, determined by arbitration in accordance with article 47 (arbitration).

## **PART 8**

### **FOR THE PROTECTION OF NATIONAL HIGHWAYS LIMITED**

*Application*

**105.**—(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) Except where expressly amended by the Order the operation of the powers and duties of National Highways or the Secretary of State under the 1980 Act, the 1984 Act, the 1991 Act, the Transport Act 2000, or the Town and Country Planning (General Permitted Development) (England) Order 2015 shall continue to apply in respect of the exercise of all National Highways' statutory functions.

*Interpretation*

**106.**—(1) Where the terms defined in this Part of this Schedule are inconsistent with the terms defined in article 2 (interpretation) of this Order, the former prevail.

(2) In this part of this Schedule—

“as built information” means “as built information” means one electronic copy of the following information (in so far as it is relevant to the works concerned)—

- (a) as constructed drawings in both PDF and AutoCAD DWG forms for anything designed by the undertaker as installed and any ancillary or protective measures installed within the strategic road network;
- (b) as constructed information for any utilities discovered or moved during the works;
- (c) method statements for the works carried out;
- (d) in so far as it is relevant to the works, the health and safety file; and
- (e) such other information as is reasonably required by National Highways to be used to update all relevant databases and to ensure compliance with National Highway Asset Data Management Manual as is in operation at the relevant time or any successor of it.

“cable works” means any works under this Order which consist of the installation of cables, cable ducts, tunnels for cables and cable ducts and related or associated works to those operations, all under the strategic road network and to be installed through the use of trenchless installation techniques where no works are required to or on the operational carriageway;

“commuted sum” means the sum agreed as being the necessary contribution by the undertaker to the increase in direct costs reasonably incurred by National Highways of maintaining new strategic highway assets constructed as SRN works pursuant to this Order only for 10 years from the issue of the final certificate;

“condition survey” means a survey of the condition of National Highways structures and assets within the Order limits that may be affected by the SRN works and cable works;

“contractor” means any contractor or sub-contractor appointed by the undertaker to carry out the SRN works and cable works;

“defects period” means the period from the date of the provisional certificate to the date of the final certificate which may be no less than 6 months from the date of the provisional certificate;

“detailed design information” means such of the following drawings or specifications and calculations as are relevant –

for the SRN works –

- (a) site clearance details;
- (b) boundary environmental and mitigation fencing;
- (c) earthworks including supporting geotechnical assessments required by DMRB CD622 Managing geotechnical risk and any required strengthened earthworks appraisal form certification;
- (d) utilities diversions; or

for the “cable” works –

- (a) earthworks including supporting geotechnical assessments required by DMRB CD622 Managing geotechnical risk and any required strengthened earthworks appraisal form certification;
- (b) other such information that may be reasonably required by National Highways to be used to inform the detailed design of the cable works;

“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 SRN works that have resulted in any alteration to the strategic road network to be issued by National Highways pursuant to paragraph 114;

“health and safety file” means the file or other permanent record containing the relevant health and safety information for the works required by the Construction Design and Management Regulations 2015 (or such updated or revised regulations as may come into force from time to time);

“LEMP” means “Landscape and Ecological Management Plan”;

“nominated persons” means the undertaker’s representatives or the contractor’s representatives on site during the carrying out of the cable works or SRN 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 SRN works;

“provisional certificate” means the certificate of provisional completion relating to those aspects of the cable works or SRN works that have resulted in any alteration to the strategic road network to be issued by National Highways in accordance with paragraph 112 as appropriate when it reasonably considers those works are substantially complete and may be opened for traffic;

“road safety audit” means an audit carried out in accordance with the road safety audit standard and “road safety audits” shall be construed accordingly;

“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 and “road space bookings shall be construed accordingly”;

“SRN works” means so much of the authorised development, which involve works to the carriageway or verge or any other part of the strategic road network, including in respect of the mitigation measures for glint and glare, or to operational assets ancillary thereto, and including any maintenance of that work, as is undertaken on the strategic road network for which National Highways is the highway authority;

“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 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; and

“utilities” means any pipes wires cables or equipment belonging to any person or body having power or consent to undertake street works under the New Roads and Street Works Act 1991.

#### *General*

**107.—**(1) The undertaker acknowledges that parts of the works authorised by this Order affect or may affect parts of the strategic road network in respect of which National Highways may have appointed or may appoint a highway operations and maintenance contractor.

(2) In respect of any part of the strategic road network that may be affected by works authorised by this Order, both National Highways and the highway operations and maintenance contractor shall have the benefit of this Part of Schedule but for the purposes of any approvals required under this Part of this Schedule, the undertaker shall liaise directly with National Highways.

(3) No works in carrying out, maintaining or diverting the authorised development may be carried out under (at a distance less than 4 metres below the lowest point of the carriageway surface) the strategic road network unless such works are agreed in writing with National Highways, such agreement not to be unreasonably withheld or delayed.

(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.

#### *Prior approvals and security*

**108.—**(1) The SRN works must not commence until—

- (a) a stage 1 or stage 2 road safety audit has been carried out and all recommendations raised by them or any exceptions are approved by National Highways (acting reasonably);
- (b) the programme of works has been approved by National Highways (acting reasonably);
- (c) the detailed design of the SRN works comprising of the following details, insofar as considered relevant by National Highways, has been submitted to and approved by National Highway (acting reasonably):
  - (i) the detailed design information incorporating all recommendations and any exceptions approved by National Highways under sub-paragraph (a);
  - (ii) details of the proposed road space bookings and at the same time as submitting the relevant details the undertaker shall be entitled to submit its application for road space bookings to National Highways;
  - (iii) the identity and suitability 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 condition survey and regime of monitoring of any National Highways assets or structures that National Highways reasonably considers will be affected by the SRN works, has been agreed in writing by National Highways, acting reasonably;
- (e) the undertaker has consulted with National Highways in relation to mitigation measures for glint and glare within a LEMP as far as relevant to its respective functions;
- (f) stakeholder liaison has taken place in accordance with the process for such liaison agreed
- (g) between the undertaker and National Highways under sub-paragraph (c)(iv) above;
- (h) National Highways has approved the audit brief for all road safety audits and exceptions to items raised in accordance with the road safety audit standard;

- (i) the undertaker has agreed the estimate of the commuted sum with National Highways; and
  - (j) a condition survey and regime of monitoring of any National Highways assets or structures that National Highways reasonably considers will be affected by the SRN works has been agreed in writing by National Highways.
- (2) The cable works must not commence until –
- (a) 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 (acting reasonably); and
  - (b) a condition survey and regime of monitoring of any National Highways assets or structures that National Highways reasonably considers will be affected by the SRN works, has been agreed in writing by National Highways (acting reasonably).
- (3) National Highways must, prior to the commencement of the cable works and SRN works, 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 (2).
- (4) Any approval of National Highways required under this paragraph–
- (a) must not be unreasonably withheld;
  - (b) must be given in writing;
  - (c) shall be deemed to have been given 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 (acting reasonably) within 2 months of receipt of the information to which the request for further particulars relates; and
  - (d) may be subject to any reasonable conditions as National Highways acting reasonably considers necessary.
- (5) Any change to the identity of the contractor and/or designer of the SRN works will be notified to National Highways immediately and details of their suitability to deliver the SRN works will be provided on request.
- (6) Any change to the detailed design of the SRN works must be approved by National Highways in accordance with sub-paragraph (1) of this Part.

#### *Construction of the cable works and SRN works*

**109.**—(1) The undertaker must give National Highways 56 days’ notice in writing of the day on which the cable works and/or the SRN works will start unless otherwise agreed in writing 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 of the SRN works and no SRN work for which a road space booking is required shall commence without a road space booking having first been secured from National Highways.

(3) The cable works and SRN works must be carried out by the undertaker to the reasonable satisfaction of National Highways in accordance with –

- (a) the relevant detailed design information and programme of works approved pursuant to paragraph 108(1) or 108(2) above or as subsequently varied by agreement between the undertaker and National Highways;
- (b) in so far as it may be applicable, 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 or any statutory amendment or variation of the same.

(4) The undertaker must ensure that (where possible) without entering the highway the highway is kept free from mud, soil and litter as a result of carrying out the SRN works;

(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 access to the cable works and SRN works for the purposes of inspection and supervision of those works.

(6) If any part of the cable works or SRN works are 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 reasonable 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) The undertaker must notify National Highways if it fails to complete the cable works or SRN works in accordance with the agreed programme of works pursuant to paragraph 108(1)(b) of this Part or suspends the carrying out of any SRN work beyond a reasonable period of time to be agreed between the parties 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*

**110.**—(1) The undertaker must pay to National Highways a sum equal to the whole of any reasonable costs and expenses which National Highways reasonably incurs (including costs and expenses for using international or external staff and costs relating to any work which becomes abortive) in relation to the cable works and SRN 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 91(1) and 91(2);

(b) the supervision of the cable works and SRN works;

(c) the checking and approval of the information required to determine approvals under this Order;

(d) all legal and administrative costs and disbursements reasonably incurred by National Highways in connection with the Order and sub-paragraphs (a)-(d); and

(e) any value added tax which is payable by National Highways in respect of such costs and expenses arising under this paragraph and for which it cannot obtain reinstatement from HM Revenue and Customs,

sub-paragraphs (a) to (e) together comprising “the National Highways’ costs”.

(2) National Highways must provide the undertaker with a schedule showing its reasonable estimate of the National Highways’ costs at least 56 days prior to the planned commencement of cable works and/or SRN works, of which written notice has been given in accordance with paragraph 109(1), and the undertaker must pay to National Highways the reasonable estimate of the National Highways’ costs prior to commencing the cable works or SRN works. Where the undertaker does not accept that the estimate of costs is reasonable, escalation under sub-paragraph (7) will apply.

(3) If National Highways fails to provide the estimate within that period, the undertaker may submit a reasonable estimate of the National Highways’ costs and may commence the specified

works upon payment of that sum, without prejudice to the final determination of the National Highways' costs under this paragraph.

(4) If at any time after the payment referred to in sub-paragraph (2) has become payable, National Highways reasonably believes that the National Highways costs will exceed the estimated National Highways costs, it may give notice to the undertaker of the amount that it reasonably believes the National Highways costs will exceed the estimate (the excess). Where the undertaker accepts that the estimate of the excess is reasonable, the undertaker must pay to National Highways the estimate of the excess within 30 days of the date of receipt of a properly issued VAT invoice from National Highways addressed to the undertaker for the excess. Where the undertaker does not accept that the estimate of costs is reasonable, escalation under sub-paragraph (6) will apply.

(5) National Highways must give the undertaker a final account of the National Highways costs referred to in sub-paragraph (1) above within 30 days of the issue of the provisional certificate issued pursuant to paragraphs 111(4) or 112(3).

(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; or
- (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 118.

(8) Save where otherwise agreed in writing between the undertaker and National Highways or where alternative direction is made by expert determination in accordance with paragraph 118, if any payment due under sub-paragraph (2) above, 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 SRN works*

**111.**—(1) Following any closure or partial closure of any of the strategic road network for the purposes of carrying out the SRN works, National Highways will 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 prior to reopening the strategic road network.

(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 SRN works; and
- (b) provide the undertaker with a written list of works that are reasonably 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 SRN works has been carried out and all recommendations raised have (subject to any exceptions agreed) been approved by National Highways (acting reasonably);
- (b) the SRN works incorporating any further works notified to the undertaker pursuant to sub-paragraph (3)(b) have been completed to the reasonable 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) In this paragraph, “reasonable satisfaction” means fair, proper and moderate under the circumstances, having regard to the details approved under paragraph 108.

#### *Provisional Certificate for cable works*

**112.**—(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 practicable –

- (a) inspect the area of the highway within the strategic road network over the route of the cable works; and
- (b) provide the undertaker with a written list of works that are reasonably required for the provisional certificate to be issued or confirmation that no further works are required for this purpose.

(3) When the cable works incorporating any further works notified to the undertaker pursuant to sub-paragraph (2)(b) have been completed to the reasonable satisfaction of National Highways, National Highways must issue the provisional certificate.

(4) In this paragraph, “reasonable satisfaction” means fair, proper and moderate under the circumstances, having regard to the details approved under paragraph 108.

#### *Final condition survey*

**113.**—(1) If deemed necessary and agreed with National Highways, the undertaker must, as soon as reasonably practicable after making its application for a provisional certificate pursuant to paragraphs 111(4) or 112(3), arrange for the 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.

(2) If the re-surveys carried out under sub-paragraph (1) indicate that any material damage has been caused to a structure or asset by way of defect, 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.

(3) National Highways may, at its discretion, at the same time as giving its approval to the re-surveys pursuant to this paragraph, give notice in writing that National Highways will remedy any damage identified in the re-surveys and National Highways may recover on demand any expenditure from the undertaker it reasonably incurs in so doing.

(4) 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 or SRN works following its completion that the undertaker may from time to time carry out.

#### *Final Certificate*

**114.**—(1) The undertaker must apply to National Highways for the final certificate no sooner than 6 months from the date of the provisional certificate for the SRN works pursuant to paragraph 111 and provisional certificate for cable works pursuant to paragraph 112.

(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 material defect or damage in the strategic road network 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 material defects or damage arising 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 the 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 undertaker must pay to National Highways within 30 days of written demand the reasonable costs incurred by National Highways in identifying the material defects and supervising and inspecting the undertaker's work to remedy the defects that it is required to remedy pursuant to this paragraph.

(6) In this paragraph "reasonable satisfaction" means fair, proper and moderate under the circumstances, having regard to the details approved under paragraph 108.

#### *Commuted sums*

**115.**—(1) National Highways must provide to the undertaker a reasonable estimate of the commuted sum, calculated in accordance with FS Guidance S278 Commuted Lump Sum Calculation Method dated 18 January 2010 or any successor guidance, within 56 days of the undertaker applying to National Highways for the provisional certificate in accordance with paragraphs 111(4) or 112(3).

(2) If National Highways fails to provide the estimate within that period, the undertaker may submit a reasonable estimate of the National Highways' costs and may commence the SRN works upon payment of that sum, without prejudice to the final determination of the commuted sum under this paragraph.

(3) 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 118.

#### *Maintenance of the cable works or SRN works*

**116.**—(1) The undertaker must, prior to the commencement of any works of external maintenance to the cable works or SRN works, give National Highways 30 days' notice in writing of the date on which those works will start unless otherwise agreed in writing by National Highways, acting reasonably.

(2) If, for the purposes of maintaining the SRN works, the undertaker needs to occupy any road space, the undertaker must comply with National Highways' Road space booking requirements, and no maintenance of the SRN works for which a road space booking is required shall commence without a road space booking having first been secured.

(3) During any maintenance works, the undertaker must comply with any reasonable requirements that National Highways may notify to the undertaker, such requirements to be

notified to the undertaker not less than 14 days in advance of the planned commencement date of the maintenance works.

*Land*

**117.** The undertaker must not, in reliance on or in exercise of any power under this Order, interfere with, remove, damage or prevent or impair the functioning of, and must on reasonable request (or in case of emergency, on demand) allow access by National Highways to, highway drainage assets.

*Application of article 47 (arbitration)*

**118.** Any difference or dispute arising between the undertaker and National Highways under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Highways be determined by arbitration in accordance with article 47 (arbitration).

# SCHEDULE 12

## HEDGEROWS AND TREES

Articles 43 and 44

### PART 1

#### HEDGEROW TO BE REMOVED

| (1)<br><i>Reference No. (location of hedgerow)</i>                                  | (2)<br><i>Extent of removal</i> | (3)<br><i>Important<br/>hedgerow</i> |
|-------------------------------------------------------------------------------------|---------------------------------|--------------------------------------|
| <b>Within the administrative area of City of Doncaster Council</b>                  |                                 |                                      |
| H1 as shown on Sheet 1 of the Vegetation Removal Plans <a href="#">s</a>            | Partial removal                 | Yes                                  |
| H2 as shown on Sheet 1 of the Vegetation Removal Plans <a href="#">s</a>            | Partial removal                 | Yes                                  |
| H3 as shown on Sheet 1 of the Vegetation Removal Plans <a href="#">s</a>            | Partial removal                 | Yes                                  |
| H4 as shown on Sheet 1 of the Vegetation Removal Plans <a href="#">s</a>            | Partial removal                 | Yes                                  |
| H5 as shown on Sheet 1 of the Vegetation Removal Plans <a href="#">s</a>            | Partial removal                 | No                                   |
| H6 as shown on Sheet 1 of the Vegetation Removal Plans <a href="#">s</a>            | Partial removal                 | No                                   |
| H7 as shown on Sheet 1 of the Vegetation Removal Plans <a href="#">s</a>            | Partial removal                 | No                                   |
| H8 as shown on Sheet 1 of the Vegetation Removal Plans <a href="#">s</a>            | Partial removal                 | Yes                                  |
| H9 as shown on Sheet 1 of the Vegetation Removal Plans <a href="#">s</a>            | Partial removal                 | No                                   |
| H10 as shown on Sheets 1, 2 and 3 of the Vegetation Removal Plans <a href="#">s</a> | Partial removal                 | No                                   |
| H13 as shown on Sheets 1 and 3 of the Vegetation Removal Plans <a href="#">s</a>    | Partial removal                 | Yes                                  |
| H86 as shown on Sheet 1 of the Vegetation Removal Plans <a href="#">s</a>           | Partial removal                 | No                                   |
| H11 as shown on Sheet 2 of the Vegetation Removal Plans <a href="#">s</a>           | Partial removal                 | No                                   |
| H12 as shown on Sheet 2 of the Vegetation Removal Plans <a href="#">s</a>           | Partial removal                 | Yes                                  |
| H89 as shown on Sheet 2 of the Vegetation Removal Plans <a href="#">s</a>           | Partial removal                 | No                                   |
| H14 as shown on Sheet 3 of the Vegetation Removal Plans <a href="#">s</a>           | Partial removal                 | No                                   |
| H15 as shown on Sheet 3 of the Vegetation Removal Plans <a href="#">s</a>           | Partial removal                 | No                                   |
| H16 as shown on Sheet 3 of the Vegetation Removal Plans <a href="#">s</a>           | Partial removal                 | No                                   |
| H87 as shown on Sheet 3 of the Vegetation Removal Plans <a href="#">s</a>           | Partial removal                 | No                                   |
| H88 as shown on Sheet 3 of the Vegetation Removal Plans <a href="#">s</a>           | Partial removal                 | No                                   |

| <i>(1)</i><br><i>Reference No. (location of hedgerow)</i>                       | <i>(2)</i><br><i>Extent of removal</i> | <i>(3)</i><br><i>Important<br/>hedgerow</i> |
|---------------------------------------------------------------------------------|----------------------------------------|---------------------------------------------|
| Removal Plans                                                                   |                                        |                                             |
| H17 as shown on Sheet 4 of the Vegetation Removal Plans                         | Partial removal                        | No                                          |
| H18 as shown on Sheet 4 of the Vegetation Removal Plans                         | Partial removal                        | No                                          |
| H19 as shown on Sheet 4 of the Vegetation Removal Plans                         | Partial removal                        | No                                          |
| H90 as shown on Sheet 4 of the Vegetation Removal Plans                         | Partial removal                        | No                                          |
| <b>Within the administrative area of Rotherham Metropolitan Borough Council</b> |                                        |                                             |
| H20 as shown on Sheet 8 of the Vegetation Removal Plans                         | Partial removal                        | No                                          |
| H21 as shown on Sheet 9 of the Vegetation Removal Plans                         | Partial removal                        | No                                          |
| H22 as shown on Sheets 10 and 11 of the Vegetation Removal Plans                | Partial removal                        | No                                          |
| H23 as shown on Sheet 10 of the Vegetation Removal Plans                        | Partial removal                        | No                                          |
| H24 as shown on Sheet 10 of the Vegetation Removal Plans                        | Partial removal                        | No                                          |
| H25 as shown on Sheet 10 of the Vegetation Removal Plans                        | Partial removal                        | No                                          |
| H23 as shown on Sheet 12 of the Vegetation Removal Plans                        | Partial removal                        | No                                          |
| H24 as shown on Sheet 12 of the Vegetation Removal Plans                        | Partial removal                        | No                                          |
| H25 as shown on Sheet 12 of the Vegetation Removal Plans                        | Partial removal                        | No                                          |
| H23 as shown on Sheet 12 of the Vegetation Removal Plans                        | Partial removal                        | No                                          |
| H27 as shown on Sheet 12 of the Vegetation Removal Plans                        | Partial removal                        | No                                          |
| H28 as shown on Sheet 13 of the Vegetation Removal Plans                        | Partial removal                        | No                                          |
| H29 as shown on Sheet 13 of the Vegetation Removal Plans                        | Partial removal                        | No                                          |
| H30 as shown on Sheet 13 of the Vegetation Removal Plans                        | Partial removal                        | No                                          |
| H31 as shown on Sheet 14 of the Vegetation Removal Plans                        | Partial removal                        | No                                          |
| H32 as shown on Sheet 14 of the Vegetation Removal Plans                        | Partial removal                        | Yes                                         |
| H33 as shown on Sheet 14 of the Vegetation Removal Plans                        | Partial removal                        | No                                          |
| H34 as shown on Sheet 14 of the Vegetation Removal Plans                        | Partial removal                        | No                                          |
| H35 as shown on Sheet 14 of the Vegetation Removal Plans                        | Partial removal                        | No                                          |
| H36 as shown on Sheet 14 of the Vegetation Removal Plans                        | Partial removal                        | No                                          |

| <i>(1)</i><br><i>Reference No. (location of hedgerow)</i>                  | <i>(2)</i><br><i>Extent of removal</i> | <i>(3)</i><br><i>Important<br/>hedgerow</i> |
|----------------------------------------------------------------------------|----------------------------------------|---------------------------------------------|
| H37 as shown on Sheet 14 of the Vegetation Removal Plans <a href="#">s</a> | Partial removal                        | No                                          |
| H38 as shown on Sheet 14 of the Vegetation Removal Plans <a href="#">s</a> | Partial removal                        | No                                          |
| H39 as shown on Sheet 14 of the Vegetation Removal Plans <a href="#">s</a> | Partial removal                        | No                                          |
| H40 as shown on Sheet 15 of the Vegetation Removal Plans <a href="#">s</a> | Partial removal                        | No                                          |
| H41 as shown on Sheet 15 of the Vegetation Removal Plans <a href="#">s</a> | Partial removal                        | No                                          |
| H42 as shown on Sheet 15 of the Vegetation Removal Plans <a href="#">s</a> | Partial removal                        | No                                          |
| H43 as shown on Sheet 15 of the Vegetation Removal Plans <a href="#">s</a> | Partial removal                        | Yes                                         |
| H44 as shown on Sheet 15 of the Vegetation Removal Plans <a href="#">s</a> | Partial removal                        | No                                          |
| H45 as shown on Sheet 15 of the Vegetation Removal Plans <a href="#">s</a> | Partial removal                        | No                                          |
| H46 as shown on Sheet 15 of the Vegetation Removal Plans <a href="#">s</a> | Partial removal                        | No                                          |
| H47 as shown on Sheet 15 of the Vegetation Removal Plans <a href="#">s</a> | Partial removal                        | No                                          |
| H48 as shown on Sheet 15 of the Vegetation Removal Plans <a href="#">s</a> | Partial removal                        | No                                          |
| H49 as shown on Sheet 15 of the Vegetation Removal Plans <a href="#">s</a> | Partial removal                        | No                                          |
| H50 as shown on Sheet 15 of the Vegetation Removal Plans <a href="#">s</a> | Partial removal                        | No                                          |
| H51 as shown on Sheet 15 of the Vegetation Removal Plans <a href="#">s</a> | Partial removal                        | No                                          |
| H52 as shown on Sheet 15 of the Vegetation Removal Plans <a href="#">s</a> | Partial removal                        | No                                          |
| H53 as shown on Sheet 15 of the Vegetation Removal Plans <a href="#">s</a> | Partial removal                        | No                                          |
| H54 as shown on Sheet 15 of the Vegetation Removal Plans <a href="#">s</a> | Partial removal                        | No                                          |
| H55 as shown on Sheet 15 of the Vegetation Removal Plans <a href="#">s</a> | Partial removal                        | No                                          |
| H65 as shown on Sheet 15 of the Vegetation Removal Plans <a href="#">s</a> | Partial removal                        | No                                          |
| H66 as shown on Sheet 15 of the Vegetation Removal Plans <a href="#">s</a> | Partial removal                        | No                                          |
| H90 as shown on Sheet 15 of the Vegetation Removal Plans <a href="#">s</a> | Partial removal                        | No                                          |
| H91 as shown on Sheet 15 of the Vegetation Removal Plans <a href="#">s</a> | Partial removal                        | No                                          |
| H92 as shown on Sheet 15 of the Vegetation Removal Plans <a href="#">s</a> | Partial removal                        | No                                          |
| H56 as shown on Sheet 17 of the Vegetation Removal Plans <a href="#">s</a> | Partial removal                        | No                                          |

| <i>(1)</i><br><i>Reference No. (location of hedgerow)</i>                  | <i>(2)</i><br><i>Extent of removal</i> | <i>(3)</i><br><i>Important<br/>hedgerow</i> |
|----------------------------------------------------------------------------|----------------------------------------|---------------------------------------------|
| H57 as shown on Sheet 17 of the Vegetation Removal Plans <a href="#">s</a> | Partial removal                        | No                                          |
| H58 as shown on Sheet 18 of the Vegetation Removal Plans <a href="#">s</a> | Partial removal                        | No                                          |
| H59 as shown on Sheet 18 of the Vegetation Removal Plans <a href="#">s</a> | Partial removal                        | No                                          |
| H60 as shown on Sheet 18 of the Vegetation Removal Plans <a href="#">s</a> | Partial removal                        | Yes                                         |
| H61 as shown on Sheet 18 of the Vegetation Removal Plans <a href="#">s</a> | Partial removal                        | Yes                                         |
| H62 as shown on Sheet 18 of the Vegetation Removal Plans <a href="#">s</a> | Partial removal                        | No                                          |
| H63 as shown on Sheet 18 of the Vegetation Removal Plans <a href="#">s</a> | Partial removal                        | No                                          |
| H64 as shown on Sheet 18 of the Vegetation Removal Plans <a href="#">s</a> | Partial removal                        | No                                          |
| H65 as shown on Sheet 19 of the Vegetation Removal Plans <a href="#">s</a> | Partial removal                        | No                                          |
| H66 as shown on Sheet 19 of the Vegetation Removal Plans <a href="#">s</a> | Partial removal                        | No                                          |
| H67 as shown on Sheet 19 of the Vegetation Removal Plans <a href="#">s</a> | Partial removal                        | No                                          |
| H68 as shown on Sheet 19 of the Vegetation Removal Plans <a href="#">s</a> | Partial removal                        | No                                          |
| H69 as shown on Sheet 19 of the Vegetation Removal Plans <a href="#">s</a> | Partial removal                        | No                                          |
| H70 as shown on Sheet 19 of the Vegetation Removal Plans <a href="#">s</a> | Partial removal                        | Yes                                         |
| H71 as shown on Sheet 20 of the Vegetation Removal Plans <a href="#">s</a> | Partial removal                        | Yes                                         |
| H94 as shown on Sheet 20 of the Vegetation Removal Plans <a href="#">s</a> | Partial removal                        | No                                          |
| H72 as shown on Sheet 21 of the Vegetation Removal Plans <a href="#">s</a> | Partial removal                        | No                                          |
| H73 as shown on Sheet 21 of the Vegetation Removal Plans <a href="#">s</a> | Partial removal                        | No                                          |
| H74 as shown on Sheet 21 of the Vegetation Removal Plans <a href="#">s</a> | Partial removal                        | No                                          |
| H93 as shown on Sheet 21 of the Vegetation Removal Plans <a href="#">s</a> | Partial removal                        | No                                          |
| H75 as shown on Sheet 26 of the Vegetation Removal Plans <a href="#">s</a> | Partial removal                        | Yes                                         |
| H76 as shown on Sheet 26 of the Vegetation Removal Plans <a href="#">s</a> | Partial removal                        | No                                          |
| H77 as shown on Sheet 26 of the Vegetation Removal Plans <a href="#">s</a> | Partial removal                        | No                                          |
| H78 as shown on Sheet 26 of the Vegetation Removal Plans <a href="#">s</a> | Partial removal                        | No                                          |
| H79 as shown on Sheet 27 of the Vegetation Removal Plans <a href="#">s</a> | Partial removal                        | No                                          |

| <i>(1)</i><br><i>Reference No. (location of hedgerow)</i> | <i>(2)</i><br><i>Extent of removal</i> | <i>(3)</i><br><i>Important<br/>hedgerow</i> |
|-----------------------------------------------------------|----------------------------------------|---------------------------------------------|
| H80 as shown on Sheet 27 of the Vegetation Removal Plans  | Partial removal                        | No                                          |
| H81 as shown on Sheet 27 of the Vegetation Removal Plans  | Partial removal                        | No                                          |
| H82 as shown on Sheet 28 of the Vegetation Removal Plans  | Partial removal                        | No                                          |
| H83 as shown on Sheet 28 of the Vegetation Removal Plans  | Partial removal                        | No                                          |
| H95 as shown on Sheet 28 of the Vegetation Removal Plans  | Partial removal                        | No                                          |
| H84 as shown on Sheet 29 of the Vegetation Removal Plans  | Partial removal                        | Yes                                         |
| H85 as shown on Sheet 29 of the Vegetation Removal Plans  | Partial removal                        | Yes                                         |

## PART 2

### TREES SUBJECT TO TREE PRESERVATION ORDER

| <i>(1)</i><br><i>TPO Reference</i> | <i>(2)</i><br><i>Work to be carried out</i>                                                       | <i>(3)</i><br><i>Relevant part of the authorised<br/>development</i> |
|------------------------------------|---------------------------------------------------------------------------------------------------|----------------------------------------------------------------------|
| CC1999/0110                        | To facilitate the construction of the cable underneath this TPO, at a depth of at least 3 metres. | Work No. 2L                                                          |

## SCHEDULE 13

Article 45

### DOCUMENTS TO BE CERTIFIED

| (1)<br><i>Document</i>                                | (2)<br><i>Document Reference</i> | (3)<br><i>Version</i> |
|-------------------------------------------------------|----------------------------------|-----------------------|
| Book of Reference                                     | EN0110020/APP/4.3                | 1                     |
| Environmental Statement                               | EN0110020/APP/6.1 – 6.21-48      | 1                     |
| Land Plans                                            | EN0110020/APP/2.2                | 1                     |
| Crown Land Plans                                      | EN0110020/APP/2.8                | 1                     |
| Location Plans                                        | EN0110020/APP/2.1                | 1                     |
| Works Plans                                           | EN0110020/APP/2.3                | 1                     |
| Traffic Regulations Plans                             | EN0110020/APP/2.5                | 1                     |
| Streets, Rights of Way and Access Plans               | EN0110020/APP/2.4                | 1                     |
| Vegetation Removal Plans                              | EN0110020/APP/2.9                | 1                     |
| Outline Battery Safety Management Plan                | EN0110020/APP/5.15               | 1                     |
| Outline Construction Environmental Management Plan    | EN0110020/APP/5.9                | 1                     |
| Outline Construction Traffic Management Plan          | EN0110020/APP/5.12               | 1                     |
| Outline Operational Environmental Management Plan     | EN0110020/APP/5.10               | 1                     |
| Outline Decommissioning Environmental Management Plan | EN0110020/APP/5.11               | 1                     |
| Design Approach Document                              | EN0110020/APP/5.7                | 1                     |
| Outline Landscape and Ecology Management Plan         | EN0110020/APP/5.13               | 1                     |
| Outline Public Rights of Way Management Plan          | EN0110020/APP/5.14               | 1                     |
| Outline Surface Water Drainage Strategy               | EN0110020/APP/5.17               | 1                     |
| Outline Written Scheme of Investigation               | EN0110020/APP/5.16               | 1                     |

## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order grants development consent for, and authorises the construction, operation, maintenance and decommissioning of a solar generating station and battery energy storage system on land east of Sheffield, South Yorkshire, within the administrative areas of the City of Doncaster Council, Rotherham Metropolitan Borough Council, North East Derbyshire District Council and Derbyshire County Council together with associated development. This Order imposes requirements in connection with the development and authorises the compulsory purchase of land (including rights in land) and the right to use land and to override easements and other rights.

A copy of the documents referred to in Schedule 13 to this Order and certified in accordance with article 45 (certification of documents, etc.) of this Order may be inspected free of charge during normal working hours at [ ].



**WHITESTONE**  
solar farm

## Contact

Whitestone Net Zero Ltd

[info@whitestonesolarfarm.co.uk](mailto:info@whitestonesolarfarm.co.uk)

0800 688 9936