

The Great Grid Upgrade

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1. Introduction

1.1 Purpose of the Explanatory Memorandum

- 1.1.1 This Explanatory Memorandum explains the purpose and effect of each article of, and the Schedules to, the draft National Grid (Bramford to Twinstead Reinforcement) Order (“the Order”), as required by regulation 5(2)(c) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (as amended)¹.
- 1.1.2 This Explanatory Memorandum is intended to assist the Examining Authority, Interested Parties and the Secretary of State in understanding the rights and powers sought within the Order.
- 1.1.3 In particular, it sets out (as per the Planning Inspectorate’s *Advice Note 15: Drafting Development Consent Orders*):
- (a) the source of the provision within the Order (whether it is bespoke or based on a made Order);
 - (b) the section/Schedule of the Planning Act 2008² (the “Act”) under which it is made; and
 - (c) the reasons why the Article is relevant to the project and considered important and/or necessary to the delivery of the Bramford to Twinstead Reinforcement.

1.2 Genesis of the Order

- 1.2.1 The Order is based on the General Model Provisions (the “general model provisions”) in the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 (the “Model Provisions Order 2009”³), unless otherwise stated⁴. The general model provisions were followed because there are no model provisions for electric lines.
- 1.2.2 The Localism Act 2011 removed the requirement for the decision maker to have regard to the general model provisions in deciding applications, and with the repeal of section 38 without the Model Provisions Order 2009 being ‘saved’, they have formally ‘lapsed’. Secondary legislation under the Localism Act also removed the requirement on an applicant to explain in the Explanatory Memorandum divergences from the Model Provisions.
- 1.2.3 Paragraph 1.5 of the Planning Inspectorate’s Advice Note 15 states that “[*if*] a draft DCO includes wording derived from other made DCOs, this should be explained in the Explanatory Memorandum. The Explanatory Memorandum should explain why that particular wording is relevant to the proposed draft DCO, for example detailing what is

1 S.I. 2009/2264.

2 c.29.

3 S.I. 2009/2265.

4 Although the Model Provisions Order 2009 lapsed on the repeal of the enabling power in section 38 of the Planning Act, and the Planning Inspectorate’s Advice Note 15 (published in July 2018) removed the requirement to append to the Explanatory Memorandum a comparison of the draft DCO showing departures from the model provisions, the model provisions continue to provide a helpful guide to drafting.

factually similar for both the relevant consented NSIP and the Project... the ExA and Secretary of State will need to understand why it is appropriate for the scheme applied for. Any divergence in wording from the consented DCO drafting should also be explained.”

- 1.2.4 Where there is a departure from the general model provisions, or an article is based on other precedent orders, an explanation of the new provision is provided. In general, the precedents followed for the Order are other development consent orders for electric lines (primarily the National Grid (Richborough Connection Project) Development Consent Order 2017⁵, the National Grid (Hinkley Point C Connection Project) Order 2016⁶ and the National Grid (North London Reinforcement Project) Order 2014,⁷ as well as development consent orders and Transport and Works Act Orders for other linear schemes, such as the Southampton to London Pipeline Development Consent Order 2020⁸, the A303 (Amesbury to Berwick Down) Development Consent Order 2020⁹, the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014¹⁰ and railways and tramways developments.
- 1.2.5 The Order does not include model provisions which are not relevant or applicable to the project and this Explanatory Memorandum does not seek to explain further their omission.

5 S.I. 2017/817 (as corrected by S.I. 2018/572).

6 S.I. 2016/49 (as corrected by S.I. 2017/786).

7 S.I. 2014/1052.

8 S.I. 2020/1099.

9 S.I. 2020/1297.

10 S.I. 2014/2384.

2. Purpose of the Order

2.1 Nationally Significant Infrastructure Project – installation of above ground electric line

2.1.1 National Grid Electricity Transmission plc (“National Grid”) is applying to the Secretary of State for a development consent order (“DCO”) for the Bramford to Twinstead Reinforcement which would authorise reinforcement of the transmission network between Bramford Substation in Suffolk, and Twinstead Tee in Essex. The Bramford to Twinstead Reinforcement (“the project”) would be achieved by the construction and operation of a new electricity transmission line over a distance of approximately 29km comprising of overhead lines, underground cables and grid supply point substation. It also includes the removal of 25km of the existing distribution network and various ancillary works.

2.1.2 The project will include the following principal components:

- (a) the installation of approximately 18 kilometres of new overhead electricity transmission line (consisting of approximately 50 new pylons and conductors);
- (b) the installation of approximately 11 kilometres of new underground electricity transmission line (with associated joint bays and above ground link pillars);
- (c) the construction of four Cable Sealing End (“CSE”) Compounds which would be required in order to facilitate the transition between the overhead electric line and underground cable technology. Each CSE will be situated within a fenced compound, and contain electrical equipment, support structures, control building and a permanent access track;
- (d) the removal of approximately 27.5 kilometres of existing overhead electric line and associated pylons (comprising 25 kilometres of existing overhead distribution (132kV) electric line between Burstall Bridge and Twinstead Tee, and 2.5 kilometres of the existing overhead transmission (400kV) electric line to the south of Twinstead Tee); and
- (e) the construction and operation of a new grid supply point (“GSP”) substation to facilitate the removal of the existing overhead electricity distribution line. The GSP substation would include associated works, including replacement pylons, a single circuit sealing end compound and underground cables to tie the substation into the existing 400kV and 132kV networks.

2.1.3 Other ancillary activities would be required to facilitate construction and operation of the project, including (but not limited to):

- (a) modifications to, and realignment of sections of existing overhead lines, including pylons;
- (b) temporary land to facilitate construction activities including temporary amendments to the public highway, public rights of way, working areas for construction equipment and machinery, site offices, welfare, storage and access;

- (c) temporary infrastructure to facilitate construction activities such as amendments to the highway, pylons and overhead line diversions, scaffolding to safeguard existing crossings and watercourse crossings;
 - (d) diversion of third-party assets and land drainage from the construction and operational footprint; and
 - (e) mitigation, compensation and enhancement of the environment as a result of the environmental assessment process, and National Grid's commitments to Biodiversity Net Gain.
- 2.1.4 A more detailed description of the project is provided at Chapter 4 of the Environmental Statement (**application document 6.2.4**).
- 2.1.5 The project lies wholly within England and includes the installation of an electric line with a nominal voltage of more than 132kV above ground for more than two kilometres. It is therefore a nationally significant infrastructure project ("NSIP") for the purposes of sections 14(1)(b) and 16 of the Act.
- 2.1.6 As the project is an NSIP, development consent must be obtained to authorise it¹¹, and any application for a development consent order must be made to the Secretary of State under section 37 of the Act.
- 2.1.7 Schedule 1 to the Order contains a list of numbered works comprising the project. The project includes works of a description in section 14(1)(b) of the Act (the installation of an electric line above ground), Associated Development, and other matters that are included as ancillary to the development as described in sections 120(3) and (4) and Part 1, Schedule 5 of the Act.
- 2.1.8 In line with the approach taken in other development consent orders,¹² Schedule 1 does not specify which elements of the project are considered to be part of the NSIP pursuant to section 14(1)(b) and which are Associated Development. National Grid considers that because it is clear that all elements of the proposals put forward are necessary for the construction and operation of the project, it is not material whether they are stated on the face of the Order to be part of the NSIP or Associated Development.
- 2.1.9 For the avoidance of doubt, National Grid considers that all elements of the project are, or form part of, an NSIP, or are Associated Development.

2.2 Ancillary matters

- 2.2.1 The Order also contains powers that are ancillary to the authorised development (i.e. provisions not consisting of development) in accordance with section 120(3) of the Act.
- 2.2.2 The main ancillary matter is a power to acquire land or create or interfere with rights compulsorily or by agreement, in accordance with section 120(4) and Part 1, Schedule 5 of the Act. The Order also contains powers of compulsory acquisition for land required for the authorised development, or to facilitate, or that is incidental to the authorised development under section 122 of the Act. It also seeks associated powers including the acquisition of rights necessary to operate and maintain the authorised development. A

¹¹ S.31 of the Act.

¹² See, for example, The Hinkley Point C (Nuclear Generating Station) Order 2013 (S.I. 2013/648) and, more recently, The Sizewell C (Nuclear Generating Station) Order 2022 (S.I. 2022/853).

justification for the powers of compulsory acquisition is set out in the Statement of Reasons which accompanies the application (**application document 4.2**).

- 2.2.3 The Order seeks to apply and modify statutory provisions, including in relation to the compulsory acquisition of land. In such cases, sections 117 and 120(5) of the Act require that the Order be made by Statutory Instrument. The Order is, therefore, drafted in that form.
- 2.2.4 Other ancillary matters include the diversion and stopping up of lengths of existing highway and private means of access within the vicinity of the project, the temporary closure of streets, the application of speed limits, the regulation of vehicular traffic, the temporary use of land for constructing and maintaining the project, the felling or lopping of trees and hedgerows, and the application and disapplication of legislation relating to the project.
- 2.2.5 National Grid considers that these powers are required for the development to which the Order relates, or are required to facilitate or are incidental to that development.

3. Draft Order

3.1 Introduction

- 3.1.1 The draft Order is based on the National Grid (Hinkley Point C Connection Project) Order 2016¹³ and the National Grid (Richborough Connection Project) Development Consent Order 2017¹⁴, with certain provisions also drawing on the Southampton to London Pipeline Development Consent Order 2020¹⁵, the A303 (Amesbury to Berwick Down) Development Consent Order 2020¹⁶, and the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014¹⁷.
- 3.1.2 The draft Order is also based on the general model provisions and reference is also made to the railway model provisions within the Model Provisions Order 2009, given the linear nature of the project.

3.2 Authorised development

- 3.2.1 The general model provisions refer to “the authorised project” which comprises “the authorised development” and “the ancillary works”. The Order does not use the term “ancillary works” and therefore the Order does not require a definition of “the authorised project” which is distinct from “the authorised development”. Accordingly, references in the model provisions to “the authorised project” have been replaced in the Order by references to “the authorised development”.

3.3 Deemed approvals

- 3.3.1 Previous Orders (for example, the National Grid (Hinkley Point C Connection Project) Order 2016, the National Grid (Richborough Connection Project) Development Consent Order 2017 and the Southampton to London Pipeline Development Consent Order 2020) have included articles which contain a provision by which the promoter must obtain consent, agreement or approval from a third party before it may do something and that such consent, agreement or approval shall not be unreasonably withheld. They, and other made orders, have also included a default longstop provision to the effect that, if the relevant third party fails to respond within a specified period, certain consents, agreements or approvals shall be deemed to have been given.
- 3.3.2 National Grid considers this approach to be necessary to remove the possibility for undue delay and to provide certainty that the authorised development can be delivered in a timely fashion. In this respect, the inclusion of deemed approvals provisions aligns with the objectives of the Act to ensure efficient delivery of nationally significant infrastructure projects. This approach is also considered to be proportionate in that, having undertaken extensive pre-application consultation and the Order having been rigorously examined,

13 S.I. 2016/0049 (as amended)

14 S.I. 2017/817

15 S.I. 2020/1099.

16 S.I. 2020/1297.

17 S.I. 2014/2384 (as amended)

the delivery of the authorised development should not be held up unreasonably, if it has been approved by the Secretary of State.

- 3.3.3 The draft Order includes, therefore, at articles 11(3) (street works), 14(5) (power to alter layout, etc. of streets); 15(9) (temporary stopping up of streets and public rights of way); 16(2) (access to works); 19(9) (discharge of water); 21(8) (authority to survey and investigate land), 47(8) (traffic regulation) and 48(5) (felling or lopping) a deemed consenting regime. This applies whereby if a consent etc. is required, and no such consent etc. is provided within 28 days of receiving an application for consent or approval, the consenting authority is deemed to have granted consent. The same 28 day period is used in the National Grid (Hinkley Point C Connection Project) Order 2016 and the National Grid (Richborough Connection Project) Development Consent Order 2017, and is considered to be proportionate to each of the applications made, whilst ensuring that the delivery of the project is not unnecessarily delayed by means outside the control of National Grid.
- 3.3.4 However, the draft Order makes clear that, in each case, the deemed approvals provisions will only have effect where the application for consent, agreement and/or approval includes a clear statement that consent etc. must be provided within 28 days or else the consenting authority is deemed to have granted consent. This is intended as a safeguard to ensure that the consenting authority is placed on notice that the deemed approvals provisions will apply and is considered helpful where the consenting authority may be required to determine a number of applications concurrently.
- 3.3.5 In each case, the draft Order also makes clear that an alternative period of time may be agreed on a case by case basis with the relevant authority. It is anticipated that this will provide greater flexibility.
- 3.3.6 The provisions of the draft Order are now explained in sequence, giving reasons for any departure from the precedents noted above.
- 3.3.7 Both the draft Order and this Explanatory Memorandum include reference to other documents which accompany National Grid's application for a DCO for the project. All documents are allocated revision number (A) at the point of submission of the application, and references in the draft Order and this Explanatory Memorandum to those documents will be updated accordingly if revisions are required during the Examination.

Part 1 – Preliminary

3.4 Preamble

- 3.4.1 The Order, in common with all statutory instruments, is introduced by a preamble.
- 3.4.2 The preamble to the Order also includes the wording necessary to give effect to the conclusions reached in the Special Category Land Report which forms Appendix C to the Statement of Reasons (**application document 4.2.3**), namely that the special category land identified within the Order limits, when burdened with the rights sought to be compulsorily acquired over it for the purposes of the project, will be no less advantageous than it was before to (1) the persons in whom it is vested, (2) other persons, if any, entitled to rights of common or other rights, and (3) to the public and, hence, special parliamentary procedure ("SPP") is not engaged.

3.5 Article 1 (Citation and commencement)

- 3.5.1 Article 1 sets out the name and commencement date of the Order.

3.6 Article 2 (Interpretation)

- 3.6.1 Article 2(1) defines terms used in the remainder of the Order. The definitions used in the general model provisions are amended and supplemented to reflect the particular circumstances of the project and changes to the Act which have been made since it was originally enacted.
- 3.6.2 A number of definitions are added, including: “the 1981 Act”; “the 2009 Act”, “the 2016 Act”, “Access and Rights of Way Plans”; “commence”, “electric line”, “electronic transmission”; “limits of deviation”; “maintain”; and “traffic”.
- 3.6.3 Several of these additional definitions are the same as those in the National Grid (Hinkley Point C Connection Project) Order 2016 and the National Grid (Richborough Connection Project) Development Consent Order 2017 and, where this is the case, the wording of those additional definitions is identical.
- 3.6.4 The “undertaker” is defined as National Grid Electricity Transmission plc in relation to the authorised development and UK Power Networks Holdings Limited and/or its affiliate, Eastern Power Networks plc, in relation to the UKPN Works. This approach was adopted in the National Grid (Hinkley Point C Connection Project) Order 2016 and the National Grid (Richborough Connection Project) Development Consent Order 2017.
- 3.6.5 The UKPN Works are also defined in article 2 as those works to UKPN assets or equipment forming part of the authorised development, including Work Numbers 8 and 11.
- 3.6.6 As is explained above, the definition of “undertaker” includes both National Grid and UKPN. In this document, the terms “National Grid” and “UKPN” are also used. Save where both National Grid and UKPN are mentioned in the same paragraph, a reference to “the undertaker” in this document also applies to UKPN in so much as the provisions of the Order have effect for the benefit of UKPN in respect of the UKPN Works (see article 6 (Benefit of Order)) as well as National Grid in respect of the authorised development.
- 3.6.7 A detailed definition of the “Environmental Statement” has also been given to reflect any subsequent submissions of various environmental statement documents to the Examination. Whilst the approach to this definition is adopted from the National Grid (Hinkley Point C Connection Project) Order 2016, the Order extends this definition to include any environmental statement that may be submitted for the purpose of complying with and/or discharging the Requirements. This will ensure that the authorised development is constructed in accordance with any such approved submissions.
- 3.6.8 The definition of “maintain” has been amended from the definition contained in the National Grid (Hinkley Point C Connection Project) Order 2016, to add the ability to dismantle, refurbish, decommission, or improve the authorised development. This is to take into account the range of works that National Grid considers it may reasonably need to carry out over the lifetime of the authorised development to ensure a safe and efficient connection. The Order restricts this definition such that the ability to maintain does not vary the project beyond the definition of the authorised development. Reference has been included to enable National Grid to use technology, such as drones, in its maintenance activities. This is appropriate to ensure that National Grid can maintain the

authorised development using the most efficient and least disruptive methods available to it. The context in which National Grid can (or is required to) maintain is set out in the relevant article.

3.6.9 In terms of the definition of “operational use”:

- (a) The definition has been adapted from the National Grid (Hinkley Point C Connection Project) Order 2016 to fit with the specific circumstances of the project. The reference to 400kV relates to National Grid apparatus.
- (b) However, so as to ‘futureproof’ the project, rating values (kV) for the overhead lines and substations have not been specified within Schedule 1 of the Order. This approach to drafting has been taken because positive future developments, which allow an increase in output from renewable energy sources, may necessitate higher transmission values to ensure that reaching carbon reduction targets are not inhibited by the transmission network. Future developments in overhead line technology may also allow for this increase without any material changes to infrastructure, or therefore consequent material changes to likely significant effects.
- (c) The environmental impact assessment has been conducted on the basis of the intended transmission value of 400kV for overhead lines and 400kV for substations.
- (d) However, it is not considered necessary to specify the transmission value in the Order as a parameter in order to control environmental effects, as these are properly controlled by all other parameters of the Order. For these reasons, the description of development at Schedule 1 of the Order has been drafted so as not to specify a transmission value or, therefore, inhibit the operation of a different transmission value than currently envisaged in the future.

3.6.10 The definition of “Order land” refers to land shown on the Land Plans (**application document 2.3**) and described in the Book of Reference (**application document 4.3**). The Order land is not limited to land which is to be acquired. It also includes third party land over which the undertaker is seeking to acquire rights and land of which temporary possession is required for the construction, operation and maintenance of the Bramford to Twinstead Reinforcement.

3.6.11 Other amendments have been made to the definitions used in the general model provisions, including that “relevant planning authority” has been amended to refer to the local planning authority for the areas to which the specific provision relates. This is necessary as the authorised development passes through more than one local planning authority area. Identical wording is contained in the National Grid (Hinkley Point C Connection Project) Order 2016.

3.6.12 Unlike the National Grid (Hinkley Point C Connection Project) Order 2016, this Order does not include definitions of “Deemed Marine Licence”, “MMO”, or “Port Authority” as they are not applicable in the circumstances of this Order.

3.6.13 The definition of “the 2021 Act” is required following the coming into force of certain provisions of the Environment Act 2021.

3.6.14 The definition of “commence” is used to clarify what material operations (being works forming part of the authorised development) must be carried out for the authorised development to have ‘commenced’ within the time period set by Requirement 2(2). It

incorporates the definition of a “material operation” under section 155 of the Act, but makes clear that certain “pre-commencement operations” are excluded.

- 3.6.15 The carve out of “pre-commencement operations” from the definition of “commence” allows certain minor set up operations, including environmental investigations and monitoring, the diversion and laying of services, remediation in respect of any contamination or other adverse ground conditions, and set up works associated with the establishment of construction compounds,¹⁸ to be carried out before the discharge of the pre-commencement requirements in Schedule 3. The works and operations within the definition of “pre-commencement operations” are either *de minimis* or have minimal potential for adverse impacts. Indeed, they may, in some cases, need to be carried out in order to comply with pre-commencement requirements (for example, to inform assessments and proposals required to be submitted for approval) or to implement environmental mitigation or other measures required pursuant to European Protected Species licences.
- 3.6.16 Whilst noting the Planning Inspectorate's comments in Advice Note 15 regarding the use of the term “commence” within draft Orders, the ability to undertake these “pre-commencement operations” ahead of main construction is of importance in the context of the anticipated construction programme for the project. The Environmental Statement does not indicate that the excluded works and operations would be likely to have significant environmental effects. For this reason, National Grid considers that the exclusion of these works and operations from the definition is appropriate. In any event, Requirement 4 (Management Plans) clarifies that these “pre-commencement operations” will be controlled by the Construction Environmental Management Plan (“CEMP”) (**application document 7.5**) (which includes by way of appendix, the Code of Construction Practice (“CoCP”) (**application document 7.5.1**) and the Register of Environmental Actions and Commitments (“REAC”) (**application document 7.5.2**)), the Construction Traffic Management Plan (“CTMP”) (**application document 7.6**), the Materials and Waste Management Plan (“MWMP”) (**application document 7.7**), the Landscape and Ecological Management Plan (“LEMP”) (**application document 7.8**), and the Public Rights of Way Management Plan (“PRoWMP”) (**application document 8.5.8**) each of which the undertaker will be required to comply with in carrying out the authorised development. The CoCP in particular specifies measures relating to the establishment of construction compounds, and therefore will effectively control these excluded works and operations. Therefore there is effective control over these excluded works and operations.
- 3.6.17 A new definition of “electric line” has been added, which cross refers to the meaning specified in the 2008 Act (which itself refers to section 64(1) of the Electricity Act 1989), and which provides examples of the types of apparatus which form part of an electric line.
- 3.6.18 A definition of “statutory undertaker” has been included by cross reference to the 2008 Act (being the salient primary legislation). This mirrors the definition in the National Grid (Hinkley Point C Connection Project) Order 2016.
- 3.6.19 Article 2(2) clarifies that references in the Order to rights over land include the rights to do anything in, on or under the land or in the airspace above. It also clarifies that the imposition of restrictions in respect of the Order land includes restrictive covenants over the Order land. This wording is almost identical to the wording in the National Grid (Hinkley Point C Connection Project) Order 2016 and the National Grid (Richborough

¹⁸ Substantially similar operations concerning the establishment of construction compounds are included in other recent Orders, including The A428 Black Cat to Caxton Gibbet Development Consent Order 2022 (S.I. 2022/934) and The A417 Missing Link Development Consent Order 2022 (S.I. 2022/1248).

Connection Project) Development Consent Order 2017, save that “in respect of land” has been added to clarify that it is only the restrictions in respect of land which are references to restrictions over land which interfere with the interest or rights of another and which are for the benefit of land which is acquired.

- 3.6.20 Article 2(3) defines measurements as approximate, in line with the general model provisions. The purpose of this is to ensure that if, upon construction of the works, it transpires that the distances are marginally different to those listed in the Order there is no issue over whether the works are permitted by the Order. This provision allows for a small tolerance with respect to any distances and points, although all works will take place within the Order limits. It is commonplace to include such a provision in an Act or instrument authorising linear infrastructure¹⁹ and similar wording is included in the National Grid (Hinkley Point C Connection Project) Order 2016. The Order further specifies that distances for linear works are to be measured along the centre line for those works, and that pylon identification numbers are identified by reference to the centre line of those works and are subject to the limits of deviation for those works. Additionally, it is specified that the tower numbering and location of towers may adjust in accordance with the limits of deviation.
- 3.6.21 Articles 2(4) to (7) are not in the general model provisions. Article 2(4) provides that areas given in the Book of Reference are approximate since the Book of Reference is outside the scope of Article 2(3).
- 3.6.22 Articles 2(5) to (6) explain how references in the Order to letters or numbered points and to numbered works are to be construed. Article 2(7) confirms that any reference to Documents in the Order are references to documents submitted by National Grid in support of the application for the Order. Substantially similar wording is included in the National Grid (Hinkley Point C Connection Project) Order 2016.
- 3.6.23 Article 2(8) clarifies that references to statutory bodies include successors to the functions as relevant to the Order.
- 3.6.24 Article 2(9) provides that any references to legislation include amendments to such legislation.
- 3.6.25 Article 2(10) clarifies that any reduction or removal or avoidance of an adverse environmental effect reported in the Environmental Statement is not to be construed as being “materially new or materially different” for the purposes of determining whether or not a material or non-material amendment is required to the Order once made. Its inclusion is intended to offer further certainty as to the proper interpretation of the “materially new or materially different” test which is used (in the definition of “maintain” (Article 2(1)), as well as in Article 5(2) and Schedules 3 and 4) to constrain the exercise of certain powers or activities undertaken pursuant to the Order. National Grid considers it important to emphasise that the Order does not seek to prevent the future delivery of the project in a manner which is more environmentally advantageous than the reasonable worst case scenario outlined in the Environmental Statement. Whilst the drafting is currently without substantial precedent, an equivalent provision is included in the draft A122 (Lower Thames Crossing) Development Consent Order.

¹⁹ See, for example, section 56(5)(c) of the Crossrail Act 2008. Also, see article 2(3) of the Southampton to London Pipeline Development Consent Order 2020.

Part 2 – Principal Powers

3.7 Article 3 (Development consent etc. granted by the Order)

- 3.7.1 Article 3 grants development consent for the authorised development within the Order limits. The authorised development is described in Schedule 1. The development consent is subject to the Requirements set out in Schedule 3. The wording of article 3 is similar to, and has the same effect as, the wording in the National Grid (Richborough Connection Project) Development Consent Order 2017 and includes wording from the National Grid (Hinkley Point C Connection Project) Order 2016.
- 3.7.2 There are no “ancillary works” for the project within the meaning given in article 1 of the general model provisions, and so this term has been removed from article 3 and also from article 2 of the Order. This mirrors the position in the National Grid (Hinkley Point C Connection Project) Order 2016 and the National Grid (Richborough Connection Project) Development Consent Order 2017.
- 3.7.3 Article 3 grants development consent to National Grid to carry out any of the authorised development. Article 3 also grants development consent to UKPN to carry out the UKPN Works, subject to those works having been carried out by UKPN without National Grid needing to step in.
- 3.7.4 Paragraphs (2) and (3) of article 3 reflect section 141 of the Act, and provide that National Grid and UKPN have authority to install and keep installed the above-ground electric lines, underground cables and any telemetry included in those works. These paragraphs also allow National Grid and UKPN to remove or replace any pylon that requires removal as part of the authorised development. In particular, this power relates to transpositions which are designed to enable National Grid to swap the line over from one route to the other, and also to the exercise of the maintenance power at Article 4. As part of the transposition works, and as part of the exercise of the maintenance power, pylons will need to be removed and replaced.
- 3.7.5 Paragraphs (4) and (5) allow National Grid and UKPN to operate and use the electric line and any other elements of the authorised development and UKPN Works respectively as part of the electricity transmission and distribution network in England and Wales. The provision is necessary to allow the undertaker to operate and use the authorised development for the purposes for which it was designed, in accordance with the provisions of the Order and the attached Requirements.
- 3.7.6 Paragraph (6) specifies that the development consent granted by the Order allows works (including demolition of buildings or other structures) within the Order limits to the extent that they are required by or incidental to the carrying out of the authorised development, as permitted by section 120(3) of the Act.
- 3.7.7 Paragraph (7) of article 3 confirms the limits of deviation within which the works described in Schedule 1 must be carried out. Further commentary on the limits of deviation is provided below in relation to article 5.
- 3.7.8 Paragraph (8) gives effect to Schedule 3 (requirements).

3.8 Article 4 (Maintenance of authorised development)

- 3.8.1 This article sets out the scope within which National Grid may maintain the authorised development and UKPN may maintain the UKPN works. The wording in article 3 of the

general model provisions is replicated for each of National Grid and UKPN. “Maintain” is defined in article 2.

3.9 Article 5 (Limits of deviation)

3.9.1 Article 5 allows for:

- (a) horizontal (i.e. lateral and longitudinal) and vertical limits of deviation in respect of both the overhead electric line works and the underground electric line works; and
- (b) horizontal (i.e. lateral and longitudinal) and vertical limits of deviation in respect of other permanent (non-linear) above ground structures forming part of the authorised development, including the CSE compounds and the GSP substation.

3.9.2 The ability to include such a power is contained in section 120(3) of the Act, which enables an Order granting development consent to make provision relating to, or to matters ancillary to, the development for which consent is granted.

3.9.3 The purpose of Article 5 is to provide the necessary flexibility when constructing the authorised development, reducing the risk that the project as approved cannot later be implemented for unforeseen engineering or geological reasons.

3.9.4 Article 5 should be read alongside the Work Plans (**application document 2.5**) and Chapter 4 of the Environmental Statement (**application document 4.2**). Chapter 4 of the Environmental Statement explains how the limits of deviation set out in Article 5 have been applied in the context of the environmental impact assessment undertaken for the project.

3.9.5 In the context of the overhead electric line works and the underground electric line works forming part of Work Numbers 1, 2, 3, 4, 5, 6, 10 and 11 (inclusive), the limits of deviation included in Article 5 allow for:

- (a) horizontal (i.e. lateral and longitudinal) deviation anywhere within the yellow or blue dashed lines shown on the Work Plans.²⁰ Construction activities for those works may take place anywhere within the Order limits. It should also be noted that the horizontal limits of deviation in respect of the underground electric line are influenced by the nature of the ground conditions. Hence, the horizontal limits of deviation are wider so that, whatever ground conditions are encountered, there is sufficient flexibility to deliver the underground electric line section within the horizontal limits of deviation;
- (b) the vertical upwards deviation of the pylons, not exceeding 4 metres upwards. This is the same upward deviation as was allowed for in the National Grid (Hinkley Point C Connection Project) Order 2016 and the National Grid (Richborough Connection Project) Development Consent Order 2017, and is intended to provide a necessary but proportionate degree of flexibility in the construction of the authorised development and to reduce risk;
- (c) the vertical downwards deviation of the pylons to any extent as the undertaker considers necessary or convenient. This is adapted from the wording in the DCO general model provisions and also the TWA model provisions and is common in

²⁰ For the avoidance of doubt, horizontal limits of deviation for the overhead electric line works are shown as yellow dashed lines on the Work Plans. Horizontal limits of deviation for the underground electric line works are shown as blue dashed lines on the Work Plans.

linear projects including the National Grid (Richborough Connection Project) Development Consent Order 2017. Flexibility in downwards deviation is required so that any construction can reflect extant ground conditions when the works are carried out;

- (d) the vertical deviation (both upwards and downwards) of the overhead conductors and fibre-optic earth wires to such extent as the undertaker considers necessary or convenient. This is necessary because the height of the conductors and fibre-optic earth wires are functions of the position and height of the pylons. This means that if, for example, a pylon height changes, or the pylons are placed closer together or further apart, the height of the conductors and fibre-optic earth wires will also change. The upwards limits of deviation will be restricted by the upwards limits of deviation for the pylons. Clearance regulations contained in the Electricity Safety, Quality and Continuity Regulations 2002²¹ will apply to the overhead conductors and fibre-optic earth wires and, hence, will restrict the downward limits of deviation because that clearance must always be maintained; and
- (e) the vertical upwards deviation in respect of the underground electric line is such that the minimum distance that will be kept between the top of the protective tiles or the top of the cable ducts (where there are no protective tiles) and the top of the finished ground level is 0.9 metres. Vertical downwards deviation of the underground cables is to such extent as the undertaker considers necessary or convenient. This flexibility is necessary to ensure that any localised changes in landform, geology or agricultural practices can be taken into account during construction, as well as enabling a safe distance to be maintained relative to any existing buried utility apparatus.

3.9.6 It should be noted that when each of the limits of deviation for the overhead electric line works and the underground electric line works are viewed as a whole, the overall flexibility is more limited because the combination of these limits of deviation restricts each of the individual limits of deviation.

3.9.7 A similar approach to the overhead line works has been adopted on the National Grid (Hinkley Point C Connection Project) Order 2016 and The National Grid (King's Lynn B Power Station Connection) Order 2013²², although the Order breaks down the limits of deviation to account for the differing requirements of each element of the authorised development.

3.9.8 In respect of other above ground structures, erections and apparatus including substations and CSE compounds forming part of the authorised development, the limits of deviation included in Article 5 allow for:

- (a) horizontal (i.e. lateral and longitudinal) deviation anywhere within the parameters shown by the pink dashed line on the Work Plans; and
- (b) vertical upwards deviation not exceeding 10% above the maximum height shown on the table of parameters which forms part of the Work Plans and vertical downwards deviation to such extent as the undertaker considers necessary or convenient. Once again, flexibility in downwards deviation is required so that construction can reflect extant ground conditions when the works are carried out.

²¹ S.I. 2002/2665.

²² S.I. 2013/3200.

- 3.9.9 Article 5(4) also allows a potential extension to the limits of vertical deviation specified in paragraphs (1)(b), (1)(d) and (3)(b) where the undertaker is able to demonstrate to the Secretary of State's satisfaction (and the Secretary of State has certified accordingly following consultation with the relevant planning authority) that such extension would not give rise to any materially new or materially different environmental effects to those reported in the Environmental Statement. This provision allows for unexpected ground conditions which would otherwise make it dangerous or unduly complex to install the overhead electric line works and/or the underground electric cable works and/or any other non-linear infrastructure forming part of the authorised development within the limits of vertical deviation stated in paragraphs (1)(b), (1)(d) and (3)(b) respectively. A substantially similar provision appears in other made Orders – see for example Article 6 of the Testo's Junction Alteration Development Consent Order 2018 and Article 6 of the Southampton to London Pipeline Development Consent Order 2020.

3.10 Article 6 (Benefit of Order)

- 3.10.1 This article is a departure from the general model provisions (article 4) and overrides section 156(1) of the Act (as permitted by section 156(2)) which, if applied, would confer the benefit of the Order on anyone with an interest in the land). Statutory powers may usually only be exercised by the body on whom they are conferred.
- 3.10.2 It is appropriate in this case for the Order powers, subject to article 7 (Consent to transfer benefit of Order), to be exercised only by National Grid (or UKPN in the case of the UKPN Works).
- 3.10.3 Article 6(1) confirms this position, specifying in paragraph (1) that those provisions in the Order in respect of the authorised development are for the benefit of National Grid, and those provisions in respect of the UKPN Works (described above at paragraph 3.6.5) are for the benefit of UKPN (unless UKPN fails to carry out the UKPN Works and National Grid serves notice that it intends to carry out the UKPN Works instead).
- 3.10.4 By this means, UKPN enjoys the benefit of the Order as well as National Grid, so far as the UKPN Works are concerned, including the powers to obtain the necessary interests in land and to take possession of land temporarily.
- 3.10.5 This approach also safeguards National Grid's ability to carry out the UKPN Works itself (if required) as part of the authorised development.
- 3.10.6 By article 6(3), UKPN may not exercise the development consent for the UKPN Works conferred on it without the consent of, and subject to such reasonable conditions imposed by, National Grid.
- 3.10.7 Articles 6(4) and (5) confirm the position that, if UKPN fails to carry out the UKPN Works (or part of them), National Grid can carry out the UKPN Works (or the relevant part of them), on giving notice to UKPN and the Secretary of State, and that UKPN is to cease to have the benefit of articles 3(1)(b) and 6(1)(b) on the date specified in the notice and National Grid can benefit from UKPN's temporary possession powers under article 27. This termination of UKPN's ability to rely on articles 3(1)(b) and 6(1)(b) does not affect its ability to keep installed the electric line and other works included in the UKPN Works, nor to maintain the UKPN Works. Works done and actions undertaken before the issue of the notice by National Grid would therefore still be appropriately authorised. The wording of article 6(5) closely follows the Richborough Connection Project Development Consent Order 2017 (as amended by the Richborough Connection Project Correction Order 2018).

- 3.10.8 The provisions of this Article are substantially similar to those contained in the National Grid (Hinkley C Point Connection) Order 2016, save that paragraph (2) has been added, reflecting the drafting in the draft Yorkshire and Humber CCS Cross Country Pipeline Order (as promoted by National Grid Carbon). Paragraph (2) excepts works which are carried out for the benefit or protection of persons or land affected by the authorised development, so that it is clear that in these cases the benefit of the “planning permission” equivalent of the Order, i.e. development consent, for those mitigation works is not personal to the undertaker but also for the users of the relevant land.

3.11 Article 7 (Consent to transfer benefit of Order)

- 3.11.1 This article allows any or all of the benefits of the provision of the Order to be transferred, with the consent of the Secretary of State, to others. The wording of Article 7 is based on Article 5 of the general model provisions, with minor project-specific amendments, and is substantially similar to Article 7 of the National Grid (Richborough Connection Project) Development Consent Order 2017.
- 3.11.2 Article 7(3) ensures that any other party that exercises any benefits of rights conferred on it by any transfer or grant, is subject to the same restrictions, liabilities and obligations as would apply if those benefits and rights were exercised by National Grid or UKPN.
- 3.11.3 This article is subject to the provisions of Article 6 in relation to any rights or benefits in relation to the UKPN Works that are transferred or granted by UKPN.

3.12 Article 8 (Application of the 1990 Act)

- 3.12.1 Article 8(1) applies to specified works which, though temporary in nature, would be in place for a considerable period of time. The article applies section 57(2) of the Town and Country Planning Act 1990 to those works to clarify that planning permission is not required for the resumption, at the end of that period, of the purpose for which that land was normally used before the development consent was granted. A similar provision is included at Article 10 of the National Grid Hinkley Point C (Nuclear Generating Station) Order 2013²³ and at Article 8 of the National Grid (Hinkley Point C Connection Project) Order 2016 and is appropriate in this case to avoid disproportionate administrative burden on both landowners and the relevant planning authority once these temporary construction works have ceased.
- 3.12.2 Article 8(2) follows article 36 of the general model provisions and provides that for the purposes of section 264(3)(a) of the Town and Country Planning Act 1990, the development consent granted by the Order shall be treated as specific planning permission. This means that the land subject to the authorised development will be the operational land of the undertaker as a statutory undertaker and, therefore, is land on which National Grid and/or UKPN is permitted to carry out its undertaking. Statutory undertakers can make an application for planning permission on their operational land under section 266 TCPA 1990 and that application will be dealt with by the Secretary of State and the appropriate Minister. In addition, in respect of operational land certain permitted development rights may apply. This is appropriate and proportionate for inclusion in the draft Order as it will mean that, once constructed and into their operational phase, the works are treated as part of the wider network of which they will be part, on an equivalent legal basis. This provision is also included at Article 37 of the National Grid

23 S.I. 2013/648.

(Hinkley Point C Connection Project) Order 2016 and Article 36 of the National Grid (Richborough Connection Project) Order 2017.

- 3.12.3 Additional provision has also been made at paragraph (3) to provide for planning permission in relation to powers to carry out certain street works (pursuant to article 11(2)). This is because such matters may be outside of the Order limits, and hence the article provides that such works are not deemed to constitute development. Article 8(2) and (3) mirror the provisions of Article 51 of The Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014, and Article 8(2) is also included at Article 37 of the National Grid (Hinkley Point C Connection Project) Order 2016.
- 3.12.4 Articles 8(4), (5) and (6) together provide for an extension for the implementation of the Order in the event that a decision by the Secretary of State to grant development consent is subject to a challenge. This wording mirrors sections 91(3A) and (3B) of the 1990 Act and section 5B of the Vesting Declarations Act, and seeks to carry through a helpful element of the town and country planning and compulsory purchase regime into the NSIP regime. Under the 1990 Act, sections 91(3A) and (3B) only apply to planning permissions for the development of land in England. The effect of Articles 8(4), (5) and (6) is that if there is a legal challenge to the Order, the time limit in Article 33 (time limit for exercise of authority to acquire land compulsorily) and the time within which the authorised development must be commenced (requirement 2) are extended by an equivalent period (or one year if shorter) to account for the delay resulting from the legal challenge. This drafting is considered necessary to include within the Order given the importance of the provisions to which it relates.

3.13 Article 9 (Application of the Community Infrastructure Levy Regulations 2010)

- 3.13.1 Article 9 clarifies that, for the purposes of the Community Infrastructure Levy Regulations 2010, any buildings within the authorised development fall within the exemption under regulation 6 and will not be considered as "development" for the purposes of the Community Infrastructure Levy (CIL).
- 3.13.2 The rationale for this disapplication is that the authorised development is in its own right a piece of nationally significant infrastructure, and the undertaker will be obliged to provide all of the mitigatory infrastructure to mitigate its effects. Therefore, it would not be justifiable for CIL to be charged in respect of the development on top of this, for further infrastructure to mitigate impacts.
- 3.13.3 Identical wording is included in the Southampton to London Pipeline Development Consent Order 2020, the A303 (Amesbury to Berwick Down) Development Consent Order 2020 and in the Silvertown Tunnel Order 2018²⁴.

3.14 Article 10 (Planning permission)

- 3.14.1 Insofar as National Grid needs to obtain any other planning permission for anything relating to the authorised development (i.e. to facilitate its completion, construction, use or operation), this article seeks to avoid any question as to the interface between any such planning permission and this Order (i.e. these planning permissions will not

²⁴ S.I. 2018/574.

constitute a breach of the terms of this Order). Substantially similar wording is included at Article 40 of the Southampton to London Pipeline Development Consent Order 2020.

- 3.14.2 Article 10(2) further confirms that any other planning permissions which conflict with the authorised development can proceed without the risk of enforcement action being taken notwithstanding any incompatibility between the project and the development authorised under that planning permission. In light of the Supreme Court's ruling in *Hillside Parks Ltd v Snowdonia National Park Authority* 2022 UKSC [30], this provision is considered necessary to ensure that developments under such planning permissions are not prohibited.
- 3.14.3 Article 10(3) deals with the converse situation and confirms that development within the Order limits which is constructed or used under a standalone planning permission does not prevent the carrying out of any development authorised under the Order.
- 3.14.4 As noted, both Articles 10(2) and 10(3) seek to address salient points arising from the Supreme Court's recent decision in *Hillside Parks Ltd v Snowdonia National Park Authority* 2022 UKSC [30]. The drafting is currently without substantial precedent, although similar provisions are included in the draft A122 (Lower Thames Crossing) Development Consent Order.

Part 3 – Streets

3.15 Article 11 (Street works)

- 3.15.1 This article confers authority on the undertaker to interfere with and execute works in or under certain streets, which are specified in Schedule 5 (*streets subject to street works*) within the Order Limits and on other streets within or outside of the Order limits for the purposes of (or for purposes ancillary to) the authorised development. This article follows the general model provisions except in the following respects:
- (a) Article 8(3) of the general model provisions is deleted as it is believed that the model provision may cause confusion. The intention, it is assumed, behind paragraph (3), which applies sections 54 to 106 of the 1991 Act to any street works authority, is to ensure that the relevant provisions of the 1991 Act which apply to street works apply also to other works in streets authorised by this article. As drafted, however, the model provision causes some confusion. It seems more sensible to extend article 123 of the Order which applies selected provisions of the 1991 Act to temporary stopping up of streets even if no street works (within the meaning of the 1991 Act) are being carried out.
 - (b) The list of the types of works that the undertaker is authorised to carry out has been expanded from article 8(1) of the general model provisions. Article 11(1)(a) is extended to enable the breaking up or opening of any sewer, drain or tunnel within the street. Article 11(1)(b) is adapted to add the carrying out of any works to strengthen or repair the carriageway. Article 11(1)(c) has been included to reflect the street works powers available to National Grid in paragraph 1(b)(iii) of Schedule 4 to the Electricity Act 1989²⁵. Article 11(1)(e) permits the maintenance, renewal or alteration of apparatus or furniture in or on the street or a change to its position. Article 11(1)(f) includes the right to provide or improve sight lines required by the highway authority. Article 11(1)(g) includes the right to provide

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c. 29.

and maintain hard or soft landscaping measures in the street. Article 11(1)(h) includes the right to carry out re-lining and the placement of temporary markings. These additional provisions relate to the authorised development, as permitted by Sections 120(3) and (4) together with item 15 of Part 1 of Schedule 5 to the Act, namely carrying out civil engineering or other works. They are also necessary and expedient to give full effect to the power to carry out the development authorised under article 3 of the Order (*development consent etc. granted by the Order*), as permitted under Section 120(5) of the Act.

- (c) Article 11(2) has been taken from article 10(2) of The Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 with a minor modification as described below. This provision allows the undertaker (with the consent of the street authority) to enter onto any other street (i.e. one not listed in Schedule 5 and whether or not it is in the Order limits) for the purposes of the authorised development and, in this instance, for purposes ancillary to the authorised development, to carry out the street works authorised by Article 11(1). The rationale for the inclusion of this ability to carry out street works on streets not listed in Schedule 5 and/or outwith the order limits, is to cover off any instance where the undertaker, in delivering the authorised development, finds it necessary to seek to carry out additional street works which are not set out in the schedule and/or are not within the order limits. It allows flexibility for the street authority to consent to such street works within the scope of the DCO, rather than necessitating a separate standalone consent. This allows for such works to be delivered further to the same set of controls as set out within the DCO, given that such street works would be directly linked to the delivery of the authorised development.
- (d) A new sub-paragraph (7) has been included to make it clear that any powers conferred by article 11 do not limit those granted under the Electricity Act 1989. An identical provision is included in the National Grid (Hinkley Point C Connection Project) Order 2016.

3.15.2 General model provision 8(2), as reflected in article 11(6), provides that the authority given by paragraphs (1) and (2) is a “statutory right” for the purposes of the New Roads and Street Works Act 1991²⁶. The authority given by this article is a statutory right for the purposes of section 48(3) (Streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the New Roads and Street Works Act 1991, which means that the Order replaces the need to apply for a street works licence under that Act.

3.16 Article 12 (Application of the Permit Schemes)

- 3.16.1 This article deals with the relationship between the Order powers and the traffic management permit schemes operated by Essex County Council and Suffolk County Council (together “the Permit Schemes”).²⁷
- 3.16.2 Article 12(1) confirms that the Permit Schemes apply and will be used by National Grid (or, where appropriate, UKPN) in connection with the construction and maintenance of the authorised development, subject to the qualifications in paragraphs (2) and (3).

²⁶ c. 22.

²⁷ The Essex County Council Permit Scheme Order 2015 (SI 2015/37) (as varied by The Essex County Council (Permit Scheme) (Variation) Order 2015) and The Suffolk County Council Permit Scheme Order 2020 (SI 2020/[●]).

- 3.16.3 Article 12(2)(d) relates to the grant of provisional advance authorisations and clarifies that a permit may not be granted for works in a location and time which one relates to (save for immediate works). It is essential that this provision is included within the Order, as without this the undertaker will not be able to forward plan works. In certain locations, albeit more generally also, controls on when works may be undertaken in the highway, including in proximity to one another, are provided for to minimise environmental impacts. The undertaker therefore must be able to forward plan by reserving road space in this manner and obtaining permits at the appropriate time in closer proximity to works being undertaken, as the Permit Schemes provide for.
- 3.16.4 Articles 12(3) and (4) address the approval process provided for by the Permit Schemes, which requires a permit application to begin again should proposed conditions not be agreed with. The potential consequence of this is that the undertaking of works is delayed.
- 3.16.5 The need to re-apply for a permit and the timescales associated with this could have the potential to delay the delivery of elements of the authorised development by significant periods, potentially years in areas where the available window for undertaking works is significantly constrained, for instance in proximity to schools. To address this significant delivery risk, Articles 12(3) and (4) provide a process for agreement to be reached on the appropriate conditions, ensuring adequate controls are provided for and the authorised development is able to be delivered in a timely manner.
- 3.16.6 Paragraph 8 clarifies that the procedure for appeals in Schedule 4 of the Order is capable of applying to any refusal to grant a permit, or to any decision to grant a permit subject to conditions, but not so as to limit any other appeal mechanism available to National Grid or UKPN under the Permit Schemes or otherwise.
- 3.16.7 Similar wording is included in The Southampton to London Pipeline Development Consent Order 2020, and also in The AQUIND Interconnector Order (noting that the latter Order is not yet made).

3.17 Article 13 (Application of 1991 Act)

- 3.17.1 This article sets out how the 1991 Act will apply to the authorised development.
- 3.17.2 Article 13(1) clarifies that specific works such as the reconstruction, widening or substantial alteration of the highway, carried out by the undertaker on the highway, will be treated as if they are "major highway works" carried out by a highway authority for the purposes of Part 3 of the 1991 Act (street works in England and Wales). This provision ensures that the cost sharing provisions under section 85 of the 1991 Act (sharing of cost of necessary measures) apply to the Order. It is also intended to apply the co-ordination measures under section 84 of the 1991 Act (measures necessary where apparatus affected by major works) to such works whereby the undertaker and other statutory undertakers must co-operate to secure the efficient implementation of the works.
- 3.17.3 Article 13(3) provides that certain provisions of the 1991 Act as listed will not apply when the undertaker is carrying out any street or highway works under the Order. The provisions of the 1991 Act as listed comprise the following:

Provision	Purpose
Section 56	Allows a street authority to direct an undertaker as to the time at which street works can be carried out, in instances

	where the street authority believes that the works would otherwise cause serious disruption to traffic.
Section 56A	Enables a street authority to direct an undertaker not to use a proposed street to place its apparatus, if it appears to the street authority that this is likely to cause disruption to traffic, and there is another street in which the apparatus could be placed instead.
Section 58	Provides that where a street authority intends to carry out substantial road works in a highway, the street authority may by notice restrict the execution of street works during the twelve months following the completion of the road works.
Section 58A	Confers a power on a street authority to impose a restriction following the carrying out by an undertaker of substantial street works. It is similar to the corresponding provision in Section 58, and is given further effect by Schedule 3A (to which see further below).
Section 73A ²⁸	Provides for a 'resurfacing notice' to be given by a street authority to the undertaker specifying the resurfacing work which the undertaker is required to carry out in certain circumstances.
Section 73B	This provision enables the street authority to specify in a 'resurfacing notice' the times, stages and dates for beginning, executing and completing any resurfacing works.
Section 73C	Provides that the new road surface must conform, for a prescribed period after resurfacing, to any prescribed standards in terms of the materials and workmanship as well as any performance standards.
Section 77	This provision requires an undertaker to indemnify a highway authority for costs incurred in strengthening a highway or repairing any damage caused to a highway in circumstances where that highway is used as an alternative route by traffic due to the closure of an existing highway which is necessary to allow street works to take place.
Section 78A	Requires an undertaker executing street works to contribute to the costs incurred or likely to be incurred by a street authority in reconstructing or resurfacing the street.
Schedule 3A	Establishes the process to be followed where a restriction is to be imposed by a street authority pursuant to Section 58A following the carrying out of substantial street works.

3.17.4 The disapplication of the provisions listed in Article 13(3) (which are designed primarily to regulate the carrying out of street works by utility companies in respect of their apparatus)

²⁸ Sections 73A, 73B, 73C and 78A of the 1991 Act have not yet been enacted via the relevant provisions (sections 55 and 57) of the Traffic Management Act 2004. Sections 55 and 57 of the Traffic Management Act 2004 are not yet in force, and no date for their enactment is currently specified. Sections 73A, 73B, 73C and 78A of the 1991 Act are therefore included in the Order on a pre-emptive basis.

is appropriate given the scale of works proposed under the Order, the specific authorisation given for those works by the Order (particularly Article 4 and Schedule 1), and the specific provisions in the Order which would regulate the carrying out of the Order works.

- 3.17.5 Comparable provisions have been included at Article 12(3) of the Southampton to London Pipeline Development Consent Order 2020, at Article 7(3) of the Silvertown Tunnel Order 2018, and also at Article 15(2) of the Sizewell C (Nuclear Generating Station) Order 2022. The power to apply and disapply sections of the 1991 Act is provided for under section 120(5) of the Act.
- 3.17.6 Article 13(4) provides that further provisions of the 1991 Act as listed will not apply where the undertaker makes use of the Permit Schemes in connection with the construction and maintenance of the authorised development. The provision gives effect to Appendix B of The Essex County Council Permit Scheme Order 2015 (SI 2015/37) (as varied by The Essex County Council (Permit Scheme) (Variation) Order 2015) and to Appendix B of The Suffolk County Council Permit Scheme Order 2020 (SI 2020/[●]), each of which confirms that the provisions of the 1991 Act as listed in Article 13(4) are expressly disapplied.
- 3.17.7 Article 13(5) departs from the general model provisions to provide that relevant provisions of the New Roads and Street Works Act 1991 shall apply to a temporary stopping up of a street under Article 14, even if no street works (within the meaning of the 1991 Act) are being carried out. This would, for example, require National Grid to make arrangements, so far as practicable, for utilities to gain access to their apparatus. Comparable provisions are commonly included in Transport and Works Act Orders, and have also appeared in Development Consent Orders with identical wording being included in the National Grid (Hinkley Point C Connection Project) Order 2016.
- 3.17.8 This article avoids confusion as to whether works in respect of a temporarily stopped up street are 'street works' for the purposes of the 1991 Act and also simplifies the implementation of those works by providing for a single process in respect of streets which are stopped up and those which are not.

3.18 Article 14 (Power to alter the layout, etc. of streets)

- 3.18.1 This article permits National Grid and anyone else with the benefit of the Order to alter, either permanently or temporarily, the layout of the streets listed in Part 1 (permanently) and Part 2 (temporarily) in Schedule 6 (*streets subject to alteration of layout*) to the Order for the purpose of the authorised development.
- 3.18.2 Article 14(2) provides a broader power to alter the layout of any street within or outwith the Order limits (i.e. where the street is not listed in Schedule 6) and the layout of any street having a junction with such a street. The consent of the street authority must be obtained, such consent not to be unreasonably withheld or delayed.
- 3.18.3 In this Order, the rationale for this broader power, which is replicated elsewhere in the Order, comes from Section 120(3) of the 2008 Act, which makes it plain that an order granting development consent may make provision relating to, or to matters ancillary to, the development for which consent is granted.
- 3.18.4 Article 14(3) provides that any street altered temporarily under this article must be restored to the reasonable satisfaction of the street authority.

- 3.18.5 This article is not included in the general model provisions. This type of provision has precedent in recent linear schemes authorised by the Transport and Works Act 1992²⁹ and is based on the Model Clauses for Tramways contained in Schedule 2 to the Transport and Works (Model Clauses for Railways and Tramways) Order 2006³⁰. Similar wording has been included in other development consent order applications for linear projects, such as the National Grid (Hinkley Point C Connection Project) Order 2016; the National Grid (North London Reinforcement Project) Order 2014; the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014; and the Network Rail (North Doncaster Chord) Development Consent Order 2012.
- 3.18.6 As explained earlier, a street authority that fails to respond to an application for consent within 28 days of the application being made is deemed to have given its consent. The rationale for such deemed consent provisions is set out above in paragraph 3.3.
- 3.18.7 This provision is necessary and expedient to give full effect to the power to carry out the authorised development as is provided for under section 120(5) of the Act.

3.19 Article 15 (Temporary stopping up of streets and public rights of way)

- 3.19.1 This article provides for the temporary stopping up, alteration or diversion of streets or public rights of way shown on the access and rights of way plans or within Order limits. In relation to those streets and public rights of way listed in Schedule 7, National Grid must first consult with the relevant street authority. In relation to streets and public rights of way not listed in the Schedule, the consent of the street authority (which may impose reasonable conditions) must be obtained (such consent not to be unreasonably withheld or delayed).
- 3.19.2 This article, and Schedule 7 to which it relates, departs from the general model provision in a number of ways. In particular, it has been expanded to deal also with public rights of way (the general model provisions only provide for the permanent stopping up of footpaths). This approach was adopted in the National Grid (King's Lynn B Power Station Connection) Order 2013 and the National Grid (Hinkley Point C Connection Project) Order 2016.
- 3.19.3 A new paragraph (2) confers a power on National Grid to use a street or public right of way, which has been temporarily stopped up, altered or diverted, as a temporary working site. This provision has precedent in recent orders made under the Transport and Works Act 1992³¹ and the wording contained in the Order is identical to the wording in the National Grid (Hinkley Point C Connection Project) Order 2016. It is also considered appropriate and necessary to facilitate construction of the authorised development without the undertaker needing to acquire further interests to accommodate additional construction laydown or compound areas.
- 3.19.4 Paragraph (4) amends Article 14(3) of the general model provisions to make it clear that National Grid, when stopping up streets or public rights of way, must provide temporary diversions in relation to the streets and public rights of way listed in Part 1 of Schedule 7.

²⁹ See the Network Rail (Hitchin (Cambridge Junction)) Order 2011 (S.I. 2011/1072).

³⁰ S.I. 2006/1954.

³¹ See the Network Rail (Thameslink 2000) Order 2006 (S.I. 2006/3117); the Network Rail (Nuneaton North Chord) Order 2010 (S.I. 2010/1721); and the Network Rail (Hitchin (Cambridge Junction)) Order 2011 (S.I. 2011/1072).

- 3.19.5 Paragraph (6) confirms that any temporary diversion provided under paragraph (4) in respect of the streets or public rights of way closed, diverted or altered listed in Schedule 7, is not required to be of a higher standard than the temporarily closed street. This is a departure from Article 11 of the general model provisions, but is included to ensure that the undertaker is only required to provide a like-for-like replacement. The same approach was adopted in the Southampton to London Pipeline Development Consent Order 2020.
- 3.19.6 Paragraph (9) has been added (as previously explained) to impose a time limit of 28 days after which a street authority which fails to respond to an application for consent is deemed to have granted consent, so as not to delay the project unnecessarily. This provision has been used in other development consent orders such as the Network Rail (Ipswich Chord) Order 2012 and National Grid (Hinkley Point C Connection Project) Order 2016. As the works proposed under paragraph (5)(b) are temporary in nature, and this provision will provide greater flexibility and certainty in delivering the authorised development, it is considered that this approach is justified.

3.20 Article 16 (Access to works)

- 3.20.1 This article is based on article 12 of the general model provisions and confers upon the undertaker powers for the purposes of the authorised development, and ancillary purposes, to provide or improve both permanent and temporary accesses at the locations specified in Schedule 8 (access to works).
- 3.20.2 Similar powers are conferred in relation to any other locations within the Order limits reasonably required for the authorised development so long as the relevant planning authority consents following consultation with the highway authority (such consent not to be unreasonably withheld or delayed).
- 3.20.3 The rationale for the inclusion of this ability to establish accesses elsewhere within the Order limits is to cover off any instance where the undertaker, in delivering the authorised development, finds it necessary to seek additional accesses which are not set out in the schedule. It allows flexibility for the street authority to consent to such accesses within the scope of the DCO rather than necessitating a separate standalone consent. This allows for such accesses to be delivered further to the same set of controls as set out within the DCO, given that such accesses would be directly linked to the delivery of the authorised development. The same approach was adopted in the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014.
- 3.20.4 If the authority fails to respond to an application for consent within 28 days (as explained above), it will be deemed to have granted consent under article 16(2). Article 16(2) mirrors the National Grid (Hinkley Point C Connection Project) Order 2016 and the National Grid (Richborough Connection Project) Development Consent Order 2017. The rationale for such deemed consent provisions is set out in paragraph 3.3 above.

3.21 Article 17 (Construction, alteration and maintenance of streets)

- 3.21.1 Article 17 is based on article 10 of the TWA Model Provisions and replicates article 12 of the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014.
- 3.21.2 It creates a mechanism for any street constructed or area of street altered under the Order, to be adopted for maintenance at public expense, if it is completed to the reasonable satisfaction of the local highway authority and after a set maintenance period.

- 3.21.3 This provision is necessary to facilitate the adoption of new street further to the proposed alterations to streets as a result of article 14 (power to alter layout, etc. of streets) of the Order.
- 3.21.4 This provision may be included as an incidental provision to the consent for the authorised project at article 3 of the draft Order (development consent etc. granted by the Order) under section 120(5)(d) of the Act.
- 3.21.5 The article goes further than the Model Provision in that it also seeks to deal (article 17(4)) with the dedication of the altered street where the alterations have led to the creation of new public highway, at the end of the 12 month maintenance period.
- 3.21.6 Further incidental provision is made for the undertaker to have a defence against claims for loss or damage resulting from failure to maintain any street under this article if it can prove that it took all care reasonably necessary in the circumstances to ensure that the relevant part of the street was not dangerous to traffic. The article sets out factors which a court can take into account in considering this defence. No offence is created.
- 3.21.7 The rationale for its inclusion is to provide a process within the Order which addresses the status of new street. However, it will always be open to the undertaker and the street authority to enter into any appropriate agreement further to article 18 (see below).

3.22 Article 18 (Agreements with street authorities)

- 3.22.1 This article follows article 13 of the general model provisions on which the National Grid (Hinkley Point C Connection Project) Order 2016 was based and allows National Grid and the relevant street authority to enter into agreements about the street works necessitated by the project which would (amongst other matters) allow the local authority to carry out such works under the terms of that agreement.
- 3.22.2 As permitted by section 120(5)(d) of the Act, the additional provisions at paragraphs 1(e), 2(c) and 2(e), supplement the powers in paragraphs 1(a) and 2(a) and article 4 of the Order (maintenance of the authorised development), which would allow for such streets to be repaired. These additional paragraphs are adapted from the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 (article 17).
- 3.22.3 The power contained in this article is separate to any agreements made under section 278 of the Highways Act 1980 (which do not relate to powers under the Order but relate to a local authority devolving its powers (under section 278 of that Act)) and this article is, therefore necessary to permit such agreements.

Part 4 – Supplemental Powers

3.23 Article 19 (Discharge of water)

- 3.23.1 This article sets out the circumstances in which National Grid is entitled to discharge water into a sewer or watercourse. Essentially, this can be undertaken with the consent of the owner of the sewer or watercourse. If the person whose consent is required for the discharge of water fails to respond to an application for consent within 28 days of the application being made, consent is deemed to have been given. The rationale for such deemed consent provisions is set out in paragraph 3.3 above.
- 3.23.2 Whilst work has been undertaken to understand the likely position, it is too early to identify the location of all discharges to private watercourses, as they will be very specific to

ground conditions at the time of construction. Any owner that may potentially be affected will have been consulted on the emerging proposals for the project.

- 3.23.3 The article is similar to the general model provision (article 14), except, in particular:
- (a) paragraph (8) is updated to reflect the repeal of section 85 of the Water Resources Act 1991³² (which is referred to in the general model provisions) and its replacement by the Environmental Permitting (England and Wales) Regulations 2016³³; and
 - (b) paragraph (9) has been added to provide that if an authority fails to respond within 28 days of an application for approval or consent under this article it shall be deemed to have been given or granted.
- 3.23.4 This article is substantially the same as Article 16 of the National Grid (Hinkley Point C Connection Project) Order 2016 and the National Grid (Richborough Connection Project) Development Consent Order 2017, save that any owner of a public sewer or drain to which the undertaker intends to make an opening must not unreasonably withhold or delay their consent to such opening, and the undertaker is not required to maintain a watercourse or public sewer or drain, or the drainage works. This responsibility will fall to the usual undertaker as is appropriate. A new definition of “main river” has been included for clarity and the definition of “watercourse” has been deleted to avoid repetition with the definition in Article 2.

3.24 Article 20 (Protective works)

- 3.24.1 This article sets out the circumstances in which protective works can be carried out to land, buildings, structures, apparatus or equipment, within the Order limits or which may be affected by the authorised development. Except in an emergency, 14 days’ notice must be given to the owner, and the owner can seek arbitration by serving a counter-notice. The power lasts until five years after the relevant part of the project comes into operation. There is an entitlement to compensation, both in relation to loss or damage caused by the undertaker in carrying out the protective works and where, within a specified period, the protective works are shown not to be sufficient.
- 3.24.2 The article is based on article 15 of the general model provisions. Similar mechanisms are found in the National Grid (Hinkley Point C Connection Project) Order 2016 (article 17 (Protective work to buildings)), the National Grid (Richborough Connection Project) Development Consent Order 2017 (article 17 (Protective work to buildings)) and the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 (articles 20 (Protective works to buildings and structures as listed in a schedule) and 21 (Remedial works to buildings or apparatus or equipment whether or not within the Order limits)).
- 3.24.3 The Order extends the power to carry out protective works from just buildings to land, buildings, structures, apparatus, equipment (similar to article 21 of the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014) and the authorised development, and allows the undertaker access to land within or outside of the Order limits to exercise this power (where reasonably necessary). This is necessary given the linear nature of the authorised development and also given the range of potential items that might necessitate protective works (which are defined in sub-paragraph (12) as being both protective and remedial works), and, in particular, the inclusion of this provision will help

32 c. 57.

33 S.I. 2016/1154.

to mitigate the risk of unforeseen circumstances prejudicing the delivery of this nationally significant infrastructure project.

- 3.24.4 Paragraph (10) applies section 13 of the Compulsory Purchase Act 1965, thereby providing an enforcement mechanism (by way of a warrant) where entry onto, or possession of, land under the article is refused. Equivalent provision is found in the Southampton to London Pipeline Development Consent Order 2020 and in the A303 (Amesbury to Berwick Down) Development Consent Order 2020.

3.25 Article 21 (Authority to survey and investigate the land)

- 3.25.1 This article confers the power to enter land (which includes land covered with water) within the Order limits or land which may be affected by the authorised development, for the purpose of surveying, monitoring or investigating it, including a power to make trial holes, boreholes, excavations and/or take horizontal cores (e.g. inclined boreholes for the purpose of geological fault modelling), carry out ecological or archaeological investigations or monitoring, and to use and leave apparatus (including attached to buoys) on the land for these purposes. The power of entry is subject to a requirement to give 14 days' notice to owners and occupiers of the land. Compensation is payable for any loss or damage as a result of the exercise of this power. The power to make trial holes is restricted in respect of highways or streets and requires the consent of the relevant highway or street authority, such consent being subject to the deemed approval provision which is justified above.
- 3.25.2 The article is based on the National Grid (Hinkley Point C Connection Project) Order 2016 (article 18), which in turn is based on the general model provision (with various drafting changes). Paragraph (1)(b) includes the power to survey and investigate land or buildings to establish the effect of the authorised development or to enable the authorised development to begin. Paragraph (1)(e) allows equipment used for ecological or archaeological investigations to be left on the land (along with other apparatus used in connection with the survey, monitoring or investigation of land). These two additional powers are adapted from the provisions of Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 (article 22) and are necessary to ensure that this article provides authority for the types of activities that are likely to be necessary in respect of the authorised development.
- 3.25.3 In addition, the power in the general model provisions is extended to include the ability to take, and process, samples of water, air, soil or rock, flora, bodily excretions, non-human dead bodies, or any non-living thing present as a result of human action found on, in or over the land. This wording reflects the wording of section 53(3A) of the Act which clarifies that the right to enter land for the purposes of surveying includes the power to take and process certain types of samples. This may be included in a DCO under section 120(4) and item 12 of Part 1 of Schedule 5 of the Act, which makes particular provision for the inclusion of powers for carrying out surveys or taking of soil samples.
- 3.25.4 Article 21(4) ensures that landowners are provided with details of the undertaker's purpose for surveying, monitoring or investigating the land before the undertaker enters the land, and authorises the undertaker to take necessary vehicles and equipment onto the land to carry out the survey, monitoring or investigations.
- 3.25.5 The provision relates to, or is ancillary to, the authorised development within the scope of section 120(3) of the Act and is a matter specifically identified in paragraph 12 of Schedule 12 of the Act, which states that a development consent order can provide for the carrying out of surveys or taking of soil samples.

3.26 Article 22 (Removal of human remains)

- 3.26.1 This article is based on article 17 of the general model provisions and article 23 of the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014. It requires the undertaker, before it carries out any development or works which will or may disturb any human remains, to remove those remains. Before removing any human remains, the undertaker is required to publish notice of its intention to do so. Notice is also required to be displayed near the site.
- 3.26.2 Any relative or personal representative of any deceased person whose remains are proposed to be removed may, at any time within 56 days of first publication of a notice by the undertaker, give notice to the undertaker of their intention to undertake the removal of the remains themselves and arrange for those remains to be re-interred or cremated. The undertaker will be responsible for the reasonable costs incurred in responding to National Grid's notice and the reasonable costs re-interring or cremating the remains.
- 3.26.3 In the event that such relative or personal representative does not remove the remains, the undertaker is required to comply with any reasonable request the relative or personal representative may make in relation to the removal and re-interment or cremation of the remains.
- 3.26.4 In addition, paragraph (19) applies to this Order sections 238 and 239 of the 1990 Act, which ordinarily allow the use of consecrated land or burial grounds in accordance with a planning permission notwithstanding ecclesiastical law, so that land acquired for the authorised development or temporarily used or in relation to which rights are acquired, has the same benefit of those 1990 Act sections as it would have done if the Order had been a planning permission. The Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 included a substantively similar provision (at Schedule 19 part 1 paragraph 9(2)), save that paragraph (16) further clarifies the interpretation of terminology from the 1990 Act under the Order. Whilst it is noted that a similar provision was removed from the National Grid (Richborough Connection Project) Development Consent Order 2017, it is considered appropriate to include it in this Order, given the nature of the underground electric line works.

Part 5 – Powers of Acquisition and Possession of Land

Powers of Acquisition

3.27 Article 23 (Compulsory acquisition of land)

- 3.27.1 This article authorises the compulsory acquisition of so much of the Order land listed in the Book of Reference as is required for the construction, operation or maintenance of the authorised development or is incidental to it or necessary to facilitate it. In the case of UKPN, Article 23 relates to the construction, operation and maintenance of that part of the UKPN Works forming part of Work No. 9 only.
- 3.27.2 This article is based on Article 18(1) of the general model provisions. General model provision paragraphs (2) and (3) have not been included. The former would provide for the automatic extinguishment of any rights applying to the Order land as soon as it is vested in the undertaker. This is inconsistent with the general model provision on private rights of way, which provides for the extinguishment of such rights on entry onto the land, which may take place ahead of vesting of the land. Vesting may actually take place after

works, which conflict with the rights in question, have been carried out. It has therefore been considered preferable to extend the “rights of way” model clause to deal with private rights in general. Hence paragraphs (2) and (3) are omitted from this article.

- 3.27.3 The inclusion in Article 23 of wording authorising compulsory acquisition of such land that is required for the authorised development or is incidental to it or required for facilitate it, is based on Section 122(2) of the 2008 Act, which makes plain that compulsory acquisition of land etc. must be that which is required for the development to which the development consent relates, is required to facilitate or is incidental to that development, or is replacement land.
- 3.27.4 Subject to the above, almost identical wording appears in the National Grid (Hinkley Point C Connection Project) Order 2016 (article 19).

3.28 Article 24 (Compulsory acquisition of rights)

- 3.28.1 This article allows National Grid to acquire rights (and impose restrictions) over the Order land, including by creating new rights for the purpose of the authorised development.
- 3.28.2 Paragraph (1) provides that National Grid may acquire or create rights as described in the Book of Reference (**application document 4.3**) with the general nature and extent of these rights also shown in the land plans.
- 3.28.3 As well as providing for the acquisition of rights, the article enables National Grid to impose restrictions (as described in the Book of Reference) over the Order land for the purposes of the authorised development. This power to impose restrictions on the use of land is considered a proportionate means of protecting the authorised development whilst minimising the extent of land to be compulsorily acquired. This power has appeared in Orders made under the Transport and Works Act 1992, particularly in contexts where it is necessary to restrict use of land or airspace above or beneath an authorised development which consists of a viaduct or tunnel. The power contained in the Order is almost identical to that contained in the National Grid (Richborough Connection Project) Development Consent Order 2017 (article 21), save that the article is also subject to article 23 (compulsory acquisition of land) which was not applicable on the National Grid (Richborough Connection Project) Development Consent Order 2017 as in that instance only rights were due to be acquired. The power to impose restrictions is appropriate in the context of the authorised development to restrict use of land or airspace above or beneath the overhead electric lines or underground cables. The plots and the restrictions to be imposed are confirmed and described in the Book of Reference.
- 3.28.4 As per the National Grid (Richborough Connection Project) Development Consent Order 2017, general model provision paragraph (2) has not been included as similar provision is instead included in article 37 (Extinguishment and suspension of private rights).
- 3.28.5 Paragraph (3) provides that where National Grid needs only to acquire rights over land or impose a restriction on that land, it shall not be obliged to acquire any greater interest in that land.
- 3.28.6 Paragraph (4) and Schedule 9 impose modifications to the compulsory purchase and compensation provisions under general legislation, as updated by the Housing and Planning Act 2016. They do not affect the entitlement to compensation, but generally ensure that the compensation procedure applies to the additional categories of acquisition covered by the Order – the creation of new rights and the imposition of restrictions in particular. This is a consequence of the extension of land acquisition powers to these categories (done to allow lesser land interests to be acquired), and is

commonplace in Transport and Works Act Orders and other compulsory purchase orders made by local authorities. For the purpose of section 126(2) of the Act, the relevant compensation provisions are modified only to the extent necessary to ensure that they apply properly to the acquisition of rights, and not to affect the amount of compensation to which landowners would be entitled.

- 3.28.7 General model provision paragraph (4) has not been included as equivalent provision has instead been made in article 37 (Extinguishment and suspension of private rights).
- 3.28.8 Paragraphs (5) and (6) provide that National Grid, with the consent of the Secretary of State, may transfer to statutory undertakers its power to acquire rights or impose restrictions, where the diversion, replacement or protection of apparatus is required on Order land. The benefit of this is that it would avoid possible delay and uncertainty by statutory undertakers being required to exercise their own powers. For them to do so would be unnecessary given that the action taken would be no different than if the powers were created within this Order.
- 3.28.9 Paragraph (7) is identical to that in the National Grid (Richborough Connection Project) Development Consent Order 2017 and clarifies that the acquisition of rights over, or the imposition of restrictions which affect and interest held by, or on behalf of, the Crown are not authorised by this article.

3.29 Article 25 (Acquisition of subsoil or airspace only)

- 3.29.1 This article allows National Grid to acquire land lower than ground level or airspace above ground level, rather than having to acquire all of the land. The article is similar to the general model provision (article 24) except that it has been extended to include airspace as well as subsoil and is identical to the power contained in the National Grid (Hinkley Point C Connection Project) Order 2016 (Article 26) and the National Grid (Richborough Connection Project) Development Consent Order 2017 (Article 26).
- 3.29.2 The acquisition of interests in or rights over airspace is particularly relevant in the context of overhead electricity lines, and subsoil is, of course, relevant in the context of the proposed underground element of the authorised development.
- 3.29.3 Article 28 of the National Grid (North London Reinforcement Project) Order 2014 and Article 30 of the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 contain similar provisions for airspace and subsoil respectively.

Temporary Possession of Land

3.30 Article 26 (Temporary use of land by National Grid)

- 3.30.1 This article which applies only to National Grid, follows the principle of general model provision 28 and allows the land set out in Schedule 10 to be occupied temporarily by National Grid in connection with the carrying out of the authorised development (article 26(1)(a)(i)).
- 3.30.2 A modification to article 28 of the general model provisions has been made to allow National Grid also to take temporary possession of any other Order land which may be subject to compulsory acquisition of land or rights but in respect of which National Grid has not yet served a notice of entry or made a general vesting declaration (article 26(1)(a)(ii)).

- 3.30.3 This provision has appeared in Orders made under the Transport and Works Act 1992³⁴ and the wording of this article is very similar to that contained in the National Grid (Hinkley Point C Connection Project) Order 2016 (article 29). It allows National Grid to occupy land to construct the authorised development without having to permanently acquire the land, or a right over the land. Once constructed, that land, or rights in the land, may be compulsorily acquired. This means that National Grid will be able to compulsorily acquire rights to retain, operate and maintain the authorised development over an area of land which matches the final footprint of the authorised development. This provides flexibility to National Grid and, for the landowner, minimises the area of land required for the compulsory acquisition of land or rights, which has a lesser impact on the landowner. There is a consequential amendment to paragraph (3) to refer to the two different categories of land mentioned in paragraphs (1)(a)(i) and (1)(a)(ii).
- 3.30.4 Paragraph 1(b) has extended the model provision to allow for National Grid to remove equipment or any other thing from the land. This goes beyond the wording of the National Grid (Hinkley Point C Connection Project) Order 2016, but is required to give National Grid appropriate flexibility in its temporary use of the land and is considered to be proportionate in the context of the authorised development.
- 3.30.5 Paragraph (1)(d) has been also been added to allow specified works to be constructed on the land listed in Schedule 10.
- 3.30.6 Paragraph (2) requires National Grid to give landowners 14 days' notice before entering on and taking temporary possession of land. This timeframe is considered to be necessary, appropriate and proportionate given the need for National Grid to construct the authorised development to meet the needs case.
- 3.30.7 Paragraph (4) provides that National Grid must provide written notice to the landowner of the date of completion of the work for which temporary possession was taken within 28 days of completion of the works.
- 3.30.8 Paragraph (5) provides that, unless otherwise agreed with the landowners, before giving up temporary possession of land listed in Schedule 10 National Grid must remove all temporary works and restore the land save for the exceptions listed in sub-paragraphs (a) to (h) which has been amended to allow works of mitigation and other works (such as the pylons) to be constructed and left on the land, without a requirement for these to be removed. This would apply, for example, where mitigation is provided but National Grid does not need to retain a permanent interest in the land and has precedent in the Network Rail (Nuneaton North Chord) Order 2010³⁵. The provision would allow National Grid to leave, in place, foundations (more than 1.5 metres below ground) for the pylons which have been removed. This is because the removal of the foundations below 1.5 metres is judged, on balance, to be unnecessary when comparing the benefit of such removal as against the potential effects. In particular, it is considered a sufficient depth to ensure the safe future use of the land in question.
- 3.30.9 Paragraph (6) is similar to paragraph (5) but relates to land not listed in the Schedule, and provides that where temporary possession has been taken over land which may be subject to compulsory acquisition, but in respect of which National Grid has not yet served a notice of entry or made a general vesting declaration, National Grid shall either acquire the land, or right, over the land or remove the temporary works. Paragraph (6) mirrors Article 29(6) of the National Grid (Hinkley Point C Connection Project) Order 2016 except that the Order incorporates three additional exclusions to the requirement to remove the

³⁴ For example, the Nottingham Express Transit System Order 2009 (S.I. 2009/1300) (article 36(1)(a)(ii)).

³⁵ S.I. 2010/1721

temporary works. Under these exclusions, National Grid is not required to remove any ground-strengthening works, nor to remove or reposition any apparatus belonging to statutory undertakers, nor to remove any drainage works. This is to ensure that in returning the land temporarily occupied, there is not a requirement to 'undo' works which have been carried out to facilitate the authorised development. For the same reasons as in paragraph (5), this provision allows National Grid to leave in place foundations (more than 1.5 metres below ground) for the pylons which have been removed. The first two of these exclusions are contained in the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 (Article 35).

- 3.30.10 Paragraph (9) amends the general model provisions to make clear that compensation payable under this article is compensation payable for injurious affection which would normally arise under section 10 of the Compulsory Purchase Act 1965 but which, by virtue of section 125(3)(b) of the Act is payable under section 152 of the Act instead.
- 3.30.11 Under paragraph (10), National Grid is not required to acquire the land listed in Schedule 10 or any interests in that land, but this provision does not prevent rights in or over land, subsoil or airspace over land from being acquired. The model provision has been amended to also allow restrictions to be imposed on the Schedule 10 land and for airspace to be acquired.
- 3.30.12 Paragraph (12) makes clear that the power in this article can be exercised on more than one occasion. This change is intended to clarify the intention behind the model provision rather than to expand its scope.

3.31 Article 27 (Temporary use of land by UKPN)

- 3.31.1 This article is similar to article 26 (Temporary use of land by National Grid) and provides that UKPN may, in connection with the carrying out of the UKPN Works (only) take temporary possession of the Order land specified in Schedule 10. The extent of this provision is more limited in scope than article 26 as it need only relate to the UKPN Works.
- 3.31.2 The ability to leave those works listed in article 26(5)(e)-(h) in situ has not been replicated in the UKPN power as these are not works forming part of the UKPN Works.
- 3.31.3 Article 27(12)(a) makes clear that the temporary possession power in Article 27 can be exercised on more than one occasion by UKPN. Sub-paragraph (b) provides that National Grid is also not prevented from taking temporary possession more than once in relation to any land specified in article 26(1)(a). This is included to clarify that National Grid can take temporary possession of land of which UKPN has previously taken temporary possession and is necessary to ensure the delivery of the project.

3.32 Article 28 (Temporary use of land for maintaining authorised development)

- 3.32.1 This article provides for entry upon, and the taking temporary possession of, land within the Order limits (except for houses, gardens and any other building for the time being occupied) reasonably required to maintain the authorised development. At least 28 days' notice must be given (save in emergencies), and compensation must be paid for any loss or damage.
- 3.32.2 The article follows the general model provisions save that paragraph (1)(c) extends the model provisions to include a right to enter on to the land for the purpose of gaining access

to maintain the authorised development (which compliments the maintenance powers set out in paragraph (1)(a)). In addition, a provision removing the need for 28 days' notice in emergency situations has been added at paragraph (11), which mirrors wording in the River Humber Gas Pipeline Replacement Order 2016³⁶.

- 3.32.3 Article 28(12) differentiates between a 'maintenance period' for maintaining the authorised development (five years beginning with the date that part of the authorised development is brought into operational use) and a 'maintenance period' for replacement or landscape planting (five years beginning with the date on which that part of the replacement or landscape planting is first completed).
- 3.32.4 Similar wording appears in the National Grid (Hinkley Point C Connection Project) Order 2016 (article 31), with the main differences being that article 28(11) includes the emergency notice requirements explained above.
- 3.32.5 This provision is necessary to ensure National Grid can access the authorised development for the purpose of maintenance, which National Grid considers to be necessary and proportionate.

3.33 Article 29 (Use of subsoil under or airspace over streets)

- 3.33.1 This article, which closely mirrors article 27 of the general model provisions (save for the inclusion of reference to purposes ancillary to the authorised development), provides that National Grid may use streets within the Order limits for the authorised development without being required to acquire any part of the street or any easement or right in the street. Provision is made for the payment of compensation to persons who suffer losses as a result of the exercise of this power.
- 3.33.2 This type of provision also appears in the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 (article 48).

Compensation

3.34 Article 30 (Disregard of certain interests and improvements)

- 3.34.1 This article is not contained in the general model provisions but follows article 26 of the TWA Order Model Provisions and replicates article 37 of the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014.
- 3.34.2 It provides for disregarding certain interests in and enhancements to the value of land for the purposes of assessing compensation with respect to its compulsory acquisition where the creation of the interest or the making of the enhancement was not reasonably necessary and was designed with a view to obtaining compensation or increased compensation.
- 3.34.3 It complies with section 126 (compensation for compulsory acquisition) of the Act. This is because it does not have the effect of modifying or excluding the application of an existing provision relating to compulsory purchase compensation.
- 3.34.4 The wording of this article mirrors much of the wording of section 4 (assessment of compensation) of the Acquisition of Land Act 1981 (the "1981 Act"). It is necessary to specifically apply the effect of section 4 to the draft Order. This is because the 1981 Act

³⁶ S.I. 2016/853.

only applies to a compulsory purchase to which any other statutory instrument has applied its provisions (Section 1 (*Application of Act*)) and neither the Act nor the general model provisions apply Section 1 of the 1981 Act to the draft Order. Section 120(3) and 120(5)(a) and item 36 of Part 1 of Schedule 5 allow the application in an Order of statutory provisions which relate to the payment of compensation.

3.35 Article 31 (Set-off for enhancement in value of retained land)

- 3.35.1 This article is not contained in the DCO Model Provisions but follows article 27 of the TWA Order Model Provisions and replicates article 38 of the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014.
- 3.35.2 It provides that in assessing the compensation payable to any person in respect of the acquisition of any land, the Upper Tribunal shall set off against the value of the land, any increase in value of any contiguous or adjacent land belonging to that person, arising out of construction of the authorised development.
- 3.35.3 In assessing the compensation payable to any person in respect of the acquisition of new rights over land, the Upper Tribunal shall set off against the value of the land, any increase in the value of land over which new rights are acquired and any increase in the value of contiguous or adjacent land belonging to that person, arising as a result of the authorised development.
- 3.35.4 It complies with Section 126(2) of the Act. This is because it does not have the effect of modifying the application of an existing provision relating to compulsory purchase compensation.
- 3.35.5 The principle in this article is established in section 7 of the Land Compensation Act 1961 (*effect of certain actual or prospective development of adjacent land in same ownership*), which needs to be applied.
- 3.35.6 Sections 120(3) and 5(a) and item 36 of Part 1 of Schedule 5 to the 2008 Act allow the application in an Order of statutory provisions which relate to the payment of compensation.

Supplementary

3.36 Article 32 (Compulsory acquisition of land - incorporation of the mineral code)

- 3.36.1 This article is based on the general model provisions (and contains minor additions, as were contained in the draft National Grid Yorkshire and Humber CCS Cross Country Pipeline Order (article 39)).
- 3.36.2 It incorporates both Parts 2 and 3 of Schedule 2 of the Acquisition of Land Act 1981 (with modifications) rather than just Part 2. Part 3 provides the procedure for the owner wishing to work the mines or minerals. By incorporating the two parts of the named Schedule, this article exempts existing rights in minerals from the scope of compulsory acquisition and deals with the situation where the owner of mines or minerals wishes to work them. This is necessary given the nature and location of the authorised development, particularly around Layham Quarry.

- 3.36.3 Modifications to Parts 2 and 3 of Schedule 2 of the Acquisition of Land Act 1981, which were included in the draft Yorkshire and Humber CCS Cross Country Pipeline Order (article 39) are to substitute the words “undertaking” and “compulsory purchase order” for “authorised development” and “this Order”, respectively.

3.37 Article 33 (Time limit for exercise of authority to acquire land compulsorily)

- 3.37.1 This article gives National Grid five years to issue ‘notices to treat’ or a ‘general vesting declaration’ to acquire the land that is subject to the power of compulsory purchase. These are the two main procedural methods by which the process of acquiring land is undertaken should this Order be made. The time period is consistent with the general model provisions (article 20).
- 3.37.2 Sections 154(3) and (4) of the Act and regulation 3 of the Infrastructure Planning (Miscellaneous Prescribed Provisions) Regulations 2010³⁷ allow the Order to prescribe an ‘other period’ than the ‘prescribed period’, being five years from the day on which the Order is ‘made’. This provision extends the period slightly to five years from the day on which the Order comes into force and is, therefore, an ‘other period’ for the purposes of section 154(3)(b).
- 3.37.3 The time limit in this article is to be extended by one year, in the event that the Order is subject to a legal challenge. This is explained further in paragraph 3.12.4 above.

3.38 Article 34 (Acquisition of part of certain properties)

- 3.38.1 This article, which follows general model provision 26, enables acquisition of a part, rather than the whole of, properties subject to compulsory acquisition. It contains a procedure enabling the relevant owner in certain circumstances to require the whole of the land to be taken, with disputes being determined by the Land Chamber of the Upper Tribunal. The article applies as a substitute for section 8(1) and Schedule 2A of the Compulsory Purchase Act 1965.

3.39 Article 35 (Application of the Compulsory Purchase (Vesting Declarations) Act 1981)

- 3.39.1 This article provides for the application, with modifications, of the Compulsory Purchase (Vesting Declarations) Act 1981 (the “1981 Vesting Declarations Act”) which contains vesting procedures for land subject to compulsory purchase.
- 3.39.2 Article 35 allows the undertaker to choose between the notice to treat procedure or the general vesting declaration procedure set out in the 1981 Vesting Declarations Act. The latter procedure allows for title in land to pass to the acquiring authority more quickly than the former procedure. By its nature, the general vesting declaration procedure also enables several parcels of land to be acquired at the same time and is, thus, more efficient than the notice to treat procedure.
- 3.39.3 The article also modifies specific provisions in the 1981 Vesting Declarations Act to ensure consistency with the provisions in the Order which relate to the exercise of

³⁷ S.I. 2010/105.

compulsory purchase powers. It is important to provide clarity within the Order as to the procedures in place in respect of the authorised development.

- 3.39.4 In particular, the article clarifies at paragraph (2) that the undertaker will be a body or person authorised to acquire land for the purposes of the vesting declaration procedure. This is consistent with the approach adopted at Article 27(3) of the Southampton to London Pipeline Development Consent Order 2020 and at Article 26(3) of the A303 (Amesbury to Berwick Down) Development Consent Order 2020.
- 3.39.5 Precedent wording appeared in the National Grid (Hinkley Point C Connection Project) Order 2016 (article 25) although, since then, parts of the Housing and Planning Act 2016 have come into force, hence this article has been updated accordingly. The 2016 Act repealed sections 3 and 5(1) of the 1981 Act so that a preliminary notice of intention is no longer required before a general vesting declaration may be executed. Instead, a prescribed statement about the effects of Parts 2 and 3 of the 1981 Act must be included in the confirmation notice under section 15 of the 1981 Act, together with an invitation for a person to provide information where that person would be entitled to claim compensation if a general vesting declaration were made.
- 3.39.6 The modification of the 1981 Vesting Declarations Act under Article 35 is provided for pursuant to section 120(5) of the Act which allows the Order to exclude, modify or apply any statutory provision which relates to any matter for which provision may be made in the Order (in this case, the powers of compulsory acquisition).

3.40 Article 36 (Application of Part 1 of the 1965 Act)

- 3.40.1 This article provides for the application, with modifications, of Part 1 of the Compulsory Purchase 1965 Act.
- 3.40.2 The modifications are necessary to ensure that the 1965 Act is consistent with the terminology contained in the draft Order and the challenge procedures to which the draft Order is subject.
- 3.40.3 Article 36(5) replaces the time limit for exercising compulsory purchase powers in the 1965 Act with the powers contained in article 33 of the draft Order.
- 3.40.4 Article 36(6) ensures that references to entering on and taking temporary possession of land under Schedule 2A (as introduced by the Housing and Planning Act 2016) do not include entering on and taking temporary possession under the draft Order. This reflects the fact that Schedule 2A has two processes for the serving and determination of counter-notices depending on whether or not the acquiring authority is in possession of the land. The interpretation clause makes it clear that the undertaker will not be deemed to be in possession of the land where it is exercising its power under Articles 20, 26, 27 or 28.
- 3.40.5 Whilst this provision is not included in the National Grid (Richborough Connection Project) Development Consent Order 2017, National Grid considers it to be appropriate for inclusion in this Order because National Grid is seeking powers to acquire land in addition to rights, whilst for Richborough it only sought powers to acquire rights. Except for slight departures at paragraph 2(a) and paragraph (4) of the Order, this provision closely follows the Wrexham Gas Fired Generating Station Order 2017. Similar provisions can also be found in the Silvertown Tunnel Order 2018, and the Sizewell C (Nuclear Generating Station) Order 2022.

3.41 Article 37 (Extinguishment and suspension of private rights)

- 3.41.1 This article has expanded upon the general model provision so as to apply to private rights generally and not just to rights of way.
- 3.41.2 It provides for the extinguishment or suspension of private rights over land subject to compulsory acquisition and the extinguishment of private rights over land subject to the compulsory acquisition of rights (in so far as the continuance of the existing right would be inconsistent with the right acquired or a breach of a restriction as to the user of land arising by virtue of contract) from the date of the acquisition of the land or rights, or the date of entry, whichever is earliest.
- 3.41.3 Private rights on land already owned by National Grid within Order limits would be extinguished on the commencement of any activity authorised by the Order which interferes with or breaches such rights. This draws on the approach taken in article 17 of the Rookery South (Resource Recovery Facility) Order 2011³⁸. It allows National Grid to “clear title” on land it already owns.
- 3.41.4 All private rights over land that is temporarily occupied by National Grid are suspended and unenforceable for the duration of the occupation (save as provided for in article 39 below), in so far as their continuation would be inconsistent with the exercise of the powers under the Order.
- 3.41.5 The article makes provision in relation to the payment of compensation. There is a saving for statutory undertakers. Private rights are defined in article 37(9). This builds on the definition of rights given in article 21(2) of the general model provisions and incorporates the wider definition used in article 18(3) of the Rookery South (Resource Recovery Facility) Order 2011.
- 3.41.6 The wording of this article is substantially similar to the wording contained at article 23 of the National Grid (Hinkley Point C Connection Project) Order 2016, except that paragraph (1) refers to suspension, (4) also includes wording to make it clear that the suspension is only insofar as the rights are inconsistent with order provisions being exercised, and (9) includes restrictions as to the user of land arising by the virtue of a contract.
- 3.41.7 The rationale behind the inclusion of this article is the need for National Grid to be able to construct the authorised development in a timely fashion, without interference from the exercise of any private rights which conflict with the needs of the project delivery.

3.42 Article 38 (Power to override easements and other rights)

- 3.42.1 This does not derive from the general model provisions, but is based on article 32 of the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014, with minor changes at paragraph (3) to more closely reflect the type of interests affecting land that National Grid expects to come across. It draws on the powers in section 203 of the 2016 Act (which Act repealed and replaced section 237 of the Town and Country Planning Act 1990 – see section 206 and schedule 19 paragraph 9 of the 2016 Act).
- 3.42.2 This provision also avoids the difficulty involved in applying article 18 (compulsory acquisition of land) of the general model provisions, in that extinguishment of rights is not automatic on acquisition and only those rights which obstruct the authorised development will be overridden. That avoids the extinguishment of rights, the continued use of which

38 S.I. 2013/680.

can be accommodated by the authorised development and which constitutes a potential saving in compensation.

- 3.42.3 Sections 120(3) and (4) and item 2 of Part 1 of Schedule 5 to the Act confirm that the Order may make such provision relating to the compulsory suspension, extinguishment or interference with interests in or rights over land.
- 3.42.4 Moreover, this article is supplementary (under section 120(5)(d) of the Act) to articles 22 (compulsory acquisition of land) and 23 (compulsory acquisition of rights) of the Order and is necessary and expedient to give full effect to the development consent in article 3 of the Order (as permitted by section 120(5)(c) of the Act).
- 3.42.5 Paragraphs (1)(a) and (b) are based on section 203(1) of the 2016 Act, with the exception that the interests and rights referred to in the Order also include trusts, incidents and wayleaves. These additional rights are included to more closely reflect the types of interests and rights that National Grid may come across on a linear scheme of this nature.
- 3.42.6 The definition of “authorised activity” in paragraph (2) reflects in part the list of activities in section 203(1) of the 2016 Act (see previously section 237(1A) of the 1990 Act).
- 3.42.7 Paragraph (c) of article 38(2) clarifies that “use of any land” includes the “temporary use of land”. This gives full effect to the powers under articles 26 (temporary use of land by National Grid, 27 (temporary use of land by UKPN)) and 28 (temporary use of land for maintaining authorised development) of the Order, which ought to be capable of use without constraint by the interests etc, rights or restrictions described in paragraph (1) of article 38.
- 3.42.8 Article 38(3) is based on the definition of “relevant right or interest” in section 205(1) of the 2016 Act (see previously section 237(2) of the 1990 Act). It is similar to article 32(3) of the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014, except that it also applies to trusts, incidents and wayleaves and can include any land forming part of a common, open space or fuel or field garden allotments. This addition more closely reflects the types of rights, interest and land that National Grid may come across along the linear project.
- 3.42.9 No drafting is included to reflect section 203(9) of the 2016 Act, because it may be necessary to alter the apparatus of statutory undertakers using the powers of the Order and the relationship between the undertaker and statutory undertakers is provided for in the protective provisions included at Schedule 15 (protective provisions) to the Order.
- 3.42.10 Article 38(4) is included for clarity on procedure and timing for the assessment of compensation by reference to section 204(3) of the 2016 Act.
- 3.42.11 Article 38(5) makes provision for compensation and is based on section 204(3) of the 2016 Act (see previously section 237(4) of the 1990 Act). It confirms that if the undertaker has acquired land, and compensation is payable by a person deriving title from that undertaker but the person does not pay it, then the undertaker assumes that liability.
- 3.42.12 Section 204(4) of the 2016 Act defines the specified or qualifying authority against whom the liability to pay compensation can be enforced as the authority in which the land to which the compensation relates was vested, or by which the land was acquired or appropriated. The undertaker cannot “appropriate” land in this way because it is not a local authority. Accordingly, no reference in this paragraph is made to “appropriation”, thus modifying the application of the compensation provision in section 203(3) to the extent necessary to apply it to the order, as permitted under section 125(6) of the Act.

3.43 Article 39 (Statutory authority to override easements and other rights)

- 3.43.1 For the avoidance of doubt, this article provides that, by virtue of section 158 of the Act, in carrying out or using the development authorised by the Order and doing anything else authorised by the Order, National Grid may interfere with any easement, liberty, privilege, right or advantage annexed to land and affecting other land, including any natural rights of support, or breach any restriction as to user of land arising by virtue of contract.
- 3.43.2 It also provides that, by virtue of section 152 of the Act, compensation may be payable under section 10 of the Compulsory Purchase Act 1965 for any such interference or breach.
- 3.43.3 This is not a model provision, but is added to clarify the position with regard to rights burdening land which is required for the authorised development. Similar wording appears in the Hinkley Point C (Nuclear Generating Station) Order 2013 (Article 25). The only deviation from this wording is at article 39(3) which applies the article to any trust, incident or wayleave, and includes any land forming part of a common, open space or fuel or field garden allotment, together with any restrictions as to the user of land arising by virtue of a contract. This is necessary and appropriate to address the types of interest/land that National Grid may encounter on a linear project of this nature.

3.44 Article 40 (Extinguishment of private rights and restrictive covenants relating to apparatus belonging to National Grid or UKPN removed from land subject to temporary possession)

- 3.44.1 All private rights over land that is temporarily occupied by National Grid or UKPN are suspended and unenforceable for the duration of the occupation insofar as inconsistent with the exercise of the Order powers. Rights in relation to apparatus which is removed from the land are extinguished when National Grid or UKPN no longer remains in lawful possession of the land. This article is not a model provision, but is identical to article 24 of the National Grid (Hinkley Point C Connection Project) Order 2016.
- 3.44.2 Paragraph (3) provides that the extinguishment of any right does not give rise to a cause of action relating to any foundations save for those which lie less than 1.5 metres underground. Whilst the intention is to remove apparatus from the land, the foundations (below 1.5 metres underground) will be left in situ and this paragraph is intended to confirm that leaving the foundations in the ground would not result in a cause of action of trespass in relation to the foundations once the right to leave the foundations in the ground is extinguished.
- 3.44.3 A new paragraph (4) is included, in line with the approach in the National Grid (Richborough Connection Project) Development Consent Order 2017, to explicitly give effect to Schedule 11 (extinguishment of private rights and restrictive covenants relating to apparatus belonging to National Grid or UKPN removed from land subject to temporary possession).

3.45 Article 41 (Crown Rights)

- 3.45.1 This article provides that the Order does not prejudice any estate, right, power, privilege, authority or exemption of the Crown and does not authorise the undertaker to take or

interfere with any land or rights belonging to the Crown or a government department without written consent. Consent may be given unconditionally or subject to conditions.

- 3.45.2 This article is not a model provision, but an identical provision is included at article 32 of the National Grid (Hinkley Point C Connection Project) Order 2016 and is considered appropriate that this article be included for clarity and notwithstanding the fact that no Crown interests within the Order limits have been identified through diligent enquiry.

3.46 Article 42 (Special Category Land)

- 3.46.1 Article 42 requires that rights and encumbrances over any special category land (i.e. land forming part of a common, open space, or fuel or field allotment) shall be discharged insofar as they would be inconsistent with the exercise of the Order rights. A similar provision is contained in the National Grid (Richborough Connection Project) Development Consent Order 2017 at article 31.
- 3.46.2 See also Paragraph 3.4.2 of this Explanatory Memorandum in respect of the wording concerning special category land which is included in the preamble to the Order .

3.47 Article 43 (Statutory undertakers)

- 3.47.1 This article is based on article 31 of the general model provisions. It authorises the undertaker (1) to compulsorily acquire land belonging to statutory undertakers described in the Book of Reference (**application document 4.3**), (2) to extinguish rights of statutory undertakers, as well as the removal or repositioning of apparatus belonging to statutory undertakers, and (3) acquire compulsorily new rights over land belonging to statutory undertakers described in the Book of Reference.
- 3.47.2 It departs from the general model provisions in paragraphs (2) to (5), which all relate to either the power in paragraph (1)(b) (extinguishment of rights or removal or repositioning of apparatus belonging to statutory undertakers) or other apparatus diversions. Paragraphs (3) and (4) allow for the notification process set out in the Town and Country Planning Act 1990 (sections 271-274) to apply in other cases. Paragraph (2) caveats (3) and (4).
- 3.47.3 The effect would be such that where the undertaker proposes to extinguish the rights of statutory undertakers, or to remove or reposition their apparatus, and those statutory undertakers do not fall within article 43(1)(b) (i.e. statutory undertakers' apparatus within the Order limits) then those statutory undertakers would be subject to the provisions of the Town and Country Planning Act 1990, which make provision about the extinguishment of the statutory undertakers' rights and include provisions relating to compensation.
- 3.47.4 This article is very similar to article 42 of the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2016, the only substantive difference being that the Order does not refer here to a schedule relating to the protection of statutory undertakers. Article 51 gives effect to Schedule 14 (protective provisions) separately (as explained below).

3.48 Article 44 (Recovery of costs of new connections)

- 3.48.1 This article is identical to article 34 of the National Grid (Hinkley Point C Connection Project) Order 2016.

- 3.48.2 It provides for compensation to be paid to owners or occupiers of property whose supply is affected by the removal of apparatus in accordance with article 43 (statutory undertakers).

Part 6 – Miscellaneous and general

3.49 Article 45 (Application of landlord and tenant law)

- 3.49.1 This article governs the leasing of land by National Grid to any other person. It allows the terms of the lease to override any statutory provisions relating to landlord and tenant law. The article is identical to the general model provisions article except for some very slight linguistic modernisation. This is also identical to article 36 of the National Grid (Hinkley Point C Connection Project) Order 2016 and is included for the sake of clarity and consistent application to any such leases along the route.

3.50 Article 46 (Defence to proceedings in respect of statutory nuisance)

- 3.50.1 Section 158 of the Act confers statutory authority for the purposes of a defence in statutory nuisance generally. This article amends the terms of the defence in the case of noise nuisance (other types of nuisance continue to have the general defence afforded by section 158).
- 3.50.2 The defence is available if the noise relates to (1) the construction or maintenance of the project and is in accordance with any controls imposed by the local authority under the Control of Pollution Act 1974³⁹, (2) the construction or maintenance of the project and is in accordance with the controls and measures relating to noise as described in the Construction Environment Management Plan (CEMP), (3) is a consequence of construction or maintenance and cannot reasonably be avoided, or (4) is a consequence of complying with the Order and cannot reasonably be avoided.
- 3.50.3 The defence is also available if the nuisance is attributable to the use of the project and is in accordance with the CEMP or cannot reasonably be avoided.
- 3.50.4 This article is based on article 7 of the general model provisions, with the removal of references to section 65 of the Control of Pollution Act 1974, following its repeal. This provision is appropriate for inclusion in the Order to ensure that nuisance claims are considered in the context of the wider benefits of the authorised development.

3.51 Article 47 (Traffic regulation)

- 3.51.1 This article allows National Grid to regulate traffic on the roads and to the extent specified in Parts 1 to 7 of Schedule 12 or to any other extent that is expedient or necessary, with the consent of the traffic authority, for the construction or maintenance of the authorised development.
- 3.51.2 The article is not in the general model provisions but is common in orders granting permission for infrastructure projects⁴⁰. This article has been taken from the National

³⁹ c.40.

⁴⁰ See article 37 of the Network Rail (Hitchin (Cambridge Junction)) Order 2011. See also article 38 of the Network Rail (Norton Bridge Area Improvements) Order 2014

Grid (Hinkley Point C Connection Project) Order 2016 (article 40) and has been amended to allow the regulation of traffic for purposes ancillary to the authorised development. It is necessary to enable the construction or maintenance of the authorised development to be carried out in a manner which is expedient and safe for both contractors and the public.

- 3.51.3 This article contains a provision such that consent from the traffic authority is deemed to have been given if the authority fails to notify National Grid of its decision within 28 days of receipt of the application. The rationale for the inclusion of a deemed approvals mechanism is explained at paragraph 3.3 above.

3.52 Article 48 (Felling or lopping)

- 3.52.1 This article allows any tree, shrub, hedgerow or important hedgerow that is under or within or near any part of the authorised development to be felled, lopped, pruned, cut, trimmed, coppiced, pollarded, reduced in height or width, or to have its roots cut back, if it is considered to obstruct the construction, operation or maintenance of the project or endanger anyone constructing, maintaining or operating it. This is necessary so that the authorised development can be brought forward expediently and safely and can be maintained in the same manner, noting in particular the need to ensure that minimum standard electrical safety clearances are maintained on an ongoing basis.
- 3.52.2 Compensation is payable for any loss or damage caused.
- 3.52.3 The article is based on the general model provisions article, but extends the power to include coppicing, and hedgerows and important hedgerows, and deletes reference to 'passengers' in article 48(1)(b) as it is not relevant to the development authorised by the Order.
- 3.52.4 Article 48(4)-(8) extend the provision beyond the general model provision:
- (a) Article 48(4) mirrors article 41(5) of the National Grid (Hinkley Point C Connection Project) Order 2016, and requires highway authority consent before a tree within or overhanging the public highway may be felled, lopped, pruned, cut, trimmed, coppiced, pollarded, or reduced in height or width.
 - (b) Article 48(5) provides that the consent of the highway authority is deemed to have been given if the authority fails to notify National Grid of its decision within 28 days of receipt of the application. The rationale for the inclusion of a deemed approvals mechanism is explained at paragraph 3.3 above.
 - (c) Article 48(8) states that consent of the relevant highway authority is not required under Article 48(4) where the tree to be felled, lopped, pruned, cut, trimmed, coppiced, pollarded, or reduced in height or width is described or shown in the LEMP (**application document 7.8**)
- 3.52.5 Articles 48(9) and (10) remove any obligation upon to secure any consent to remove hedgerows under the Hedgerows Regulations 1997, and are based on article 31(5) and (6) of the North Wales Wind Farms Connection Order 2016⁴¹.

3.53 Article 49 (Trees subject to tree preservation order)

- 3.53.1 This article allows National Grid to fell or lop trees listed in Schedule 13 (Trees subject to Tree Preservation Orders). This article is based on article 40 of the general model

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provisions, with minor changes to Article 49(1)(b) to replace “using the authorised project” with “constructing, maintaining or operating the authorised development”, because it is not possible for a person to use overhead electric lines. Some other minor linguistic updates are also included.

- 3.53.2 Paragraph (2) of this Article clarifies that if any tree preservation orders are made in the future within the Order limits, this will not prevent the felling, lopping, pruning, cutting, trimming, coppicing, pollarding, or reducing in height or width of any tree which is made subject to a tree preservation order where it is necessary to prevent obstruction or interference with the construction, maintenance or operation of the authorised development or to prevent a danger to any person carrying out those activities.
- 3.53.3 This article is necessary to ensure that National Grid can comply with its obligations under the Electricity Safety, Quality and Continuity Regulations 2002.

3.54 Article 50 (Temporary closure of, and works in, the River Stour)

- 3.54.1 This article identifies the relevant part of the River Stour that may have to be closed temporarily during the construction of the authorised development.
- 3.54.2 The River Stour is navigable within the Order limits. Unpowered craft (i.e. those that are paddled, rowed or sailed) are permitted to travel the whole length of the Stour Navigation, from Brundon Mill (Sudbury) to Cattawade (on the Stour Estuary). Powered craft, with certain specified exceptions, such as the River Stour Trust trip boats, are restricted to the stretch between Ballingdon Bridge (Sudbury) and Henny Street. The Environment Agency is the navigation authority for this section of the river.
- 3.54.3 None of the other watercourses within the study area are navigable.
- 3.54.4 This article would enable the temporary closure of the relevant part of the River Stour during the construction of the works. This work is necessary so that works adjacent to, above and beneath, the River Stour can be completed safely.
- 3.54.5 This article is not a general model provision but has precedent in other recent made orders, including the National Grid (Hinkley Point C Connection Project) Order 2016 (Article 39) and the National Grid (Richborough Connection Project) Development Consent Order 2017 (Article 38).

3.55 Article 51 (Protection of interests)

- 3.55.1 This article provides that Schedule 14 (protective provisions) has effect. The protective provisions seek to protect statutory undertakers whose assets may be affected by the authorised development.

3.56 Article 52 (Procedure regarding certain approvals etc.)

- 3.56.1 This article contains additional provisions in respect of any approval, consent or agreement which is required to be given under the Order. It provides that any such approval, consent or agreement given by the relevant body must be given in writing and must not be unreasonably withheld or delayed.

- 3.56.2 It also provides that the procedures set out in Schedule 4 (discharge of requirements) apply to any consent, agreement or refusal which needs to be obtained under the Requirements set out in Schedule 3 (requirements) and any other consents required under the Order. The article clarifies the procedure which applies in respect of these additional consents.
- 3.56.3 Schedule 4 (discharge of requirements) sets out the appeal process in relation to such matters and where an appeal can be made to the Secretary of State to discharge matters including the requirements in Schedule 3 (requirements) and other consents or approvals required under the Order.
- 3.56.4 This article and associated Schedule 4 (discharge of requirements) reflect the approach taken in the National Grid (Hinkley Point C Connection Project) Order 2016 (article 46), which in turn reflects the approach adopted in the (North London Reinforcement Project) Order 2014 (article 45 and Schedule 3) and the Hinkley Point C (Nuclear Generating Station) Order 2013. The only difference between the wording in the National Grid (Hinkley Point C Connection Project) Order 2016 wording and the wording in the Order is that the Order expressly states that any consent, agreement or approval given under this article must not be unreasonably withheld or delayed.
- 3.56.5 This appeal process is considered proportionate and justified in light of the size and scale of the authorised development proposed to ensure the delivery of the authorised development in a timely fashion.

3.57 Article 53 (Safeguarding)

- 3.57.1 This article is not a model provision and is based on parts of article 52 of the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014. Paragraphs (1) and (3) - (6) of the Order broadly mirror paragraphs (1), and (5) – (8) of the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014. Paragraph (5) is amended to ensure that matters raised in representations received in accordance with this article are addressed. The interpretation paragraph has been tailored to the needs of this article.
- 3.57.2 The principle of this provision is to safeguard the authorised development, and other infrastructure in the construction and operational phases, from adverse effects of development in the vicinity of the authorised development and to maintain the operational integrity of the authorised development. This is especially important given the immediate and pressing national need which the project is intended to address.
- 3.57.3 There is no established statutory mechanism for this which would represent a sufficient safeguard to the operational integrity of the authorised development.
- 3.57.4 The vires for the inclusion of this provision are sections 120(3) and (5) of the Act. The safeguarding provision is a “provision relating to, or to matters ancillary to, the development for which consent is granted” by this Order (see s.120(3)); and it is also “necessary or expedient for giving full effect to” the other provisions of this Order (see s.120(5)(c)).
- 3.57.5 The rationale for this provision - which explains the application of the vires specified above - is that the authorisation of works by this Order would be nugatory if the safety of the works could be jeopardised by other works undertaken in close proximity. In particular, the safety of the works authorised by this Order could be at risk from as yet unknown future activities by third parties.

- 3.57.6 The extent of this provision falls short, however, of preventing the grant of planning permission: the right conferred is a right to be consulted and for that response to be taken into account. The relevant local planning authority will then be able to consider engineering evidence as to the likely effect of any new proposed works on the safety and all other parts of the authorised development within the Order limits.
- 3.57.7 The principal precedents for this provision are articles 16 and 17 of the Town and Country Planning (Development Management Procedure) (England) Order 2010 (the “2010 Order”), which establish a precedent for requiring local planning authorities to consult before granting planning permission applications. These precedents demonstrate that there is no insuperable administrative difficulty for local planning authorities in operating a provision of this kind.
- 3.57.8 Paragraph (2) of article 53 sets out the mechanisms applicable for the authorised development, by which the affected area can be described. The development to which this article of the Order applies is not as extensive as the development to which the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 applied, so the scope of paragraph (2) of the Order has been scaled back to reflect the needs of the authorised development.
- 3.57.9 In order to enable local planning authorities to comply with this provision without an undue administrative burden, and in order to ensure the provision’s effectiveness, paragraph (6) makes the requirement to consult, a local land charge. The result is that in the ordinary course of the early stages of handling an application for planning permission the existence of this provision will become readily apparent to all concerned. (It is standard practice for Safeguarding Directions to be revealed in response to Optional Enquiries sent with requisitions for searches of the local land charges register⁴²; the approach taken in this Order takes advantage of the Order’s status as a statutory provision for the purpose of section 1(1)(e) of the Local Land Charges Act 1975 (see the definition in section 14(1)).)

3.58 Article 54 (No double recovery)

- 3.58.1 This is not a model provision and is based on article 44 of the Transport and Works (Model Clauses for Railways and Tramways) Order 2006. This article has precedent in numerous Transport and Works Act Orders and appears in the National Grid (Hinkley Point C Connection Project) Order 2016 (article 48) and the more recent National Grid (Richborough Connection Project) Development Consent Order (albeit with some very minor linguistic differences).
- 3.58.2 It provides that compensation is not payable both under this Order and any other enactment, contract or other rule of law. It follows the well-established principle of equivalence that a claimant is compensated for no more and no less than their loss.

⁴² See, for example, in relation to Crossrail in England: "In accordance with article 25(4)(b) of the GDPO, particulars of the Directions must be entered in Part II of the Register of Applications, in respect of any application for planning permission to which they apply. The Department is also of the view that the safeguarding provisions should be revealed in response to Optional Enquiries sent with requisitions for searches of the local land charges register in relation to properties within the zone of consultation and within 200 metres of the areas of surface interest shown shaded on the plans attached to the Directions." - http://www.crossrail.co.uk/assets/library/document/4/original/4_safeguarding_directions_schedule_guidance_and_explanatory_notes.pdf.

3.59 Article 55 (Application, disapplication and modification of legislative provisions)

- 3.59.1 This article is similar in effect to article 6 of the general model provisions, which deals with the application and modification of legislative provisions and the inclusion of this provision is justified by the need to prevent conflicts in existing legislative provisions from hindering the delivery of the project. A similar provision appears in the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 (article 56).
- 3.59.2 Section 120(5)(a) of the Act provides that an Order granting development consent may apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the Order.
- 3.59.3 In particular, a disapplication is sought in respect of the temporary possession provisions of the Neighbourhood Planning Act 2017. This disapplication is considered necessary as the relevant sections of the Neighbourhood Planning Act 2017 have not been brought into force and subsidiary regulations to that Act have not yet been made. There is currently no certainty as to the requirements of the new temporary possession regime. As such, this disapplication enables the temporary possession regime created by this Order to be applied. This approach has been accepted by the Secretary of State in, amongst others, the Southampton to London Pipeline Development Consent Order 2020, the A303 (Amesbury to Berwick Down) Development Consent Order 2020 and the Silvertown Tunnel Order 2018.

3.60 Article 56 (Amendment of local legislation)

- 3.60.1 This article is similar in effect to article 6 of the general model provisions in that it seeks to exclude local legislation and byelaws listed in Schedule 16, and other legislation of local application, further to section 120(5) of the Act. There is precedent for the principle in the National Grid (Hinkley Point C Connection Project) Order 2016 (article 47) and the National Grid (Richborough Connection Project) Development Consent Order 2017 (article 46).
- 3.60.2 The intent is to identify local legislation – in particular legislation relating to infrastructure (e.g. railways) - which may be inconsistent with the exercise of powers of the DCO.
- 3.60.3 Whilst reasonable attempts have been made to identify all legislation of local application which could affect the authorised development, it is disproportionate and impracticable to ensure that all such legislation has been identified on a linear project of this scale. Therefore, this article is not limited in scope in only seeking to identify legislation of local application, which may prohibit the delivery of this nationally significant infrastructure project, but owing to the nature of the project and the nature of potential local legislation, it also seeks to address any unidentified local legislation. It is, therefore, considered proportionate to exclude such legislation which may serve to impede the delivery of the authorised development.
- 3.60.4 As a safeguard, if National Grid is notified that anything to be done under the Order would contravene a statutory provision of local application, National Grid has to respond within 14 days setting out whether it agrees that there would be a contravention and the grounds on which it believes the article is excluded and the extent of that exclusion.

3.61 Article 57 (Certification of documents)

- 3.61.1 This article requires National Grid to submit the final versions of the plans and documents listed in Schedule 17 for certification to the Secretary of State.
- 3.61.2 The principle of the article is based on article 51 of the general model provisions. In adopting the approach of the National Grid (Hinkley Point C Connection Project) Order 2016 (article 44), this article has been amended to refer to the names of the plans and documents that are part of the application, in a similar way to the National Grid (Richborough Connection Project) Development Consent Order 2017. The actual list of plans and documents has been placed in a schedule (Schedule 17), to follow the recent drafting convention.

3.62 Article 58 (Service of notices)

- 3.62.1 This article governs how any notices that may be served under the Order shall be deemed to have been served properly. In particular, it allows service by email with the consent of the recipient, and deals with the situation of service on an unknown landowner. Although the article is not in the general model provisions it is common to have such an article in an order authorising development such as this and the wording of this article replicates the wording of article 45 of the National Grid (Hinkley Point C Connection Project) Order 2016. The provision is necessary because the service of notice provisions under sections 229 and 230 of the Act would not apply to notices served under a development consent order.

3.63 Article 59 (Arbitration)

- 3.63.1 This article governs what happens when two parties disagree over the implementation of any provision of the Order. The matter is to be settled by arbitration, and if the parties cannot agree on whom the arbitrator should be, this is decided by the Secretary of State. The article is based on the general model provision with the insertion of the Secretary of State as the appropriate body to reflect the agreed position in made Development Consent Orders, such as the National Grid (Hinkley Point C Connection Project) Order 2016.

4. Schedules

4.1 Schedule 1 (Authorised development)

Overview

- 4.1.1 Schedule 1 specifies the works comprised in the authorised development for which development consent is sought and other associated development works. Schedule 1 should be read alongside the Work Plans (**application document 2.5**), Chapter 4 of the Environmental Statement (**application document 6.2.4**) and Chapter 4 of the Planning Statement (**application document 7.1**).
- 4.1.2 The principal works comprising the authorised development have been allocated individual Work Numbers and within each of those principal works, Associated Development (such as access roads) has been included.
- 4.1.3 As explained in paragraph 2.1 above, all elements of the project are, or form part of, an NSIP, or are Associated Development. In summary, it is clear that all elements of the authorised development are necessary to enable the construction and maintenance of the Bramford to Twinstead Reinforcement, whether they are considered to be part of the NSIP or are Associated Development.
- 4.1.4 The remaining sections of this paragraph 4.1 explain each of the Work Numbers in Schedule 1 in detail. To assist with that explanation, a schematic drawing showing the sequence of the Work Numbers and the interface between them is included at **Appendix 1**. The schematic drawing is for illustrative purposes only and has no legal effect in the context of the Order.
- 4.1.5 The following general points also apply to the works as set out in Schedule 1:
- (a) The linear works relating to the construction of the new overhead and underground electricity transmission line, the modification of the existing overhead electricity transmission line and the removal of the existing overhead electricity distribution line are described in sequence from east to west. Works related to the electricity transmission line begin at Bramford Substation and end at a point to the south of Twinstead Tee (indicated as 4YLA007 on Sheet 28 of the Work Plans) where a realigned connection is proposed to be made with the existing electricity transmission line (Route 4YLA). Works related to the removal of the electricity distribution line begin at Burstall Bridge (at existing pylon PCB5) and end to the west of Twinstead Tee (at existing pylon PCB89).
 - (b) All of the linear construction and/or modification works (being works forming part of Work Numbers 1, 2, 3, 4, 5, 6 10 and 11) are subject to the limits of deviation in Article 5 and are shown on the Work Plans with centre lines and commencement and termination lines to aid the identification of the location of these works. (Although linear in nature, works related to the removal of the existing overhead electricity transmission and distribution lines are not subject to limits of deviation).
 - (c) The non-linear works (being works forming part of Work Numbers 1, 2, 3, 4, 5, 6, 9, 10 and 11) are subject to both the parameters shown by the pink dashed line on the Work Plans and the upwards vertical limits of deviation set out in Article 5.

More particularly, the works to be carried out within Bramford Substation (being Work Numbers 1(h) and 2(e)) may take place anywhere within the area shown hatched grey on the Work Plans (such area being within the Order limits).

- (d) Due to the nature of the works proposed, more than one commencement and/or termination point may be shown on the Work Plans for certain Work Numbers (for example, Work Number 10 and Work Number 11).

Work Number 1

- 4.1.6 Work Number 1 (shown on Sheets 1, 2, 3, 6 and 8 of the Work Plans) is concerned with the modifications required to the existing overhead electricity transmission line (Route 4YL) in Sections A and B along the route of the project.
- 4.1.7 Works are proposed to realign Route 4YL in the immediate vicinity of Bramford Substation. These works would principally involve:
- (a) the replacement of three pylons and the intervening spans of conductors of Route 4YL (which currently run north west out of Bramford Substation before turning west and then immediately south west in the direction of Hintlesham Woods) with a new overhead line connection (of approximately 0.5 kilometres in length) leading directly west from the gas insulated switchgear building situated within the western part of the Bramford Substation site and joining the existing Route 4YL at a point near to Hill Farm indicated as 4YL004A on Sheet 1 of the Work Plans;
 - (b) the realignment of the existing gantries within Bramford Substation; and
 - (c) the installation of switchgear and other equipment within the operational boundary of Bramford Substation, such works and equipment being necessary to maintain the electrical operating parameters of the existing electricity transmission network.
- 4.1.8 Work Number 1 would also involve the construction and installation of an approximately 2.6 kilometre section of new overhead electricity transmission line running to the north and then to the west of Hintlesham Woods. Once constructed and installed, the project envisages a transposition (i.e. switching) of Route 4YL between a point to the north east of Hintlesham Woods such that the existing double circuit would run along the new section of overhead electricity transmission line before a further transposition is effected at a point to the south west of Hintlesham Woods which would switch Route 4YL back to its existing alignment. The transpositions would take place during periods of planned transmission network outages.
- 4.1.9 Once complete, the existing pylons and spans of conductors running through Hintlesham Woods would be modified pursuant to Work Number 2 in order to accommodate the proposed new overhead electricity transmission line.

Work Number 2

- 4.1.10 Work Number 2 (shown on Sheets 1, 2, 3, 6 and 8 to 12 (inclusive) of the Work Plans) is concerned with the construction and installation of the new overhead electricity transmission line (Route RB) between Bramford Substation and the Dedham Vale East CSE Compound in Sections A, B, C and D along the route of the project.
- 4.1.11 Work Number 2 would run broadly parallel to Work Number 1, commencing from the gas insulated switchgear building situated within the western part of the Bramford Substation site and terminating at the gantries located within the Dedham Vale East CSE Compound.

It would involve the construction and installation of approximately 10.2 kilometres of new overhead electricity transmission line: comprising an approximately 3.6 kilometre section between Bramford Substation and a point to the north east of Hintlesham Woods and an approximately 6.6 kilometre section between a point to the south west of Hintlesham Woods and the Dedham Vale East CSE Compound.

- 4.1.12 As noted above, Work Number 2 also includes the modifications which are necessary to enable Route RB to make use of the existing section of overhead electricity transmission line which runs through Hintlesham Woods. Those modifications will principally comprise the installation of new electrical conductors as well as the temporary diversion of a small section of the existing overhead electricity transmission line, including the establishment of a temporary pylon and foundations adjacent to the existing line to the north east of Hintlesham Woods.

Work Number 3

- 4.1.13 Work Number 3 (shown on Sheets 12 to 15 (inclusive) of the Work Plans) is concerned with the construction and installation of an approximately 5.5 kilometre section of new underground electricity transmission line (Route RB) between the Dedham Vale East CSE Compound and the Dedham Vale West CSE Compound in Sections D, E and F along the route of the project.
- 4.1.14 Work Number 3 also includes works to construct both of the abovementioned CSE Compounds (and to install associated electrical equipment). The CSE Compounds will provide the interface point between the overhead electricity transmission line and the underground electricity transmission line. Landscaping (including permanent mitigation planting) is also proposed at each of the CSE Compounds.

Work Number 4

- 4.1.15 Work Number 4 (shown on Sheets 15, 16, 17 and 19 of the Work Plans) is concerned with the construction and installation of the new overhead electricity transmission line (Route RB) between the Dedham Vale West CSE Compound and the Stour Valley East CSE Compound in Sections F and G along the route of the project.
- 4.1.16 Work Number 4 will involve the construction and installation of approximately 5.3 kilometres of new overhead electricity transmission line, commencing at the gantries located within the Dedham Vale West CSE Compound and terminating at the gantries located within the Stour Valley East CSE Compound.

Work Number 5

- 4.1.17 Work Number 5 (shown on Sheets 19, 20, 21, 27 and 28 of the Work Plans) is concerned with the construction and installation of an approximately 5.1 kilometre section of new underground electricity transmission line (Route RB) between the Stour Valley East CSE Compound and the Stour Valley West CSE Compound in Section G along the route of the project.
- 4.1.18 Work Number 5 also includes works to construct both of the abovementioned CSE Compounds (and to install associated electrical equipment). The CSE Compounds would provide the interface point between the overhead electricity transmission line and the underground electricity transmission line. Landscaping (including permanent mitigation planting) is also proposed at each of the CSE Compounds.

Work Number 6

- 4.1.19 Work Number 6 (shown on Sheets 27 and 28 of the Work Plans) is concerned with the realignment of the existing overhead electricity transmission line (Route 4YLA) between the gantries located within the Stour Valley West CSE Compound and a point to the southwest of Alphamstone (indicated as 4YLA007 on Sheet 28 of the Work Plans) where a connection is proposed to be made with the existing electricity transmission line. It relates to Section G along the route of the project and is closely aligned with Work Number 7 which is described below.
- 4.1.20 Work Number 6 will involve the construction and installation of approximately 0.6 kilometres of new overhead electricity transmission line between the two points noted in the previous paragraph.

Work Number 7

- 4.1.21 Work Number 7 (shown on Sheets 21, 27 and 28 of the Work Plans) is concerned with the removal of approximately 2 kilometres of existing overhead electricity transmission line (Route 4YLA) between the Twinstead Tee and a point to the southwest of Alphamstone (indicated as 4YLA007 on Sheet 28 of the Work Plans). It relates to Section G along the route of the project and is closely aligned with Work Number 6 which is described above.
- 4.1.22 Work Number 7 would involve the dismantling and removal of all existing overhead electricity transmission line, conductors, insulators and fittings. Existing pylons would be removed to a minimum depth of 1.5 metres below ground level.

Work Number 8

- 4.1.23 Work Number 8 (shown on Sheets 4, 5, 7 to 17 (inclusive), 19, 20, 21 and 22 of the Work Plans) is concerned with the removal of approximately 25 kilometres of existing overhead electricity distribution line (Route PCB) between Burstall Bridge (at a point indicated as PCB5 on Sheet 4 of the Work Plans) and a point to the west of the Twinstead Tee (indicated as PCB89 on Sheet 22 of the Work Plans). It relates to Sections A to H (inclusive) along the route of the project.
- 4.1.24 Work Number 8 would involve the dismantling and removal of all existing overhead electricity distribution line, conductors, insulators and fittings. Existing pylons would be removed to a minimum depth of 1.5 metres below ground level.

Work Number 9

- 4.1.25 Work Number 9 (shown on Sheet 23 of the Work Plans) is concerned with the construction of the GSP substation which is required in order to facilitate the removal of the existing overhead electricity distribution line. It relates to Section H along the route of the project and is closely aligned with Work Numbers 10 and 11 which are described below.
- 4.1.26 Work Number 9 anticipates the establishment of a permanent fenced GSP substation compound located between Butlers Wood and Waldegrave Wood. Within that GSP substation compound, the proposed GSP substation would include two Super Grid Transformers with noise enclosures, to convert the voltage from 400kV to 132kV, as well as other switchgear, modular buildings and equipment. Given the function of the GSP substation, the compound will also include equipment related to the electricity distribution network.
- 4.1.27 Landscaping (including permanent mitigation planting) is also proposed in order to facilitate a connection between Butler's Wood and Waldegrave Wood.

Work Number 10

- 4.1.28 Work Number 10 (shown on Sheet 23 of the Work Plans) is concerned with the modifications to the existing overhead electricity transmission line (Route 4YL) which are necessary to enable a connection to be made to the GSP substation. It relates to Section H along the route of the project and is closely aligned with Work Numbers 9 and 11 which are described above and below.
- 4.1.29 The principal modifications to the existing overhead electricity transmission line are described in Work Number 10(a) to (d) and comprise:
- (a) the modification of existing pylon 4YL080, including the installation of downleads to the GSP substation;
 - (b) the temporary diversion of approximately 0.7 kilometres of the existing overhead electricity transmission line (Route 4YL), including the establishment of temporary foundations and pylons adjacent to the existing electricity transmission line, to facilitate the dismantling and removal of existing pylon 4YL081 and the installation of new pylon 4YL081A;
 - (c) the dismantling and removal of existing pylon 4YL081 including foundations; and
 - (d) the installation of new pylon 4YL081A including foundations, steelwork and associated conductors, droppers and downleads, insulators and fittings.
- 4.1.30 In addition, Work Number 10 envisages the establishment of a 400kV single circuit sealing end compound to the west of Waldegrave Wood and to the south of the existing overhead electricity transmission line. This compound would be separately fenced outside of the proposed GSP substation and would connect the southern circuit of the existing electricity transmission line back into the proposed GSP substation via a new underground transmission electric cable.

Work Number 11

- 4.1.31 Work Number 11 (shown on Sheets 23, 25 and 26 of the Work Plans) is concerned with the modifications to the existing overhead electricity distribution line (Route PCB) which are necessary to enable a connection to be made to the GSP substation. It relates to Section H along the route of the project and is closely aligned with Work Numbers 9 and 10 which are described above.
- 4.1.32 There are two principal elements to Work Number 11:
- (a) the replacement of the existing pylon PCB98 with a CSE platform pylon (PCB98A) in the same location. The replacement process would require the temporary diversion of the existing overhead electricity distribution line, including the establishment of temporary foundations and pylons adjacent to the existing electricity distribution line; and
 - (b) the construction and installation of an approximately 1.1 kilometre section of new underground electricity distribution line which is necessary to connect the proposed GSP substation with the existing overhead electricity distribution line.

Work Number 12

- 4.1.33 Work Number 12 is concerned with the establishment of temporary site compounds required in connection with the construction of the project.

- 4.1.34 A main site compound is proposed off the A134 at Leavenheath, which would include the site offices, storage areas, parking (including electric vehicles charging points if appropriate) and welfare facilities. Smaller satellite compounds are anticipated to be required at the locations listed in Table 4.3 in Chapter 4 of the Environmental Statement.

4.2 Schedule 2 (Plans)

- 4.2.1 Schedule 2 lists the following plans submitted with the application and referred to in the Order:
- (a) Access, Rights of Way and Public Rights of Navigation Plans (**application document 2.7**);
 - (b) Land Plans (**application document 2.3**);
 - (c) Special Category Land Plans (**application document 2.4**);
 - (d) Traffic Regulation Order Plans (**application document 2.6**);
 - (e) Trees and Hedgerows to be Removed or Managed Plans (**application document 2.9**); and
 - (f) Work Plans (**application document 2.5**).

4.3 Schedule 3 (Requirements)

Overview

- 4.3.1 Schedule 3 contains draft requirements corresponding to conditions which, under section 120(2) of the Act, could have been imposed on the grant of planning permission for the authorised development had it not fallen within the ambit of the Act. The requirements have a similar purpose to planning conditions. The draft requirements closely relate to the mitigation set out in the Environmental Statement and ensure that the mitigation relied upon as part of the Environmental Impact Assessment is secured.
- 4.3.2 Certain of the draft requirements (for example, Requirement 4) include what is commonly referred to as a ‘tailpiece’. Advice Note 15 describes a ‘tailpiece’ as being “*a mechanism inserted into a condition (or by analogy a Requirement) providing for its own variation.*”
- 4.3.3 Whilst noting the Planning Inspectorate’s comments in Advice Note 15 regarding the acceptability of including ‘tailpiece’ wording within draft requirements, National Grid considers that the careful use of such a mechanism in Schedule 3 of the draft Order allows for a proportionate and acceptable level of flexibility in the delivery of the project. A degree of flexibility in implementation is both appropriate and necessary when delivering complex nationally significant infrastructure, and even more so given the pressing need to deliver this particular project.
- 4.3.4 In any event, National Grid notes the inclusion in sub-paragraph 4 of Requirement 1 (Interpretation) of a safeguard mechanism through which the necessary further approval or agreement in such circumstances may only be given in relation to minor or immaterial changes and where it has been demonstrated to the satisfaction of the discharging authority that the subject matter of the approval or agreement sought does not give rise to any materially new or materially different significant environmental effects to those assessed in the Environmental Statement.

- 4.3.5 National Grid is also aware of the successful incorporation of such wording in equivalent circumstances in other recent Orders, including the Southampton to London Pipeline Development Consent Order 2020, the Sizewell C (Nuclear Generating Station) Order 2022 and the Norfolk Vanguard Offshore Wind Farm Order 2022.⁴³

DCO Requirement 1

- 4.3.6 Requirement 1 (Interpretation) provides for the interpretation of words and phrases used in this Schedule. Sub-paragraph (2) is very similar to model requirement 36 (Requirement for written approval).

DCO Requirement 2

- 4.3.7 Requirement 2 (Time limits) specifies two time periods as follows:

- (a) Sub-paragraph (1) provides that the authorised development must not *begin* later than five years from the date on which the Order comes into force. This is an ‘other period’ for the purposes of section 154(1)(b) of the Act insofar as sub-paragraph (1) departs from the period (of five years from the date on which the Order is made) prescribed in Regulation 6 of the Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015.
- (b) Sub-paragraph (2) provides a time limit for the purposes of the pre-commencement requirements in Schedule 3. This period is five years from the date on which the Order is made so as to align with the period in Requirement 2(1).

- 4.3.8 Following the Court of Appeal judgment in *Tidal Lagoon (Swansea Bay) Plc v Secretary of State for Business Energy And Industrial Strategy & Ors* [2022] EWCA Civ 1579, a distinction is intentionally drawn between the term “begin” and the term “commence”.⁴⁴ Sub-paragraph (1) sets the time period for sections 154/155 of the Act such that any material operation (save for a prescribed operation) carried out within that time period will be sufficient to ‘begin’ the development such that it does not cease to have effect pursuant to section 154(2). Sub-paragraph (2) makes clear that, for the purpose of the pre-commencement requirements the development also has to ‘commence’ within the same period. As the material operations to *commence* the development (as defined in Article 2(1)) are more restricted than the material operations to *begin* the development in section 155, this means that the authorised development must also have *commenced* within the same five year time period.

DCO Requirement 3

- 4.3.9 Requirement 3 (Stages of authorised development) provides for the production of a single staging plan for the authorised development before development can commence, and for notice of the commencement and completion of each stage to be given to the relevant planning authority.

⁴³ S.I. 2022/138.

⁴⁴ By virtue of section 11 of the Interpretation Act 1978, and since no contrary intention appears in Requirement 2 or elsewhere in the Order, the date on which the authorised development is deemed to have ‘begun’ is to be read in accordance with section 155(1) of the Act; i.e. “on the earliest date on which any material operation comprised in, or carried out for the purposes of, the development begins to be carried out”. Therefore, a specific definition of ‘begin’ is not required

- 4.3.10 National Grid's intention is to define the stages of the authorised development once detailed design has been undertaken and once it has been agreed with its main works contractor(s) how the project will be delivered.
- 4.3.11 It is anticipated that the staging plan to be submitted pursuant to Requirement 3 will specify: (a) the spatial scope of each stage of the authorised development (i.e. the geographical area(s) within which works are to take place), (b) the temporal scope of each stage of the authorised development (i.e. when the works are likely to commence and to be completed) and (c) the works to be carried out in each case.
- 4.3.12 The staging plan will also take account of the fact that different elements of the authorised development may take place in the same location at different points in time during the construction programme (to which see further at Chapter 4 of the Environmental Statement (**application document 6.2.4**)), as well as the fact that certain of the works will cross existing administrative boundaries.
- 4.3.13 National Grid anticipates that the staging plan will be of practical assistance to the relevant planning authorities in terms of the process for discharging Requirements and/or monitoring ongoing compliance with the same.

DCO Requirement 4

- 4.3.14 Requirement 4 (Management plans) requires all construction works to be carried out in accordance with the CEMP (**application document 7.5**) (which includes by way of appendix, the CoCP (**application document 7.5.1**) and the REAC (**application document 7.5.2**)), the CTMP (**application document 7.6**), the MWMP (**application document 7.7**), the LEMP (**application document 7.8**) and the PRowMP (**application document 8.5.8**), each as certified by the Secretary of State, unless otherwise agreed with the relevant planning authority or other discharging authority.
- 4.3.15 Sub-paragraph (3) further provides that the "pre-commencement operations" (as defined in Article 2(1) of the Order) must be carried out in accordance with each of the Management Plans listed above, again unless otherwise agreed with the relevant planning authority or other discharging authority.
- 4.3.16 The flexibility to deviate from the certified Management Plans is both necessary and proportionate to accommodate any required change following certification. This is particularly important given the linear nature of the project and the duration of the construction period.

DCO Requirement 5

- 4.3.17 Requirement 5 (Approval and implementation of Drainage Management Plan) prevents any stage of the authorised development from being brought into operational use (as defined in Article 2(1) until a Drainage Management Plan (DMP), addressing matters related to the management of operational surface water and foul water drainage, has been approved by the relevant planning authority.
- 4.3.18 Thereafter, the operational use of each stage of the authorised development must be in accordance with the DMP as approved or as otherwise amended with the approval of the relevant planning authority.

DCO Requirement 6

- 4.3.19 Requirement 6 (Archaeology) includes an overarching requirement that the authorised development must be undertaken in accordance with the Archaeological Framework Strategy and the Outline Written Scheme of Investigation (OWSI).

- 4.3.20 However, no stage of the authorised development is permitted to commence until a Detailed Written Scheme of Investigation, prepared in accordance with the OWSI, has been approved by the County Archaeologist.

DCO Requirement 7

- 4.3.21 Requirement 7 (Construction hours) specifies the hours during which construction work may be carried out.
- 4.3.22 Core construction hours are included at sub-paragraph (1), whilst sub-paragraph (2) lists a number of activities which are not subject to the core working hours. Start-up and close down activities (as defined in DCO Requirement 1) are also not intended to be subject to the core working hours.
- 4.3.23 Indeed, flexibility to undertake start-up and close-down activities outside of the core construction hours is both necessary and proportionate for the main works to progress on time, to programme and within defined hours (including to take account of periods of transmission network outages).

DCO Requirement 8

- 4.3.24 Requirement 8 (Retention and removal of trees, woodlands and hedgerows) prevents any stage of the authorised development from being commenced until a plan showing the trees, groups of trees, woodlands and hedgerows to be retained and/or removed during that stage has been approved by the relevant planning authority.
- 4.3.25 The retention and removal plan must be in general accordance with the Landscape and Ecological Management Plan (LEMP) approved under Requirement 4.
- 4.3.26 All trees, groups of trees, woodlands and hedgerows shown on the retention and removal plan for that stage of the authorised development must be retained and/or removed in accordance with that plan, unless otherwise approved by the relevant planning authority.

DCO Requirement 9

- 4.3.27 Requirement 9 (Reinstatement planting plan) prevents any stage of the authorised development from being brought into operational use until a reinstatement planting plan for trees, groups of trees, woodlands and hedgerows to be reinstated during that stage has been submitted to and approved by the relevant planning authority.
- 4.3.28 The reinstatement planting plan must be in general accordance with the Landscape and Ecological Management Plan (LEMP) approved under Requirement 4.

DCO Requirement 10

- 4.3.29 Requirement 10 (Reinstatement planting plan- implementation, compliance and replacement planting) requires all reinstatement planting works referred to in Requirement 9 to be implemented at the earliest opportunity and no later than by the first available planting season after that stage of the authorised development to which the reinstatement planting works apply is first brought into operational use. All reinstatement planting works are to be in accordance with the approved reinstatement plan relevant to that stage of the authorised development, unless otherwise approved by the relevant planning authority.
- 4.3.30 Sub-paragraph (3) of Requirement 10 concerns the period over which any planting associated with the reinstatement planting works is maintained. Any trees and hedgerows which, within 5 (five) years of planting, become damaged, diseased or are

removed are to be replaced by trees and hedgerows of the same size and species, unless otherwise agreed with the relevant planning authority. The flexibility to allow for different replacement sizes and species allows for proportionate flexibility to plant trees and hedgerows which perform better if the original species fails, and only with the agreement of the relevant planning authority.

DCO Requirement 11

- 4.3.31 Requirement 11 (Highway works) provides that no work to construct any permanent or temporary means of access to a highway shall commence until written details have been submitted and approved by the relevant planning authority.
- 4.3.32 Requirement 11 also requires the carrying out of road safety audits in respect of the highway works authorised by the Order in accordance with Standard GG 119 Road Safety Audit (Revision 2) of the Department for Transport's Design Manual for Roads and Bridges (or any standard which supersedes the same).

DCO Requirement 12

- 4.3.33 Requirement 12 (Decommissioning) provides for the decommissioning of the authorised development, with details to be approved by the relevant planning authority at least six months prior to the commencement of any decommissioning works. Sub-paragraph (3) makes clear that Requirement 12 does not apply to the part of the authorised development which involves the dismantling and removal of existing infrastructure or apparatus.

DCO Requirement 13

- 4.3.34 Requirement 13 (Biodiversity Net Gain) provides that, unless otherwise agreed, written evidence (in the form of the outputs of the biodiversity metric) demonstrating how at least 10% (ten per cent) in biodiversity net gain is to be delivered as part of the authorised development must be submitted to the relevant planning authority no later than the date on which that part of the authorised development comprising the installation of new overhead electricity transmission line and underground electricity transmission line is first brought into operational use.
- 4.3.35 Requirement 13 should be read alongside the Statement of Reasons (**application document 4.2**) and the Environmental Gain Report (**application document 7.4**).

4.4 Schedule 4 (Discharge of requirements)

- 4.4.1 Schedule 4 sets out two mechanisms:
 - (a) the first applies to any consent, agreement or approval which needs to be obtained under the Requirements set out in Schedule 3, and specifies elements of the procedure to be followed; and
 - (b) the second part clarifies the appeal procedure which applies in respect of any consent, agreement or approval which needs to be secured pursuant to the Requirements, any document referred to in the Requirements, or elsewhere in the Order.
- 4.4.2 Whilst it is acknowledged that the time limits included in Schedule 4 (in relation to the determination of applications made pursuant to the Requirements and any requests made by the relevant discharging authority for further information) do differ from those recommended in Advice Note 15, National Grid considers that shorter time limits are

necessary and proportionate in light of the immediate and pressing national need which the project is intended to address.

- 4.4.3 This schedule is based on Schedule 3 of the National Grid (North London Reinforcement Project) Order 2014, Schedule 14 of The Hinkley Point C (Nuclear Generating Station) Order 2013 and Schedule 4 of the National Grid (Hinkley Point C Connection Project) Order 2016.

4.5 Schedule 5 (Streets subject to street works)

- 4.5.1 Schedule 5 sets out the streets referred to in article 11 subject to street works.

4.6 Schedule 6 (Streets subject to alteration of layout)

- 4.6.1 Schedule 6 sets out the streets, referred to in article 14, the layouts of which are subject to permanent or temporary alterations.

4.7 Schedule 7 (Streets or Public Rights of Way to be temporarily stopped up)

- 4.7.1 Schedule 7 sets out the streets and public rights of way which are subject to temporary stopping up under article 15.

4.8 Schedule 8 (Access to works)

- 4.8.1 Schedule 8 sets out the locations, referred to in article 16, where access would be taken from the public highway, for construction and/or operation / maintenance purposes.

4.9 Schedule 9 (Modification of compensation and compulsory purchase enactments for creation of new rights)

- 4.9.1 Schedule 9 sets out, pursuant to article 24, the modifications to the statutory provisions applicable to compensation and compulsory purchase under the Order where new rights are to be acquired or restrictions are to be imposed.

4.10 Schedule 10 (Land of which only temporary possession may be taken)

- 4.10.1 Schedule 10 sets out the land referred to in articles 26 and 27 which National Grid and UKPN may (respectively) temporarily occupy (albeit noting the wider temporary occupation power in respect of the Order Land) and the purpose for which that temporary occupation may be taken. The plots of land listed in Schedule 10 correspond with those plots of land shown as Class 6 (only) or Class 7 (only) on the Land Plans (**application document 2.3**).

4.11 Schedule 11 (Extinguishment of private rights and restrictive covenants relating to apparatus belonging to National Grid or UKPN removed from land subject to temporary possession)

- 4.11.1 Schedule 11 sets out these plots where rights in relation to removed apparatus are to be extinguished under article 40.

4.12 Schedule 12 (Traffic regulation)

- 4.12.1 Schedule 12 sets out the streets that are subject to traffic regulation measures further to article 47.

4.13 Schedule 13 (Trees subject to tree preservation orders)

- 4.13.1 Schedule 13 sets out the trees subject to tree preservation orders further to article 49.

4.14 Schedule 14 (Protective provisions)

- 4.14.1 Schedule 14 sets out the provisions for the protection of statutory undertakers affected by the authorised development.

- 4.14.2 Further to National Grid's engagement with affected statutory undertakers, Schedule 14 currently comprises four distinct parts:

- (a) Part 1 sets out standard protective provisions for the protection of electricity, gas, water and sewerage undertakers;
- (b) Part 2 sets out standard protective provisions for the protection of operators of electronic communications code networks;
- (c) Part 3 sets out protective provisions for the benefit of Anglian Water Services Limited; and
- (d) Part 4 protective provisions for the benefit of Network Rail Infrastructure Limited.

4.15 Schedule 15 (Public General Legislation)

- 4.15.1 Schedule 15 makes provision applying, modifying and excluding statutory provisions referred to in article 55.

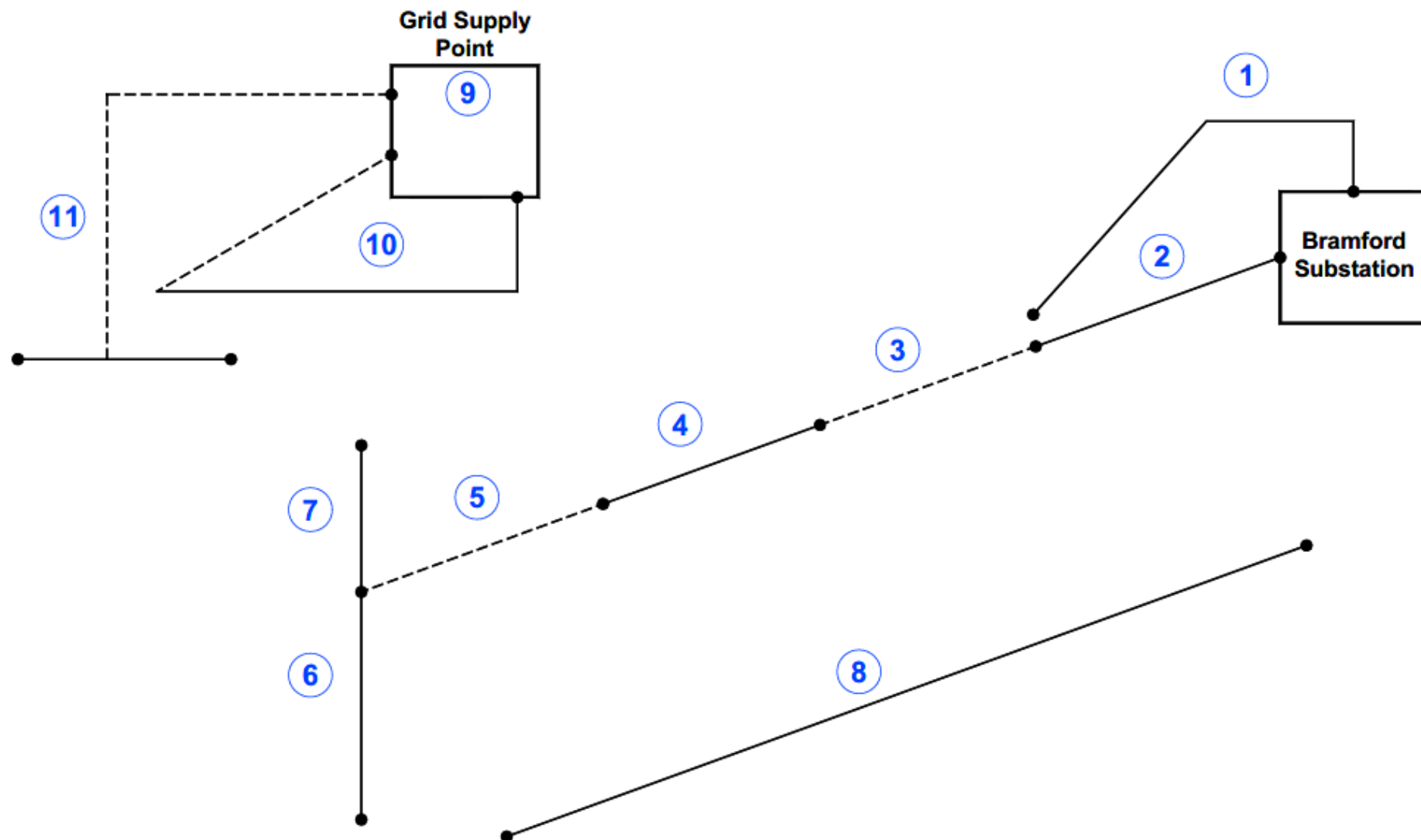
4.16 Schedule 16 (Amendment of local legislation)

- 4.16.1 Schedule 16 lists the local legislation and byelaws National Grid seeks to exclude in relation to the project further to article 56.

4.17 Schedule 17 (Certified Documents)

- 4.17.1 Schedule 17 sets out all the control documents and plans that will be certified under the Order in accordance with article 57.

Appendix 1 - Schematic



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