STATUTORY INSTRUMENTS

2024 No. 1014

INFRASTRUCTURE PLANNING

The Associated British Ports (Immingham Eastern Ro-Ro Terminal) Development Consent Order 2024

Made - - - - *4th October 2024*

Coming into force - - *25th October 2024*

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

The application was examined by a panel of three members pursuant to Chapter 2 of Part 6 of the 2008 Act and carried out in accordance with Chapter 4 of Part 6 of the 2008 Act, and the Infrastructure Planning (Examination Procedure) Rules 2010(**c**).

The panel, having examined the application with the documents that accompanied the application and the representations made and not withdrawn, has, in accordance with section 74(2) of the 2008 Act, made a report and recommendation to the Secretary of State.

The Secretary of State, having considered the representations made and not withdrawn and the report and recommendations made by the Panel, has decided to make an Order granting development consent for the development described in the application with modifications which in the opinion of the Secretary of State do not make any substantial changes to the proposals comprised in the application.

The Secretary of State, in exercise of the powers conferred by sections 114(**d**), 115(**e**), 117(**f**), 120(**a**) and 122(**b**) of, and paragraphs 1 to 3, 10 to 16, 24, 26, 30A and 30B, 36, and 37 of Part 1 of Schedule 5(**c**) to, the 2008 Act, makes the following Order—

(**a**) 2008 c. 29. Section 37 was amended by Schedule 13 to the Localism Act 2011 (c. 20).
(**b**) S.I. 2009/2264, amended by S.I. 2010/439, S.I. 2010/602, S.I. 2012/635, S.I. 2012/2654, S.I. 2012/2732, S.I. 2013/522, S.I. 2013/755, S.I. 2014/469, S.I. 2014/2381, S.I. 2015/377, S.I. 2015/1682, S.I. 2017/524, S.I. 2017/572, S.I. 2017/752, S.I. 2018/378, S.I. 2019/734, S.I. 2020/764, S.I. 2020/1534, S.I. 2021/978, S.I. 2022/634 and S.I. 2023/1071.
(**c**) S.I. 2010/103, amended by S.I. 2012/635.
(**d**) Section 114 was amended by paragraph 55 of Schedule 13 to the Localism Act 2011.
(**e**) Section 115 was amended by paragraph 56 of Schedule 13 and Part 20 of Schedule 25 to the Localism Act 2011, section 160 of the Housing and Planning Act 2016 (c. 22) and section 43 of the Wales Act 2017 (c. 4).
(**f**) Section 117 was amended by paragraph 58 of Schedule 13 and Part 20 of Schedule 25 to the Localism Act 2011.

PART 1

PRELIMINARY

Citation and Commencement

1. This Order may be cited as the Associated British Ports (Immingham Eastern Ro-Ro Terminal) Development Consent Order 2024 and comes into force on 25th October 2024.

Interpretation

2.—(1) "the 1847 Act" means the Harbours, Docks and Piers Clauses Act 1847(**d**);

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

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

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

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

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

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

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

"the 2009 Act" means the Marine and Coastal Access Act 2009(**l**);

"ABP Statutory Harbour Authority" means the undertaker in its capacity as the local lighthouse authority and as the statutory harbour authority for the Port of Immingham including that part of the estuary of the River Humber immediately adjacent to the port;

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

"berthing pocket" means the area bounded by the co-ordinates given in paragraph 5(2) (details of licensed marine activities) of Schedule 3 (deemed marine licence) and shown on sheets 1 and 2 of the works plans;

"Board" means the North East Lindsey Internal Drainage Board;

"book of reference" means the document of that description listed in Schedule 7 (plans and documents to be certified) and certified by the Secretary of State as the book of reference for the purposes of this Order;

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

"business day" means a day other than a Saturday or Sunday, Good Friday, Christmas Day or a bank holiday in England and Wales under section 1 of the Banking and Financial Dealings Act 1971(**m**);

(**a**) Section 120 was amended by section 140 of and paragraph 60 of Schedule 13 to the Localism Act 2011.
(**b**) Section 122 was amended by paragraph 62 of Schedule 13 to the Localism Act 2011.
(**c**) Part 1 of Schedule 5 was amended by paragraph 4 of Schedule 8 and Part 2 of Schedule 22 to the Marine and Coastal Access Act 2009 (c. 23), paragraph 71 of Schedule 13 to the Localism Act 2011 and paragraph 76 of Schedule 6 to the Wales Act 2017.
(**d**) 1847 c. 27.
(**e**) 1961 c. 33.
(**f**) 1965 c. 56.
(**g**) 1980 c. 66.
(**h**) 1981 c. 66.
(**i**) 1990 c. 8. Section 206(1) was amended by section 192(8) to, and paragraphs 7 and 11 of Schedule 8 to, the Planning Act 2008 (c. 29). There are other amendments to the 1990 Act which are not relevant to this Order.
(**j**) 1991 c. 22.
(**k**) 2008 c. 29.
(**l**) 2009 c. 23.
(**m**) 1971 c. 80.

"Chart Datum" in relation to any dredging is 3.9 metres below ordnance datum (Newlyn);

"commence" means the commencement of any material operation as defined in section 56 (4)(**a**) of the 1990 Act forming part of the authorised development other than operations consisting of environmental surveys and monitoring, investigations for the purposes of assessing ground conditions, the receipt and erection of construction plant and equipment, the erection of any temporary means of enclosure, the temporary display of site notices or advertisement and "commencement" is to be construed accordingly;

"construct" includes execution, placing, altering, replacing, relaying and removal and "construction" is to be construed accordingly;

"Council" means North East Lincolnshire Council, or any successor authority, acting in its capacity as the local planning authority;

"deemed marine licence" means the marine licence granted by article 30 (deemed marine licence);

"dock master" means the dock master for the Port of Immingham statutory harbour authority area;

"drainage plan" means the document of that description listed in Schedule 7 and certified by the Secretary of State as the drainage plan for the purposes of this Order;

"the electronic communications code" has the same meaning as in Chapter 1 of Part 2 of the 2003 Act;

"engineering sections, drawings and plans" means the document of that description listed in Schedule 7 and certified by the Secretary of State as the engineering sections, drawings and plans for the purposes of this Order;

"environmental statement" means the document of that description listed in Schedule 7 and certified by the Secretary of State as the environmental statement for the purposes of this Order;

"general arrangement plans" means the document of that description listed in Schedule 7 and certified as the general arrangement plans by the Secretary of State for the purposes of this Order;

"harbour master" means the harbour master for the Statutory Conservancy and Navigation Authority;

"HGV" has the same meaning as heavy goods vehicle in section 58(1) (general interpretation) of the Goods Vehicles (Licensing of Operators) Act 1995;

"HGV driver" means the driver of an HGV for the purposes of transferring freight associated with the commercial ro-ro operation of the authorised development;

"highway" has the same meaning as in section 328 (meaning of "highway") of the 1980 Act;

"highway authority" has the same meaning as in the 1980 Act;

"land plans" means the document of that description listed in Schedule 7 and certified as the land plans by the Secretary of State for the purposes of this Order;

"level of high water" means the level of mean high-water springs;

"lighting plan" means the document of that description listed in Schedule 7 and certified by the Secretary of State as the lighting plan for the purposes of this Order;

"limits of deviation" means the limits of deviation referred to in article 7 (limits of deviation);

"maintain" includes inspect, repair, adjust, alter or remove, provided such works do not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement, and any derivative of "maintain" is to be construed accordingly;

(**a**) Section 56 was amended by paragraph 10(2) of Schedule 7 to the Planning and Compensation Act 1991 (c.34). There are other amendments to section 56 which are not relevant to this Order.

"mean high water level" means the level which is half way between mean high water springs and mean high water neaps;

"mean high water neaps" means the average throughout the year of the heights of two successive high waters during those periods of 24 hours when the range of the tides at its least;

"mean high water springs" means the average throughout the year of the heights of two successive high waters during those periods of 24 hours when the range of the tide is at its greatest;

"MMO" means the Marine Management Organisation;

"navigational risk assessment" means the document of that description listed in Schedule 7 and certified by the Secretary of State as the navigational risk assessment for the purposes of this Order;

"Order land" means the land shown on the land plans and which is described in the book of reference;

"Order limits" means the limits shown on the works plans;

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

"passengers" means private individuals travelling by vessel from the authorised development, boarding by vehicular transport and not associated with the commercial ro-ro operation and not including HGV drivers;

"Port of Immingham" means the statutory port estate including the Port of Immingham statutory harbour authority area;

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

"public utility undertaker" means a gas, water, electricity or sewerage undertaker;

"River Humber" means the tidal estuary from its mouth at the Spurn Peninsula to its confluence with the rivers Ouse and Trent;

"ro-ro" is an acronym for 'Roll on/Roll off' which is a shipping industry term applied to a category of unitised cargo, the embarkation and disembarkation of which is facilitated by a wheeled transfer via a ramp mounted within the structure of the vessel;

"Statutory Conservancy and Navigation Authority" means the statutory conservancy and navigation authority for the river Humber (as successor to the Conservancy Commissioners established under the Humber Conservancy Act 1868(**c**)) and includes its role as competent harbour authority and local lighthouse authority for its statutory area;

"statutory undertaker" means any statutory undertaker for the purposes of section 127(8) (statutory undertakers' land) of the 2008 Act;

"tidal works" means so much of any of the authorised development as are on, under or over tidal waters or tidal lands below the level of high water;

"Trinity House" means the Corporation of Trinity House of Deptford Strond;

"UK marine area" has the meaning given to it in section 42 (UK marine area) of the 2009 Act;

"undertaker" means Associated British Ports ("ABP") company number ZC000195 whose registered office is at 25 Bedford Street, London, WC2E 9ES;

"vessel" means every description of vessel, however propelled or moved, and includes a non-displacement craft, a personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel, a hovercraft or any other amphibious vehicle and any other thing constructed or adapted for movement through, in, on or over water and which is at the time in, on or over water;

(**a**) 1981 c. 67. The definition of "owner" in section 7 was amended by the Planning and Compensation Act 1991 (c. 34).
(**b**) 2003 c. 21.
(**c**) 1861 c. lviii.

"watercourse" includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain;

"WEMP" means the woodland enhancement management plan included in Schedule 7 (plans and documents to be certified) for the future management of that area of land referenced in Schedules 1 and 2 and certified as the WEMP by the Secretary of State for the purposes of this Order; and

"works plans" means the plans with that name included in Schedule 7 (plans and documents to be certified) certified as the works plans by the Secretary of State for the purposes of this Order.

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

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

(4) For the purposes of this Order, all areas described in square metres in the book of reference are approximate.

(5) References in this Order to points identified by letters, with or without numbers, are to be construed as references to points so lettered on the plan to which the reference applies.

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

Disapplication and modification of legislative provisions

3.—(1) The following provisions do not apply in relation to the construction of works carried out for the purpose of, or in connection with, the construction or maintenance of the authorised development—

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

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

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

(2) On and after the date on which the authorised development is commenced, any conditions of a planning permission granted under section 57 (planning permission required for development) of the 1990 Act and which relate to the land within the Order limits cease to have effect to the extent they are inconsistent with the authorised development or anything done in accordance with or approved under the requirements set out in Schedule 2 (requirements).

(3) Sections 25 (penalties for improper deposit of hard materials in the river) and 26 (no mud to be cast into the river except as admiralty direct) of the River Humber Conservancy Act 1852(**d**), section 9 (licences for execution of works) of the Humber Conservancy Act 1899(**e**), section 6(2) (no erections in Humber below river lines or without licence above river lines) and section 8 (sand

(**a**) 1991 c. 59.
(**b**) 1991 c. 57. Paragraph 5 was amended by section 100(1) and (2) of the Natural Environment and Rural Communities Act 2006 (c. 16), section 84(2) of, and paragraph 3 of Schedule 11 to, the Marine and Coastal Access Act 2009 (c. 23), paragraph 49 of Schedule 2 to the Flood and Water Management Act 2010 (c. 29) and S.I. 2013/755.
(**c**) S.I. 2016/1154.
(**d**) 1852 c. cxxx.
(**e**) 1899 c. cci.

&c. not to be removed from bed or foreshore of River Humber without licence of Commissioners) of the Humber Conservancy Act 1905(**a**) do not apply to the authorised development.

Incorporation of the 1847 Act

4.—(1) With the exception of sections 5 to 25, 30, 35, 36, 38, 39, 43, 47 to 50, 53 to 55, 59 to 64, 66, 67, 69, 71 to 73, 77 to 102 and 104, the 1847 Act is incorporated in this Order, subject to the modifications stated in sub-paragraph (2).

(2) For the purposes of the 1847 Act, as so incorporated—

(a) the expression "the special Act" means this Order;

(b) the expression "the harbour, dock, or pier" means the authorised development;

(c) the expression "the harbour master" means, in relation to the authorised development, the dock master;

(d) the meaning assigned to the word "vessel" by section 3 of the 1847 Act is replaced by the definition of "vessel" contained in article 2(1); and

(e) section 53 of the 1847 Act shall not be construed as requiring the harbour master to serve upon the master of a vessel a notice in writing of his directions but such directions may be given orally or otherwise communicated to such master, provided that a notice which is not in writing shall not be deemed to be sufficient unless in the opinion of the court before which any case may be heard it was not reasonably practicable to serve a written notice on the master of the vessel.

PART 2

PRINCIPAL POWERS

Development consent etc. granted by the Order

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

Maintenance of authorised development

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

(2) This article does not authorise any works which are likely to give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.

Limits of deviation

7. In carrying out the authorised development comprising the works numbered in Schedule 1 (authorised development) the undertaker may—

(a) deviate laterally from the lines or situations of the authorised development shown on the works plans to the extent of the limits of deviation shown on those plans for that work; and

(b) deviate vertically from the levels of the authorised development shown on the engineering sections, drawings and plans:

(**a**) 1905 c. clxxix.

(i) to any extent upwards as the undertaker considers to be necessary or convenient but not exceeding two metres; or

(ii) save for Work No. 2 in Schedule 1 (authorised development), to any extent downwards as the undertaker considers to be necessary or convenient.

Benefit of Order

8. Subject to article 9 (transfer of benefit of Order, etc.) the provisions of this Order conferring powers on the undertaker have effect solely for the benefit of the undertaker.

Transfer of benefit of Order, etc.

9.—(1) The undertaker may, with the written consent of the Secretary of State—

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

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

(2) Where an agreement has been made in accordance with paragraph (1) references in the provisions of this Order that apply to the undertaker must include references to the transferee or the grantee, as the case may be.

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

PART 3

POWERS OF ACQUISITION

Compulsory acquisition of rights

10.—(1) Subject to the following paragraphs of this article, the undertaker may acquire compulsorily such rights over the Order land or impose restrictive covenants affecting the land as is required for the carrying out and use of the authorised development, by creating them as well as acquiring rights already in existence.

(2) In the case of the Order land specified in column (1) of Schedule 6 (land in which new rights etc. may be acquired) the undertaker's powers of compulsory acquisition are limited to the acquisition of such wayleaves, easements, new rights in the land or the imposition of restrictive covenants to the extent specified in relation to that land in column (3) of that Schedule and for the purposes of that part of the authorised development specified in column (2) of that Schedule.

(3) Subject to section 8 (other provisions as to divided land) of the 1965 Act, as modified by Schedule 5 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of restrictive covenants), where the undertaker acquires a right over land or imposes a restriction under paragraph (1), the undertaker is not required to acquire a greater interest in that land.

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

Time limit for exercise of powers of compulsory acquisition

11. After the end of the period of 5 years beginning with the day on which this Order comes into force—

(a) no notice to treat is to be served under Part 1 (compulsory purchase under Acquisition of Land Act of 1946) of the 1965 Act as modified by article 14 (modification of Part 1 of the 1965 Act); and

(b) no declaration is to be executed under section 4 (execution of declaration) of the 1981 Act as applied by article 15 (application of the 1981 Act),

in relation to any part of the Order land.

Private rights over land

12.—(1) Subject to the provisions of this article and to Schedule 4 (protective provisions), all private rights over land subject to compulsory acquisition under this Order are extinguished on—

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

(b) the date of entry onto the land by the undertaker under section 11(1)(**a**) (powers of entry) of the 1965 Act,

whichever is the earlier.

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

(a) the date of the acquisition of the right or the benefit of the restrictive covenant being imposed in favour of the undertaker, whether compulsorily or by agreement;

(b) the date of entry onto the land by the undertaker under section 11(1) of the 1965 Act; or

(c) the commencement of any activity authorised by the Order which interferes with or breaches those rights,

whichever is earlier.

(3) Any person who suffers loss by the extinguishment or suspension of any private right or by the imposition of any restrictive covenant under this article is entitled to compensation in accordance with the terms of section 152(**b**) (compensation in case where no right to claim in nuisance) of the 2008 Act, to be determined, in case of dispute, as if it were a dispute under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(4) This article does not apply in relation to any right to which section 138(**c**) (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) of the 2008 Act or article 16 (statutory undertakers and operator of the electronic communications code network) applies.

(5) Paragraphs (1) and (2) have effect subject to—

(a) any notice given by the undertaker before—

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

(ii) the undertaker's appropriation of it; or

(iii) the undertaker's entry onto it,

that any or all of those paragraphs do not apply to any rights specified in this notice; and

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(**a**) Section 11(1) was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1); and section 186 of the Housing and Planning Act 2016 (c. 22).

(**b**) Section 152 was amended by S.I. 2009/1307.

(**c**) Section 138 was amended by section 23 of the Growth and Infrastructure Act 2013 (c. 27) and S.I. 2017/1285.

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

(6) If any agreement as is referred to in paragraph (5)(b)—

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

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

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

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

Power to override easements and other rights

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

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

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

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

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

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

(c) the use of any land (including the temporary use of land).

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

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

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

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

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

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

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

(a) is liable to pay compensation by virtue of paragraph (4); and

(b) fails to discharge that liability,

the liability is enforceable against the undertaker.

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

Modification of Part 1 of the 1965 Act

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

(2) In section 4A(1)(**b**) (extension of time limit during challenge) for "section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the applicable period for the purposes of section 4" substitute "section 118(**c**) (legal challenges relating to application for orders granting development consent) of the Planning Act 2008, the five year period mentioned in article 11 (time limit for exercise of powers of compulsory acquisition) of the Associated British Ports (Immingham Eastern Ro-Ro Terminal) Development Consent Order 2024".

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

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

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

(4) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for "section 4 of this Act" substitute "article 11(time limit for exercise of powers of compulsory acquisition) of the Associated British Ports (Immingham Eastern Ro-Ro Terminal) Development Consent Order 2024".

Application of the 1981 Act

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

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

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

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

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

(5) Omit section 5A(**f**) (time limit for general vesting declaration).

(6) In section 5B(**g**) (extension of time limit during challenge) for "section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the applicable period for the purposes of section 5A" substitute "section 118 (legal challenges relating to applications for orders granting development consent) of the Planning Act 2008, the five year period mentioned in article 11of the associated British Ports (Immingham Eastern Ro-Ro Terminal) Development Consent Order 2024".

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

(**a**) Section 125 was amended by section 190 of, and paragraph 17 of Schedule 16 to, the Housing and Planning Act 2016 (c. 22).

(**b**) Section 4A(1) was inserted by section 202(1) of the Housing and Planning Act 2016. Section 4A(1) was amended by section 185(2)(b) of the Levelling-up and Regeneration Act 2023 (c. 55).

(**c**) Section 118 was amended by paragraphs 1 and 59 of Schedule 13, and Part 20 of Schedule 25, to the Localism Act 2011 (c.20) and section 92(4) of the Criminal Justice and Courts Act 2015 (c. 2).

(**d**) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016.

(**e**) Section 5 was amended by paragraph 6 of Schedule 15 to the Housing and Planning Act 2016.

(**f**) Section 5A was inserted by section 182(2) of the Housing and Planning Act 2016 and amended by section 185(3)(a) of the Levelling-up and Regeneration Act 2023.

(**g**) Section 5B was inserted by section 202(2) of the Housing and Planning Act 2016 and amended by section 185(3)(b) of the Levelling up and Regeneration Act 2023.

(**h**) Section 6 was amended by section 4 of, and paragraph 52(2) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11) and paragraph 7 of Schedule 15 to the Housing and Planning Act 2016 (c. 22).

(**i**) Section 134 was amended by section 142 of, and Part 21 of Schedule 25 to, the Localism Act 2011 and S.I. 2017/16.

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

(9) References to the 1965 Act in the 1981 Act are to be construed as references to the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (as modified by article 14 (modification of Part 1 of the 1965 Act)) to the compulsory acquisition of land under this Order.

Statutory undertakers and operator of the electronic communications code network

16. Subject to the provisions of article 10 (compulsory acquisition of rights) and Schedule 4 (protective provisions), the undertaker may—

(a) exercise the powers conferred by article 10 (compulsory acquisition of rights) in relation to so much of the Order land as belongs to statutory undertakers, the operator of the electronic communications code network, public communications providers and public utility undertakers;

(b) extinguish the rights of, remove or reposition the apparatus belonging to statutory undertakers, the operator of the electronic communications code network, public communications providers and public utility undertakers over or within the Order land; and

(c) construct the authorised development in such a way as to cross underneath or over apparatus belonging to statutory undertakers, public utility undertakers within the Order land.

Recovery of costs of new connection

17. Where any apparatus of a public utility undertaker or public communications provider is removed under article 16 (statutory undertakers and operator of the electronic communications code network) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

Disregard of certain interests and improvements

18.—(1) In assessing the compensation payable to any person on the acquisition from that person of any land or right over any land under this Order, the tribunal must not take into account—

(a) any interest in land; or

(b) any enhancement of the value of any interest in land by reason of any building erected, works executed or improvement or alteration made on relevant land,

if the tribunal is satisfied that the creation of the interest, the erection of the building, the construction of the works or the making of the improvement or alteration was not reasonably necessary and was undertaken with a view to obtaining compensation or increased compensation.

(2) In paragraph (1) "the relevant land" means the land acquired from the person concerned or any other land with which that person is, or was at the time when the building was erected, the works constructed of the improvement or alteration made as part of the authorised development, directly or indirectly concerned.

(**a**) Section 7(1) was substituted by section 199 of, and paragraph 3 of Schedule 18 to, the Housing and Planning Act 2016.

Set-off for enhancement in value of retained land

19.—(1) In assessing the compensation payable to any person in respect of the acquisition from that person under this Order of any land (including the subsoil) the tribunal must set off against the value of the land so acquired any increase in value of any contiguous or adjacent land belonging to that person in the same capacity which will accrue to that person by reason of the construction of the authorised development.

(2) In assessing the compensation payable to any person in respect of the acquisition from that person of any new rights over land (including the subsoil) under article 10 (compulsory acquisition of rights), the tribunal must set off against the value of the rights so acquired—

(a) any increase in the value of the land over which the new rights are required; and

(b) any increase in value of any contiguous or adjacent land belonging to that person in the same capacity,

which will accrue to that person by reason of the construction of the authorised development.

(3) The 1961 Act has effect, subject to paragraphs (1) and (2), as if this Order were a local enactment for the purposes of that Act.

No double recovery

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

PART 4

OPERATIONAL PROVISIONS

Operation and use of development

21.—(1) The undertaker may operate and use the authorised development as harbour facilities in connection with the import and export of ro-ro units to include all forms of accompanied and unaccompanied wheeled cargo units from or to the public highway up to a maximum of 1,800 ro-ro units per day together with occasional use by passengers travelling by vehicle when space is available on a departing vessel.

(2) On those occasions where space is available on a departing vessel—

(a) no more than 100 passengers per day may depart by vessel from the authorised development; and

(b) all such passengers must board the departing vessel or vessels by means of vehicular transport.

(3) In this article "ro-ro unit" means any item of wheeled cargo (whether or not self-propelled).

Power to appropriate

22.—(1) Regardless of anything in section 33 (harbour, dock and pier to be free to the public on payment of rates) of the 1847 Act or any other enactment, the undertaker may from time to time set apart and appropriate any part of the authorised development for the exclusive or preferential use and accommodation of any trade, person, vessel or goods or any class of trader, vessel or goods, subject to the payment of such charges and to such terms, conditions and regulations as the undertaker may think fit.

(2) No person or vessel may make use of any part of the authorised development so set apart or appropriated without the consent of the dock master, and—

(a) the dock master may order any person or vessel making use of the authorised development without such consent to be removed;

(b) the provisions of section 58 of the 1847 Act (powers of harbour master as to mooring of vessels in harbour), as incorporated by this Order, extend and apply with the necessary modifications to any such vessel.

Planning legislation

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

(2) It does not constitute a breach of the terms of this Order if, following the coming into force of this Order, any development, or any part of a development, is carried out or used within the Order limits in accordance with any planning permission granted under the 1990 Act (including a planning permission granted under article 3 (permitted development) and Class B (dock, pier, harbour, water transport, canal or inland navigation undertakings) of Part 8 of Schedule 2 or Class A (development under local or private Acts or Order) of Part 18 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015(**a**)).

PART 5

SUPPLEMENTAL POWERS

Discharge of water

24.—(1) Subject to the provisions of this article, the undertaker may use any watercourse or drain for the drainage of water in connection with the carrying out or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse or drain.

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

(3) The undertaker must not discharge any water into any watercourse or drain except with the consent of the Board and in accordance with the provisions of Part 13 of Schedule 4 (protective provisions).

(4) The undertaker must not make any opening into or connections with any watercourse or drain in connection with the authorised development or lay down, take up or alter pipes on any land within the Order limits or carry out any specified work except in accordance with the provisions of Part 13 of Schedule 4 and in accordance with plans approved by the Board in accordance with the provisions of Part 13 of Schedule 4 .

(5) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or drain pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension and the authorised development does not obstruct the path of the Habrough Marsh Drain outfall channel.

(6) Nothing in this article overrides the requirement for an environmental permit under regulation 12(1)(b) (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016(**d**) in respect of a water discharge activity or groundwater activity.

(**a**) S.I. 2015/596.
(**b**) 1991 c. 56. Section 106 was amended by sections 35(1) and (8) and 43(2) of, and Schedule 2 to, the Competition and Service (Utilities) Act 1992 (c. 43), sections 36(2) and 99 of the Water Act 2003 (c. 37) and paragraph 16(1) of Schedule 3 to the Flood and Water Management Act 2010 (c. 29).
(**c**) 1991 c. 56.
(**d**) S.I. 2016/1154.

(7) The undertaker must not, in carrying out or maintaining any works under this article, damage or interfere with the bed or banks of any watercourse or drain without the prior written consent of the Board.

(8) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters is prohibited by section 85(1), (2) or (3) (offences of polluting water) of the Water Resources Act 1991(**a**).

(9) The undertaker must monitor the path of the Habrough Marsh Drain outfall channel and report to the Board annually for a period of 10 years from the commencement of the authorised development as to whether any substantial changes to the path of the Habrough Marsh Drain outfall channel have occurred as a result of the authorised development.

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

(11) In paragraph (4), "specified work" has the same meaning as in Part 13 of Schedule 4.

Powers to dredge

25.—(1) For the purpose of constructing, operating and maintaining Work No.2, the undertaker may dredge, deepen, scour, cleanse, alter and improve the river bed and foreshore of the River Humber within the limits and to the depth specified for that work in accordance with the deemed marine licence.

(2) Subject to paragraph (3), the undertaker may use, deposit or otherwise dispose of materials dredged or removed (other than a wreck within the meaning of Part 9 (salvage and wreck) of the Merchant Shipping Act 1995(**c**)) as the undertaker thinks fit.

(3) No materials dredged under the powers of this Order may be disposed of in the UK marine area except in accordance with an approval from the MMO under the deemed marine licence or under any other marine licence granted by the MMO.

Authority to survey and investigate the land

26.—(1) The undertaker may for the purposes of this Order enter on—

(a) any land within the Order limits; and

(b) where reasonably necessary, any land which is adjacent to but outside the Order limits, or which may be affected by the authorised development, and—

(i) survey or investigate the land;

(ii) without limitation to the scope of sub-paragraph (i), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;

(iii) without limitation to the scope of sub-paragraph (i), carry out ecological or archaeological investigations on such land, including making any excavations or trial holes on the land for such purposes; and

(iv) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.

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

(3) The notice required under paragraph (2) must indicate the nature of the survey or investigation that the undertaker intends to carry out.

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

(**a**) 1991 c. 57.
(**b**) 1991 c. 57.
(**c**) 1995 c. 21.

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

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

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

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

Protective works to buildings

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

(2) Protective works may be carried out—

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

(b) after the completion of that part of the authorised development in the vicinity of the building at any time up to the end of the period of 5 years beginning with the day on which that part of the authorised development is first opened for use.

(3) For the purpose of determining how the functions under this article are to be exercised the undertaker may (subject to paragraph (5)) enter and survey any building falling within paragraph (1) and any land within its curtilage.

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

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

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

(5) Before exercising—

(a) a right under paragraph (1) to carry out protective works to a building;

(b) a right under paragraph (3) to enter and survey a building and land within its curtilage;

(c) a right under paragraph (4)(a) to enter a building and land within its curtilage; or

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

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

(6) Where a notice is served under paragraph (5)(a), (5)(c) or (5)(d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 35 (arbitration).

(**a**) 1965 c. 56. Section 13 was amended by sections 62(3) and 139(4) to (9) of, and paragraphs 27 and 28 of Schedule 13 and Part 3 of Schedule 23 to, the Upper Tribunals, Courts and Enforcement Act 2007 (c. 15).

(**b**) 2008 c. 29. Section 125 was amended by section 190 of, and paragraph 17 of Schedule 16 to, the Housing and Planning Act 2016 (c. 22).

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

(8) Where—

(a) protective works are carried out under this article to a building; and

(b) within the period of 5 years beginning with the day on which the part of the authorised development carried out in the vicinity of the building is first opened for use it appears that the protective works are inadequate to protect the building against damage caused by the carrying out or use of that part of the authorised development,

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

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

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

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

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

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

(c) any works the purpose of which is to secure the safe operation of the authorised development or to prevent or minimise the risk of such operation being disrupted.

Agreement with highway authority

28.—(1) A highway authority and the undertaker may enter into an agreement in writing with respect to—

(a) the strengthening or improvement of any highway under the powers conferred by this Order; or

(b) such other works as the parties may agree.

(2) Such an agreement may, without limitation on the scope of paragraph (1)—

(a) provide for the highway authority to carry out any function under this Order which relates to the highway or land in question;

(b) include an agreement between the undertaker and the highway authority specifying a reasonable time for completion of the works; and

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

PART 6

MISCELLANOUS AND GENERAL

Defence to proceedings in respect of statutory nuisance

29.—(1) Where proceedings are brought under section 82(1)(**b**) (summary proceedings by person aggrieved by statutory nuisance) of the Environmental Protection Act 1990 in relation to a

(**a**) Section 152 was amended by S.I. 2009/1307.
(**b**) 1990 c. 43.

nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order is to be made, and no fine may be imposed, under section 82(2)(**a**) of that Act if—

(a) the defendant shows that the nuisance—

(i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction site) of the Control of Pollution Act 1974, or a consent given under section 61(**b**) (prior consent for work on construction site) of that Act; or

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

(b) the defendant shows that the nuisance is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

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

(3) In proceedings for an offence under section 80(4) of the Environmental Protection Act 1990(**d**) (offence of contravening abatement notice) in respect of a statutory nuisance falling within section 79(1)(g) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) or (ga)(**e**) (noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street) of that Act where the offence consists in contravening requirements imposed by virtue of section 80(1)(a) or (b)(**f**) of that Act, it is a defence to show that the nuisance—

(a) is a consequence of the construction, operation, maintenance or use of the authorised development; and

(b) cannot reasonably be avoided.

Deemed marine licence

30. The undertaker is granted a deemed marine licence under Part 4 of the 2009 Act (marine licensing) to carry out the activities specified in Part 1 of Schedule 3 (deemed marine licence), subject to the licence conditions set out in Part 2 of that Schedule.

Trees subject to a tree preservation order

31.—(1) For the purposes only of the authorised development, the undertaker may fell or lop any tree or shrub as identified in the WEMP or cut back roots and undertake such other approved related works in accordance with the WEMP.

(2) In carrying out any activity authorised by paragraph (1), the undertaker must do no unnecessary damage to any tree or shrub.

(3) The duty contained in section 206(1) (replacement of trees) of the 1990 Act is not to apply.

(**a**) Subsection (2) was amended by section 5(2) of the Noise and Statutory Nuisance Act 1993 (c. 40); there are other amendments to this subsection which are not relevant to this Order.
(**b**) 1974 c. 40. Section 61 was amended by section 133(2) of, and Schedule 7 to, the Building Act 1984 (c. 55) and section 162 of, and paragraph 15(3) of Schedule 15 to, the Environmental Protection Act 1990 (c. 43).
(**c**) 1974 c. 40.
(**d**) 1990 c. 43.
(**e**) Section 79(1)(ga) was inserted by section 2(1) and (2)(b) of the Noise and Statutory Nuisance Act 1993.
(**f**) Section 80(1) was amended by section 86 of the Clean Neighbourhoods and Environment Act 2005 (c. 16).

(4) The authority given by paragraph (1) constitutes a deemed consent under the provisions of North East Lincolnshire Council No. 107 (Long Wood, Laporte Road, Stallingborough) Tree Preservation Order 2002.

Application of landlord and tenant law

32.—(1) This article applies to any agreement entered into by the undertaker under article 9 (transfer of benefit of Order, etc.) so far as it relates to the terms on which any land is subject to a lease granted by or under that agreement.

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

(3) No enactment or rule of law to which paragraph (2) applies is to apply in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

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

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

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

Certification of plans and documents etc.

33.—(1) This article applies to any agreement entered into by the undertaker under article 9 (transfer of benefit of Order, etc.) so far as it relates to the terms on which any land is subject to a lease granted by or under that agreement.

(2) Where any plan or document set out in Schedule 7 requires to be amended to reflect the terms of the Secretary of State's decision to make the Order, that plan or document in the form amended to the Secretary of State's satisfaction is the version of the plan and document required to be certified under paragraph (1).

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

Service of notices

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

(a) by post;

(b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or

(c) with the consent of the recipient and subject to paragraphs (5) to (8) by electronic transmission.

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

(3) For the purposes of section 7(**a**) (references to service by post) of the Interpretation Act 1978 as it applies for the purposes of this article, the proper address of any person in relation to the

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

service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

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

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

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

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

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

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

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

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

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

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

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

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

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

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

(b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.

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

(10) In this article—

(a) "electronic transmission" means a communication transmitted—

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

(ii) by other means provided it is in an electronic form;

and in this definition "electronic communications network" has the same meaning as in section 32(1)(**a**) (meaning of electronic communications networks and services) of the Communications Act 2003;

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

(**a**) 2003 c. 21. Section 32(1) was amended by S.I. 2011/1210.

Arbitration

35.—(1) Except where otherwise expressly provided for in this Order and unless otherwise agreed in writing between the parties, any difference under any provision of this Order, unless otherwise provided for, must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the President of the Institution of Civil Engineers.

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

Saving for Trinity House

36. Nothing in this Order prejudices or derogates from any of the rights, duties or privileges of Trinity House.

Provision against danger to navigation

37. In case of damage to, or destruction or decay of, a tidal work or any part of it, the undertaker must as soon as reasonably practicable notify Trinity House, the ABP Statutory Harbour Authority and the Statutory Conservancy and Navigation Authority and must lay down such buoys, exhibit such lights, and take such other steps for preventing danger to navigation as Trinity House, the ABP Statutory Harbour Authority or Statutory Conservancy and Navigation Authority may from time to time direct.

Lights on tidal works during construction

38.—(1) The undertaker must at or near—

(a) a tidal work, including any temporary work; or

(b) any plant, equipment or other obstruction placed in connection with any authorised development, within the area of seaward construction activity in the River Humber,

during the whole time of the construction or extension, every night from sunset to sunrise exhibit such lights, if any, and take such other steps for the prevention of danger to navigation as Trinity House, the ABP Statutory Harbour Authority or Statutory Conservancy and Navigation Authority may from time to time direct.

(2) In this article, "area of seaward construction activity" means the area of the sea within the Order limits.

Permanent light on tidal works

39. After the completion of a tidal work, the undertaker must at the outer extremity of it exhibit every night from sunset to sunrise such lights, if any, and take such other steps for the prevention of danger to navigation as Trinity House, the ABP Statutory Harbour Authority or Statutory Conservancy and Navigation Authority may from time to time direct.

Crown rights

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

(a) belonging to His Majesty in right of the Crown and forming part of the Crown Estate without the consent in writing of the Crown Estate Commissioners;

(b) belonging to His Majesty in right of the Crown and forming part of the Crown Estate without the consent in writing of the government department having the management of that land; or

(c) belonging to a government department or held in trust for His Majesty for the purposes of a government department without the consent in writing of that government department.

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

Protective provisions

41. Schedule 4 (protective provisions) has effect.

Byelaws relating to the authorised development

42.—(1) The Immingham Dock Byelaws 1929 apply in relation to the authorised development and may be enforced by the undertaker accordingly until such time as new byelaws relating to the authorised development are made by the undertaker and come into operation.

(2) In this article "Immingham Dock Byelaws 1929" means the byelaws made by the London and North Eastern Railway Company on the 1st day of January 1929 and confirmed by the Minister of Transport on the 4th day of January 1929.

Signed by authority of the Secretary of State for Transport

Gareth Leigh
Head of Transport and Works Act Orders Unit
Department for Transport

4th October 2024

SCHEDULES

SCHEDULE 1

Articles 2 and 7

AUTHORISED DEVELOPMENT

In the area of North East Lincolnshire Council and the Order limits, a nationally significant infrastructure project as defined by sections 14(1)(j) and 24 of the 2008 Act being a ro-ro facility together with associated development comprising—

Work No. 1 – The construction of a jetty and three berths as shown on sheets 1 and 2 of the works plans, comprising—

(a) an open piled approach jetty with abutments carrying on its surface a roadway, a footway, utilities, lighting and environmental screens, rising from ground level to cross over existing landside infrastructure and then extending from the shore in a north easterly direction;

(b) a single linkspan bridge carrying on its surface a roadway and footway together with lighting and utilities, extending from the approach jetty to the innermost floating pontoon;

(c) two floating pontoons connected by a linkspan, each with lighting, power, cable management system, utilities and a small crew shelter, secured in position by restraint dolphins, each located about a finger pier to accommodate the loading and unloading ramps of berthed ro-ro vessels;

(d) two finger piers of open piled construction each with navigation markers, lighting, shore power infrastructure and connections for berthed vessels and water bunkering facilities—

(i) the northern finger pier to be constructed with berthing faces on both its northern and southern elevations equipped with mooring infrastructure; and

(ii) the southern finger pier to be constructed with a berthing face only on its northern elevation equipped with mooring infrastructure.

Work No. 2 – A dredged berthing pocket as identified on sheets 1 and 2 of the works plans with a depth of up to 9.0 metres below Chart Datum.

Work No. 3 – The construction of vessel impact protection measures as shown on sheet 1 of the works plans formed of—

(a) a single row of tubular piles with a reinforced concrete capping beam, the outer facing elevation of the beam which may be equipped with fendering units and panels; and/or

(b) a piled dolphin structure with a capping slab and fendering units.

Associated development within the meaning of section 115(2) of the 2008 Act—

Work No. 4 – The construction and laying out of the northern ro-ro freight and container storage area as shown on sheets 2 and 3 of the works plans comprising—

(a) a landside ramp and bankseat linking the approach jetty to the northern storage area;

(b) the working of land for port facilities, the removal of materials, the laying of port infrastructure and services together with associated civil works and earth works;

(c) the surfacing of the storage area;

(d) the construction of a substation and a frequency converter station for shore power provision to the berths;

(e) the demolition of existing buildings;

(f) the construction of ancillary buildings;

(g) the construction of parking areas for vehicles, including cars and motorbikes using the ancillary buildings;

(h) the erection of security fencing, gates and lighting; and

(i) installation of maintenance access track.

Work No. 5 – The construction and laying out of the southern and central ro-ro freight storage area as shown on sheets 3 and 4 of the works plans comprising—

(a) the working of land for port facilities, the removal of materials, the laying of port infrastructure and services together with associated civil works and earth works;

(b) the surfacing of the storage area;

(c) the construction of a terminal building, welfare building for HGV drivers, administrative staff and passengers awaiting embarkation and a workshop and fuel station;

(d) the construction of parking areas for vehicles, including cars and motorbikes using the ancillary buildings;

(e) administrative and inspection buildings and infrastructure for the UK Border Force;

(f) entry and exit gates and security huts;

(g) the construction of new level crossings; and

(h) the erection of security fencing, gates and lighting.

Work No. 6 – The construction and laying out of the western ro-ro freight storage area as shown on sheets 4 and 5 of the works plans comprising—

(a) the working of land for port facilities, the removal of materials, the laying of port infrastructure and services together with associated civil works and earth;

(b) the surfacing of the storage area; and

(c) the erection of security fencing, gates and lighting.

Work No. 7 – As shown on sheets 2 and 3 of the works plans namely the construction of a bridge within the port estate to connect the northern storage area with the central storage area crossing

Robinson Road and port infrastructure, together with bridge approaches, including bridge lighting and utilities.

Work No. 8 – As shown on sheets 2 and 4 of the works plans, improvements within the port estate to the junction of Robinson Road and East Dock Road comprising—

(a) the separation of the Exolum Terminal access road and the Robinson Road and East Dock Road junction;

(b) repositioning/straightening of the Robinson Road and East Dock Road junction to improve HGV access to and from East Dock Road; and

(c) associated infrastructure works.

Work No. 9 – The closure to all traffic along the length of East Riverside road between the East Dock Road junction and immediately to the north of the existing access to the parking / laydown / maintenance area for the Habrough Marsh Drain outfall as shown on sheet 2 of the works plans. Traffic to and from the businesses on East Riverside to the west of the East Dock Road junction to be diverted via East Dock Road.

Work No. 10 – As shown on sheets 3 and 4 of the works plans, improvements within the port estate to Gresley Way comprising—

(a) the provision of new a connector road from Robinson Road to Gresley Way for all incoming and outgoing traffic between the terminal and the port's East Gate, including a new level crossing;

(b) the provision of new 'T' junction between Gresley Way and the connector road;

(c) minor road alignment improvements to Gresley Way before the new terminal access;

(d) new access and egress to and from the terminal on to Gresley Way; and

(e) associated infrastructure, improvement works.

Work No. 11 – As shown on sheet 4 of the works plans, improvements and alterations to the entrance/exit to Shed 26 comprising—

(a) provision of new 'T' junction between Gresley Way and the connector road opposite the entrance to Shed 26; and

(b) provision of a new entrance and exit road from Shed 26 to the connector road.

Work No. 12 – As shown on sheet 3 of the works plans, improvements to the East Gate entrance comprising—

(a) the construction of an additional access lane into the port including traffic control and security;

(b) demolition of the existing gate house;

(c) a new gate house;

(d) new security fencing and gates; and

(e) the extension of the footway from East Gate to the Queens Road bus stop.

Work No. 13 – As shown on sheet 3 of the works plans, comprising works to deliver the woodland ecological enhancement works within the administrative boundary of North East Lincolnshire Council and within the Order limits to be carried out in accordance with the WEMP.

Ancillary works

For the purposes of and in connection with any of the works detailed above, the construction, maintenance and operation of such works and further associated development within the Order limits which do not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement, consisting of—

(a) works to upgrade, alter and relocate existing utilities infrastructure and to install additional infrastructure;

(b) an improved and expanded fire water system;

(c) a modified and improved security entrance and internal road layout and installation of emergency traffic management measures;

(d) drainage infrastructure, landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised development;

(e) site preparation works, site clearance (including fencing and demolition of existing structures and buildings);

(f) earthworks (including soil stripping and storage, site levelling);

(g) remediation of contamination;

(h) construction compounds and working sites, storage areas, temporary vehicle parking, ramps and other means of access, construction fencing, perimeter enclosure, security fencing, welfare facilities and other construction-related buildings, lighting, machinery, apparatus, and works; and

(i) electrical upgrades to existing substations, electrical apparatus and cabling to and from existing substations to the new development, connection of apparatus or cabling to the new development, flood refuge platforms, operational lighting, CCTV equipment and such other works, apparatus and conveniences as may be necessary or expedient for the purposes of or in connection with the authorised development.

SCHEDULE 2

Articles 3 and 5

REQUIREMENTS

PART 1

REQUIREMENTS

Interpretation

1. In this Part of this Schedule—

"drainage strategy" means the document of that description annexed to the flood risk assessment as approved by the Board;

"Enhanced Operational Controls" means the controls set out in the document of that description listed in Schedule 7 (plans and documents to be certified) and certified by the Secretary of State as the Enhanced Operational Controls for the purposes of this Order;

"flood risk assessment" means the document of that description in Schedule 7 (plans and documents to be certified) certified by the Secretary of State as the flood risk assessment for the purposes of this Order;

"impact protection measures" means—

(a) part (a) of Work No.3 as defined in Schedule 1 to this Order; or

(b) part (b) of Work No. 3 as defined in Schedule 1 to this Order; or

(c) both parts (a) and (b) of Work No. 3 as defined in Schedule 1 to this Order;

"IOT" means the Immingham Oil Terminal;

"IOT Operators" means Associated Petroleum Terminals (Immingham) Ltd and Humber Oil Terminal Trustees Ltd, with "Associated Petroleum Terminals (Immingham) Ltd" meaning Associated Petroleum Terminals (Immingham) Limited, company number 00564394 registered at Queens Road, Immingham, Grimsby, N E Lincolnshire, DN40 2PN, and any successor in title and "Humber Oil Terminal Trustees Ltd" meaning Humber Oil Terminal Trustees Limited, company number 00874993 registered at Queens Road, Immingham, Grimsby, N E Lincolnshire, DN40 2PN, and any successor in title;

"National Highways" means National Highways Limited (company number 09346363) whose registered office is Bridge House, 1 Walnut Tree Close, Guildford, Surrey GU1 4LZ or any such successor or replacement body that may from time to time be primarily responsible for the functions, duties and responsibilities currently exercised by that statutory body;

"operational freight management plan" means the operational freight management plan included in Schedule 7 (plans and documents to be certified) and certified by the Secretary of State for the purposes of this Order;

"outline onshore construction environmental management plan" means the document of that description in Schedule 7 (plans and documents to be certified) and certified by the Secretary of State as the outline onshore construction environmental management plan for the purposes of this Order; and

"travel plan" means the travel plan included in Schedule 7 (plans and documents to be certified) and certified by the Secretary of State for the purposes of this Order.

Time limit for commencement of the authorised development

2. The authorised development must commence within 5 years of the date on which this Order comes into force.

Amendments to approved details

3. With respect to any requirement which requires the authorised development to be carried out in accordance with the details of schemes or plans approved under this Schedule the approved details or schemes or plans are taken to include any amendments that may subsequently be approved in writing by the approving body.

Construction hours – onshore works

4.—(1) Subject to sub-paragraph (2), no construction work for Work Nos. 4 to 13 or any ancillary works associated with them may take place on bank holidays or outside the hours of 07:00 to 19:00 Mondays to Fridays and 07:00 to 13:00 on Saturdays.

(2) Construction work for Work Nos. 4 to 13 may take place outside the hours mentioned in sub-paragraph (1) provided such works—

(a) do not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement; and

(b) do not exceed maximum permitted levels of noise at each agreed monitoring location to be determined with reference to the ABC Assessment Method for the different working time periods, as set out in BS 5228-1:2009+A1:2014, unless otherwise agreed in writing with the Council for specific construction activities; and

(c) are—

(i) works that cannot be interrupted; or

(ii) emergency works; or

(iii) works that are carried out with the prior approval of the Council.

(3) Any emergency works carried out under sub-paragraph (2)(c)(ii) must be notified to the Council within 72 hours of their commencement.

(4) In this requirement, "bank holiday" means a bank holiday in England and Wales under section 1 of the Banking and Financial Dealings Act 1971(**a**).

(**a**) 1971 c. 80.

Travel plan

5.—(1) The operation of the authorised development must not be commenced until a final version of the travel plan has been submitted to and approved in writing by the Council.

(2) The authorised development must be carried out in accordance with the travel plan approved pursuant to sub-paragraph (1).

Piling and marine construction works restrictions

6.—(1) Piling and marine construction works may be undertaken 24 hours a day on Mondays to Sundays provided that such works are undertaken in accordance with paragraph 12 of Part 2 of Schedule 3 (deemed marine licence).

(2) Any emergency works carried out in accordance with paragraph 12 of Part 2 of Schedule 3 must be notified to the Council within 72 hours of their commencement.

(3) Works for the capital dredge, which has the same meaning as in paragraph 1(1)(b) of Part 1 of Schedule 3, may be undertaken without restriction as to time or day.

External appearance and height of the authorised development

7.—(1) Construction of—

(a) the terminal building and the welfare building for HGV drivers and passengers awaiting embarkation and related ancillary buildings as identified as part of Work No. 5(c);

(b) the proposed administrative and inspection buildings for UK Border Force as identified as Work No. 5(e); and

(c) the proposed ancillary buildings as identified as part of Work No. 4(f),

must not be commenced until the details of the location, heights relative to the proposed finished ground levels, and external materials to be used in the construction of all new permanent buildings and structures, including the colour, materials and finishes, have been submitted to and approved in writing by the Council.

(2) The authorised development must be implemented in accordance with the details approved by the Council.

(3) The authorised development must be carried out in accordance with the general arrangement plans.

(4) The authorised development will not be in accordance with the general arrangement plans if any departure from the general arrangement plans would give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.

Onshore construction environmental management plan

8.—(1) No part of the authorised development may be commenced until an onshore construction environmental management plan has been submitted to and approved in writing by the Council and National Highways (on matters related to its functions), following consultation with the MMO, Natural England, the Environment Agency, Network Rail, Royal Mail and the Board on matters related to their respective functions.

(2) The onshore construction environmental management plan submitted and approved under sub-paragraph (1) must be in accordance with the outline onshore construction environmental management plan, including the outline plans and skeleton management plans identified and included in the outline onshore construction environmental management plan.

(3) The construction of the authorised development must be undertaken in accordance with the approved onshore construction environmental management plan.

Surface water drainage

9.—(1) The authorised development, save for the permitted preliminary works, must not be commenced until a final version of the drainage strategy has been submitted to and approved in writing by the Board. The onshore parts of the authorised development shall be implemented in accordance with the approved drainage strategy.

(2) The final version of the drainage strategy submitted and approved under sub-paragraph (1) must be in accordance with the drainage strategy.

(3) In this requirement, "the permitted preliminary works" means—

(a) works consisting of the removal of existing structures and site clearance works; and

(b) works consisting of any part of the off-site mitigation works, the installation of wheel cleaning facilities, the installation and diversion of utility services, surveys and the provision of temporary contractors' facilities.

Noise insulation

10.—(1) Prior to the commencement of the authorised development the undertaker must offer the owner and occupier of each of the residential buildings along Queens Road, Immingham a package of noise insulation mitigation to reduce internal noise levels in sensitive rooms. The noise insulation must be designed to reduce the noise level by at least the maximum predicted increase in road traffic noise (7.4 decibels) due to the operation of the authorised development, taking into consideration the performance of the existing glazing and ventilation.

(2) If the package of mitigation, or such alternative package as may reasonably be requested by the owner and occupier, offered in accordance with sub-paragraph (1) is agreed in writing by the owner and occupier of the residential building within the period specified in the offer, which must not be less than 30 days starting with the day after the offer has been received by the owner and occupier, then the package of mitigation must be implemented at the undertaker's cost prior to the commencement of the authorised development.

(3) Any dispute arising between the undertaker and the owner and occupier of a residential building along Queens Road, Immingham under this requirement is to be determined by arbitration as provided in article 35 (arbitration).

Woodland management

11. The operation of the authorised development must not be commenced until a final version of the WEMP has been submitted to and approved in writing by the Council. The authorised development must be implemented in accordance with the approved WEMP.

East Gate Improvements (Work No. 12)

12. The operation of the authorised development must not be commenced until—

(a) the undertaker has entered into such agreements with the Council as may be necessary in connection with Work No. 12 ; and

(b) the agreed works constituting Work No. 12 have been completed and are available for use.

Operational freight management plan

13.—(1) The operation of the authorised development must not be commenced until a final version of the operational freight management plan has been submitted to and approved in writing by the Council and National Highways (on matters related to its functions).

(2) The authorised development must be carried out in accordance with the operational freight management plan approved pursuant to sub-paragraph (1).

Lighting plan

14.—(1) No part of the authorised development may be brought into operation until a written scheme of the proposed operational lighting to be provided for that part of the authorised development has been submitted to and approved in writing by the Council and Network Rail.

(2) The written scheme submitted under sub-paragraph (1) must be in general accordance with the lighting plan.

(3) The authorised development must be operated in accordance with the scheme approved under sub-paragraph (1).

Flood risk assessment

15. The authorised development must be constructed and operated in accordance with the flood risk assessment.

Contaminated land

16.—(1) No part of Work Nos. 4 to 13 inclusive and any ancillary works associated with those onshore works numbers shall be commenced until a written remediation strategy applicable to the relevant part of Work Nos. 4 to 13 inclusive and any ancillary works associated with those onshore works numbers, dealing with any contamination of that land, including groundwater and ground gas, within the Order limits which is likely to cause significant harm to persons or pollution of controlled waters or the environment has, after consultation with the Environment Agency, been submitted to and approved in writing by the Council.

(2) The remediation strategy submitted for approval must include an investigation and assessment report, prepared by a suitably qualified person, to identify the extent of any contamination and the remedial measures to be taken to render the land fit for its intended purpose, together with a management plan which sets out long-term measures with respect to any contaminants remaining on the site. The remediation strategy submitted for approval must also include a procedure for handling any unexpected contamination encountered during the undertaking of the construction works.

(3) Any remediation must be carried out in accordance with the approved remediation strategy.

Materials Management Plan

17.—(1) A written materials management plan in compliance with the provisions of the CL:AIRE DoW CoP must be produced and submitted to a Qualified Person for approval and issue of a declaration (made under the CL:AIRE DoW CoP), such declaration to be approved by CL:AIRE and submitted to the Environment Agency and the Council for its records, before any works to which the materials management plan relates commence.

(2) Any works to which the material management plan relates must be undertaken in accordance with the materials management plan as approved pursuant to sub-paragraph (1).

(3) In this requirement—

(a) "CL:AIRE" means the registered charity (No. 1075611) and an environmental body registered with ENTRUST (Entrust No. 119820) also incorporated as a company, limited by guarantee and registered in England and Wales (reg no. 3740059) which provides technical secretariat services for industry wide programmes and is responsible for the registration of Qualified Persons able to issue declarations under the DoW CoP;

(b) "the DoW CoP" means the CL:AIRE Definition of Waste: Development Industry Code of Practice; and

(c) "Qualified Person" means a person appearing on the register of Qualified Persons for the CL:AIRE Definition of Waste: Development Industry Code of Practice.

Impact Protection Measures for the IOT trunkway

18.—(1) In the event that the Statutory Conservancy and Navigation Authority or the dock master determine that the impact protection measures comprising Work No. 3(a) are required, upon receiving notification of that decision from the Statutory Conservancy and Navigation Authority or the dock master, the undertaker must construct the impact protection measures.

(2) Upon receiving notification of the Statutory Conservancy and Navigation Authority's or dock master's determination referred to in sub-paragraph (1):

(a) the undertaker must within 10 business days, notify the IOT Operators and the MMO of that determination; and

(b) within 30 business days, notify the IOT Operators and the MMO as to the steps it intends to take as a result of the Statutory Conservancy and Navigation Authority's or dock master's notification.

(3) The construction of Work No. 3(a) must not be commenced until the undertaker has consulted the Statutory Conservancy and Navigation Authority, the dock master, the IOT Operators and the MMO as to the detailed design of Work No. 3(a) and has had regard to any consultative representations received by the undertaker.

(4) No works for the construction of Work No. 3(a) may be commenced until the undertaker has obtained the written consent of the Statutory Conservancy and Navigation Authority to construct Work No. 3(a).

(5) The detailed design referred to in sub-paragraph (3) must be:

(a) within the limits of deviation shown on the relevant plans of the works plans;

(b) in general accordance with the detail shown on the relevant engineering, sections, drawings and plans; and

(c) in general accordance with the detail shown on the relevant general arrangement plans.

Impact Protection Measures for the IOT finger pier

19.—(1) Prior to the commencement of the commercial operation of Berth 1, using the berth numbering adopted on General Arrangements Plan B2429400-JAC-00-ZZ-DR-ZZ-0202 Revision P05, the undertaker must—

(a) notify the Statutory Conservancy and Navigation Authority, the dock master, the MMO and IOT Operators of its intention to install the impact protection measures comprising Work No. 3(b);

(b) agree a programme of works with the parties identified in sub-paragraph (a) above; and

(c) install the impact protection measures detailed as Work No. 3(b).

Amending the Port of Immingham Marine Operations Manual

20.—(1) The undertaker must not commence marine commercial operations until the dock master has amended the Port of Immingham Marine Operations Manual (the "Manual") to incorporate the Enhanced Operational Controls prescribing operating procedures for arrival at and departure from the authorised development.

(2) As soon as reasonably practicable after the amendment mentioned in paragraph (1), the dock master must—

(a) notify the IOT Operators of its amendments to the Manual insofar as they relate to the operation of the authorised development; and

(b) publish the amended navigational controls on the Port of Immingham webpage.

(3) The undertaker must operate the authorised development only in accordance with the Manual referred to in sub–paragraph (1) as may be amended and re-published from time to time.

PART 2

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

Interpretation

21. In this Part of this Schedule, "discharging authority" means any body responsible for giving any consent, agreement or approval required by a requirement included in Part 1 of this Schedule, or for giving any consent, agreement or approval further to any document referred to in any such requirement.

Applications made under requirements

22.—(1) Subject to sub-paragraph (3), where an application has been made to the discharging authority for any consent, agreement or approval required by a requirement included in this Order, or for any consent, agreement or approval further to any document referred to in any such requirement, the discharging authority must give notice to the undertaker of its decision on the application within a period of 8 weeks beginning with—

(a) the day immediately following that on which the application is received by the discharging authority; or

(b) where further information is requested under paragraph 23, the day immediately following that on which the further information has been supplied by the undertaker,

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

(2) In determining any application made to the discharging authority for any consent, agreement or approval required by a requirement contained in Part 1 of this Schedule, the discharging authority may—

(a) give or refuse its consent, agreement or approval; or

(b) give its consent, agreement or approval subject to reasonable conditions,

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

(3) In the event that the discharging authority does not determine an application in relation to any of Work Nos. 4 to 13 inclusive and any ancillary works associated with those onshore works within the period set out in sub-paragraph (1), the discharging authority is deemed to have granted all parts of the application (without any condition or qualification) at the end of that period unless otherwise agreed in writing.

(4) An application under sub-paragraph (3) must include a statement informing the discharging authority—

(a) of the period mentioned in paragraph (1); and

(b) that if they do not respond before the end of that period, consent will be deemed to have been granted.

Further information regarding requirements

23.—(1) In relation to any application referred to in paragraph 22, the discharging authority may request such further information from the undertaker as it considers necessary to enable it to consider the application.

(2) If the discharging authority considers that further information is necessary, the discharging authority must, within 24 business days of receipt of the application, notify the undertaker in writing specifying the further information required or must do so within any longer period as may be agreed in writing between the undertaker and the discharging authority.

(3) If the discharging authority does not give the notification within the period specified in subparagraph (2) it is deemed to have sufficient information to consider the application and is not entitled to request further information without the prior agreement of the undertaker.

Appeals

24.—(1) The undertaker may appeal to the Secretary of State in the event that—

(a) the discharging authority refuses an application for any consent, agreement or approval required by—

(i) a requirement in Part 1 of this Schedule; or

(ii) a document referred to in any requirement contained in Part 1 of this Schedule,

or grants it subject to conditions to which the undertaker objects;

(b) on receipt of a request for further information pursuant to paragraph 23 of this Part of this Schedule, the undertaker considers that either the whole or part of the specified information requested by the discharging authority is not necessary for consideration of the application; or

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

(2) The appeal process is as follows—

(a) any appeal by the undertaker must be made within 42 days of the date of the notice of the decision or determination, or (where no determination has been made) the expiry of the time period set out in paragraph 22(1), giving rise to the appeal referred to in sub-paragraph (1);

(b) the undertaker must submit the appeal documentation to the Secretary of State and must on the same day provide copies of the appeal documentation to the discharging authority;

(c) as soon as is practicable but not later than 21 days after receiving the appeal documentation, the Secretary of State must appoint a person to consider the appeal ("the adjudicator") and must notify the appeal parties of the identity of the adjudicator and the address to which all correspondence for the attention of the adjudicator must be sent;

(d) the appointed adjudicator must specify a start date no later than 21 days following the appointment subject to any extension as may be agreed by the parties;

(e) the discharging authority must submit their written representations together with any other representations to the adjudicator in respect of the appeal within 10 business days of the start date specified by the adjudicator and must ensure that copies of their written representations and any other representations as sent to the adjudicator are sent to the undertaker on the day on which they are submitted to the adjudicator;

(f) the appeal parties must make any counter-submissions to the adjudicator within 10 business days of receipt of written representations pursuant to sub-paragraph (e) above; and

(g) the adjudicator must make a decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable but no later than 21 days after the end of the 10 business day period for counter-submissions under sub-paragraph (f).

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

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

(5) Any further information required pursuant to sub-paragraph (4) must be provided by the party from whom the information is sought to the adjudicator and to the other appeal parties by the date specified by the adjudicator. The adjudicator must notify the appeal parties of the revised timetable for the appeal on or before that day. The revised timetable for the appeal must require submission of written representations to the adjudicator within 10 business days of the date

specified by the adjudicator but must otherwise be in accordance with the process and time limits set out in sub-paragraphs (2)(c)-(g).

(6) On an appeal under this paragraph, the adjudicator may—

(a) allow or dismiss the appeal; or

(b) reverse or vary any part of the decision of the discharging authority (whether the appeal related to that of it or not),

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

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

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

(9) The decision of the adjudicator on an appeal is final and binding on the parties, and a court may entertain proceedings for questioning the decision only if the proceedings are brought by a claim for a judicial review.

(10) If an approval is given by the adjudicator pursuant to this Part of this Schedule, it is deemed to be an approval for the purpose of Part 1 of this Schedule as if it had been given by the discharging authority.

(11) Save where a direction is given pursuant to sub-paragraph (12) requiring the costs of the adjudicator to be paid by the discharging authority, the reasonable costs of the adjudicator are to be met by the undertaker.

(12) On application by the discharging authority or the undertaker, the adjudicator may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it is to be made, the adjudicator must have regard to relevant guidance on the Planning Practice Guidance website or any official circular or guidance which may replace it.

Anticipatory steps towards compliance with any requirement

25. If before this Order came into force the undertaker or any other person took any steps that were intended to be steps towards compliance with any provision of Part 1 of this Schedule, those steps may be taken into account for the purpose of determining compliance with that provision if they would have been valid steps for that purpose had they been taken after this Order came into force.

SCHEDULE 3

Articles 2 and 30

DEEMED MARINE LICENCE

PART 1

GENERAL

Interpretation

1.—(1) In this Schedule—

"the 2008 Act" means the Planning Act 2008;

"the 2009 Act" means the Marine and Coastal Access Act;

"2021 sediment sampling plan" means—

(a) the plan approved by the MMO on 24 September 2021, which details—

(i) a detailed dredging methodology;

(ii) dredge locations;

(iii) dredge amounts (total and annual, if applicable);

(iv) dredge depths;

(v) duration of dredging activities;

(vi) whether the dredge is a capital dredging activity or a maintenance dredging activity; and

(vii) specific gravity of the material or material type; and

(b) any further sediment sampling analyses which may be approved by the MMO in accordance with condition 18(2) prior to the expiry of the 2021 sediment sampling plan;

"alluvial materials" means dredged unconsolidated material of alluvial origin;

"the authorised development" means the construction, operation and maintenance of a Roll on Roll off facility on the River Humber as described in Schedule 1 to this Order and has the meaning given in paragraph 3(2);

"business day" means a day other than a Saturday or Sunday, Good Friday, Christmas Day or a bank holiday in England and Wales under section 1 of the Banking and Financial Dealings Act 1971;

"business hours" means the period from 09:00 until 17:00 on any business day;

"capital dredge" means the dredging to a depth not previously dredged, or to a depth not dredged within the last 10 years and is generally undertaken to create or deepen navigational channels, berths or to remove material deemed unsuitable for the foundation of a construction project and "capital dredging" shall be construed accordingly;

"Chart Datum" means 3.9 m below ordinance datum (Newlyn), corresponding with a depth of 7.6m of the outer sill of the Port of Immingham;

"cold weather construction restriction strategy" means the strategy of that description referred to in condition 8 of Part 2 of this Schedule 3;

"commence" means beginning to carry out any part of a licensed activity and "commenced" and "commencement" are to be construed accordingly;

"condition" means a condition in Part 2 and Part 3 of this licence and references in this licence to numbered conditions are to the conditions with those numbers in Part 2;

"the environmental statement" means the document of that description certified under article 33 (certification of plans and documents etc.) of the Order, certified by the Secretary of State as the environmental statement for the purposes of the Order;

"existing marine licence" means licence L/2014/00429 or any subsequent equivalent successor licence as may be granted that permits the disposal of dredged arising from the Port of Immingham;

"future sediment sampling plan" means—

(a) any further sediment sampling plan approved by the MMO in accordance with condition 18(2) which details—

(i) a detailed dredging methodology;

(ii) dredge locations;

(iii) dredge amounts (total and annual, if applicable);

(iv) dredge depths;

(v) duration of dredging activities;

(vi) whether the dredge is a capital dredging activity or a maintenance dredging activity; and

(vii) specific gravity of the material or material type;

"glacial clay" means consolidated dredged materials laid down during the last glaciation;

"high water" means daily high tides in every lunar day;

"HU056" means the area bounded by co-ordinates (53°39.3000'N, 00°10.4898'W), (53°39.0499'N, 00°10.4700'W), (53°38.8201'N, 00°09.4398'W), (53°39.3000'N, 00°10.4898'W);

"HU060" means the area bounded by co-ordinates—

(53°38.7439'N, 00°10.4434'W), (53°38.7499'N, 00°10.4536'W), (53°38.7575'N, 00°10.4677'W), (53°38.7648'N, 00°10.4823'W), (53°38.7718'N, 00°10.4974'W), (53°38.7784'N, 00°10.5128'W), (53°38.7847'N, 00°10.5287'W), (53°38.7906'N, 00°10.5450'W), (53°38.7962'N, 00°10.5617'W), (53°38.8013'N, 00°10.5787'W), (53°38.8061'N, 00°10.5960'W), (53°38.8105'N, 00°10.6136'W), (53°38.8145'N, 00°10.6315'W), (53°38.8181'N, 00°10.6496'W), (53°38.8213'N, 00°10.6679'W), (53°38.8240'N, 00°10.6864'W), (53°38.8264'N, 00°10.7051'W), (53°38.8283'N, 00°10.7239'W), (53°38.8298'N, 00°10.7428'W), (53°38.8309'N, 00°10.7618'W), (53°38.8315'N, 00°10.7809'W), (53°38.8317'N, 00°10.8000'W), (53°38.8315'N, 00°10.8191'W), (53°38.8309'N, 00°10.8382'W), (53°38.8298'N, 00°10.8572'W), (53°38.8283'N, 00°10.8761'W), (53°38.8264'N, 00°10.8949'W), (53°38.8240'N, 00°10.9136'W), (53°38.8213'N, 00°10.9321'W), (53°38.8181'N, 00°10.9504'W), (53°38.8145'N, 00°10.9685'W), (53°38.8105'N, 00°10.9864'W), (53°38.8061'N, 00°11.0040'W), (53°38.8013'N, 00°11.0213'W), (53°38.7962'N, 00°11.0383'W), (53°38.7906'N, 00°11.0550'W), (53°38.7847'N, 00°11.0713'W), (53°38.7784'N, 00°11.0872'W), (53°38.7718'N, 00°11.1026'W), (53°38.7648'N, 00°11.1177'W), (53°38.7575'N, 00°11.1323'W), (53°38.7499'N, 00°11.1464'W), (53°38.7439'N, 00°11.1567'W), (53°38.7438'N, 00°11.1564'W), (53°38.5320'N, 00°10.8000'W), (53°38.7438'N, 00°10.4436'W), (53°38.7439'N, 00°10.4434'W)

"intertidal mudflat" means exposed mud between mean high water springs and mean low water springs;

"licensable activity" means an activity licensable under section 66 of the 2009 Act;

"licensed activity" means any activity authorised in paragraph 3 of this Schedule;

"local planning authority" means North East Lincolnshire Council;

"maintenance dredge" means a dredge undertaken to keep channels, berths and other areas at their designed depths, involving removing recently accumulated sediments such as mud, sand and gravel to a level that is not lower than it has been at any time during the past 10 years;

"marine piles" means piles that will be in a free water condition during construction;

"marine written scheme of investigation" means the marine archaeological written scheme of investigation contained in appendix 15.3 to the environmental statement;

"MCMS" means the Marine Case Management System provided by the MMO;

"mean high water springs" means the average of high water heights occurring at the time of spring tides;

"mean low water springs" means the average of low water heights occurring at the time of spring tides;

"the MMO" means the Marine Management Organisation;

"named vessel" means a vessel whose name and type has been notified to the MMO in writing;

"Natural England" means the adviser to the Government for the natural environment in England;

"Notice to Mariners" means any notice to mariners which may be issued by the Admiralty, Trinity House, the Statutory Conservancy and Navigation Authority, government departments or harbour and pilotage authorities advising mariners of important matters affecting navigational safety;

"outline offshore construction environmental management plan" means the document of that description certified under article 33 (certification of plans and documents etc.) of the Order, certified by the Secretary of State as the outline offshore construction environmental management plan for the purposes of the Order;

"the Order" means the Associated British Ports (Immingham Eastern Ro-Ro Terminal) Order 20[ ]; and

"percussive piles" means driven piles but excludes the handling, placing and vibro-driving of piles;

"percussive piling" for the purposes of this licence means the driving of piles by percussive means but does not include the handling, placing or vibro-piling of piles;

"the Port of Immingham" means the statutory port estate including the Port of Immingham statutory harbour authority area;

"the River Humber" means the tidal estuary from its mouth at the Spurn Peninsula to its confluence with the rivers Ouse and Trent;

"sea bed" means the ground under the sea;

"undertaker" means Associated British Ports ("ABP") company number ZC000195 registered at 25 Bedford Street, London, WC2E 9ES and any agent, contractor or sub-contractor acting on its behalf; and

"vessel" means every description of vessel, however propelled or moved and includes a non-displacement craft, a personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel, a hovercraft or any other amphibious vehicle and any other thing constructed or adapted for movement through, in, on or over water and which is at the time in, on or over water.

(2) Unless otherwise specified, all geographical co-ordinates given in this Schedule are in latitude and longitude degrees and minutes to four decimal places.

(3) Tonnages of dredged materials are expressed in wet tonnes.

Contacts

2.—(1) Unless otherwise advised in writing by the MMO, the address for postal correspondence with the MMO for the purposes of this licence is the Marine Management Organisation, Marine Licensing Team, Lancaster House, Hampshire Court, Newcastle upon Tyne NE4 7YH, telephone 0300 123 1032 and, unless otherwise advised in writing, where contact to the local MMO office (local office) is required, the following contact details must be used: Marine Management Organisation, The MMO District Office – Crosskill House, Mill Lane, Beverley, HU17 9JB, telephone 0208 720 1344, Email – beverley@marinemanagement.org.uk.

(2) Unless otherwise advised in writing by the MMO, the address for electronic communication with the MMO for the purposes of this licence is marine.consents@marinemanagement.org.uk or where contact to the local MMO office is required is beverley@marinemanagement.org.uk.

(3) Unless otherwise advised in writing by the MMO, MCMS must be used for all licence returns or applications to vary this licence. The MCMS address is: https://marinelicensing.marinemanagement.org.uk/mmofox5/fox/live/MMO_LOGIN/login.

(4) Unless otherwise stated in writing by the MMO, all notifications required by this licence must be sent by the undertaker to the MMO using MCMS.

Licensed marine activities

3.—(1) Subject to the licence conditions in Part 2, this licence authorises the undertaker to carry out licensable marine activities under section 66(1) (licensable marine activities) of the 2009 Act which—

(a) form part of, or are related to, the authorised development; and

(b) are not exempt from requiring a marine licence by virtue of any provision made under section 74 (exemption specified by order) of the 2009 Act.

(2) For the purposes of this licence "the authorised development" means the construction operation and maintenance of a Roll on Roll off facility on the River Humber—

(a) comprising—

(i) an open piled approach jetty with abutments carrying on its surface a roadway, a footway, utilities, lighting and environmental screens, rising from ground level to cross over existing landside infrastructure and then extending from the shore in a north easterly direction (Work No.1);

(ii) a single linkspan bridge carrying on its surface a roadway and footway together with lighting and utilities, extending from the approach jetty to the innermost floating pontoon (Work No.1);

(iii) two floating pontoons connected by a linkspan, each with lighting, power, cable management system, utilities and a small crew shelter, secured in position by restraint dolphins, each located about a finger pier to accommodate the loading and unloading ramps of berthed ro-ro vessels (Work No.1);

(iv) two finger piers of open piled construction each with navigation markers, lighting, shore power infrastructure and connections for berthed vessels and water bunkering facilities—

(aa) the northern finger pier to be constructed with berthing faces on both its northern and southern elevations equipped with mooring infrastructure (Work No.1);

(bb) the southern finger pier to be constructed with a berthing face only on its northern elevation equipped with mooring infrastructure (Work No.1);

(v) piling works and construction operations within the River Humber (Work No.1);

(vi) related capital dredging works within the River Humber for the above and the disposal of any arisings from such dredgings (Work No.2);

(vii) the construction of—

(aa) a vessel impact protection barrier formed of a single row of tubular piles with a reinforced concrete capping beam, the outer facing elevation of the beam may be equipped with fendering units and panels (Work No.3(a)); and

(bb) a piled dolphin structure with a capping slab, with piles installed at each corner of the dolphin structure equipped with donut roller fenders (Work No.3(b)); and

(viii) the continued use of two existing surface water outfalls;

(b) activities which will include works to—

(i) clean, refurbish, re-construct, strengthen or maintain any work or structure; and

(ii) place and maintain works and structures including jetty furniture, fenders and impact protection; and

(c) such other incidental works as may be necessary or convenient for the purposes of, or in connection with or in consequence of, the construction, maintenance, operation or use of the authorised development, including works for the accommodation or convenience of vessels (including but not limited to berthing and mooring facilities, ladders, buoys, bollards, dolphins and fenders) and lighting.

Licence to dredge and deposit

4.—(1) Capital dredge – Subject to paragraph 5, the undertaker is permitted to undertake a capital dredge to a depth of -9 metres Chart Datum (with an allowance for the tolerances of the dredging equipment) of the berth pocket the grid coordinates for which are specified in paragraph 5(2) .

(2) The materials must be dredged in the approximate quantities and deposited at the locations according to the following table—

Material	*Volume (m3)*	*Specific gravity*	*Maximum tonnage (wet tonnes)*	*Disposal site*
Alluvial materials	150,000	1.35	202,500	HU060
Glacial clay	40,000	2.26	90,400	HU056

(3) Maintenance dredge – the undertaker is permitted to carry out maintenance dredging within the statutory harbour authority area of the Port of Immingham for the purposes of maintaining the authorised development under section 75 of the 2009 Act in accordance with the existing marine licence.

(4) Deposit of dredged arisings—

(a) The capital dredge will create arisings of glacial clay and alluvial materials which must be deposited at deposit grounds HU056 and HU060;

(b) The maintenance dredge will create arisings of alluvial materials which must be deposited at the licenced deposit ground HU060 in accordance with the existing marine licence.

Details of licensed marine activities

5.—(1) The grid coordinates within the UK Marine Area within which the undertaker may carry out a licensed activity (save for the capital dredge and disposal) are specified below—

Point reference	*Latitude*	*Longitude*
1	53.62711082	-0.179454009
2	53.62748148	-0.179008789
3	53.63004695	-0.178898384
4	53.63198621	-0.176987837
5	53.62889877	-0.168536653
6	53.62874293	-0.168641588
7	53.62841556	-0.167318049
8	53.62814789	-0.166235931
9	53.62796289	-0.166266125
10	53.62773154	-0.166760098
11	53.62716945	-0.168370825
12	53.62528877	-0.1723239
13	53.62449396	-0.17508587
14	53.62512213	-0.1750807
15	53.62520845	-0.175123251
16	53.625269	-0.175226494

(2) No capital dredging may be carried out by the undertaker other than within the area within the grid coordinates for the area of the River Humber specified below and more particularly identified as the berthing pocket under Work No. 2 on sheets 1 and 2 of the works plans—

Point of reference	*Latitude*	*Longitude*
17	53.626229	-0.17082
18	53.629182	-0.178936
3	53.630047	-0.178898
19	53.631567	-0.1774
20	53.628371	-0.168614

PART 2

CONDITIONS APPLYING TO ALL LICENSABLE ACTIVITIES

Before Licensed Activities

Notifications regarding licensed activities

6.—(1) The undertaker must inform the MMO—

(a) at least 5 business days prior to the commencement of the first licensed activity; and

(b) within 5 business days following the completion of the final licensed activity,

of the commencement or the completion (as applicable).

(2) The undertaker must provide the following information to the MMO—

(a) the name and function in writing of any agent, contractor or sub-contractor that will carry on any licensed activity on behalf of the undertaker; and

(b) such notification must be received by the MMO in writing not less than 24 hours before the commencement of the licensed activity.

(3) The undertaker must ensure that a copy of this licence and any subsequent revisions or amendments has been provided to, read and understood by any agents, contractors, and sub-contractors that will be carrying out any licensed activity on behalf of the undertaker.

(4) The undertaker must keep a copy of this licence and any subsequent revisions or amendments available for inspection at its registered address and any site office location at or adjacent to a construction site.

(5) Any changes to details supplied under sub-paragraph (2) must be notified to the MMO in writing no less than 24 hours prior to the agent, contractor or named vessel engaging in the licensed activity in question.

(6) Only those persons notified to the MMO in accordance with this condition are permitted to carry out a licensed activity.

(7) Copies of this licence must be available for inspection at the following locations—

(a) the undertaker's office at the Port of Immingham; and

(b) during the construction of the authorised development only, at any site office which is adjacent to or near the River Humber and which has been provided for the purposes of the construction of the authorised development.

(8) The undertaker must request that the masters responsible for the named vessels that will be carrying out any licensed activity on behalf of the undertaker as notified to the MMO under condition 6(5) make a copy of this licence available for inspection on board such named vessels during the carrying out of any licensed activity.

Agents / contractors / sub-contractors

7.—(1) The undertaker must notify the MMO in writing of any agents, contractors or sub-contractors that will carry on any licensed activity listed in paragraph 3 of this licence on behalf of the undertaker. Such notification must be received by the MMO no less than 24 hours before the commencement of the licensed activity.

(2) The undertaker must ensure that a copy of this licence and any subsequent revisions or amendments has been provided to, read and understood by any agents, contractors or sub-contractors that will carry on any licensed activity listed in section 3 of this licence on behalf of the undertaker.

Cold weather construction restriction strategy

8. No construction operations for any licensed activity are to commence until a cold weather construction restriction strategy is submitted to and agreed by the MMO in consultation with Natural England. The strategy shall include the following—

(a) a provision that no construction operations (other than to finish driving any pile that is in the process of being driven at the point that the cold weather restriction comes into force) shall take place following 7 consecutive days of zero or sub zero temperatures (where the temperature does not exceed zero degrees centigrade for more than six hours in any day) or any other formula as may be agreed with the MMO to define short periods of thaw;

(b) the establishment of three temperature monitoring points within the Humber Estuary; and

(c) a provision that, if the piling restriction specified in sub-paragraph (a) above comes into effect as a consequence of cold weather conditions, it will be reviewed as follows—

(i) after 24 hours of above freezing temperatures the restriction will be lifted on a temporary basis provided that the weather forecast relevant for the area including the Port of Immingham, (as agreed with the MMO) indicates that freezing conditions will not return within five days; and

(ii) after a further 5 clear days of above-freezing temperatures, the restrictions will be lifted entirely.

Marine Noise Registry

9.—(1) Only when impact driven or part-driven pile foundations are proposed to be used as part of the foundation installation the undertaker must provide the following information to the Marine Noise Registry (MNR)—

(a) prior to the commencement of the licensed activities, information on the expected location, start and end dates of impact pile driving to satisfy the Marine Noise Registry's Forward Look requirements; and

(b) within 12 weeks of completion of impact pile driving, information on the exact locations and specific dates of impact pile driving to satisfy the Marine Noise Registry's Close Out requirements.

(2) The undertaker must notify the MMO of the successful submission of Forward Look requirements.

Marine written scheme of archaeological investigation

10.—(1) A final version of the marine written scheme of investigation must be submitted to and approved by the MMO in writing before any works to which the final version of the marine written scheme of investigation relate commence.

(2) The licensed activities must be carried out in accordance with the marine written scheme of investigation approved pursuant to sub-paragraph (1).

During Licensed Activities

Offshore Construction Environmental Management Plan

11.—(1) No licensed activities shall be commenced until an offshore construction environmental management plan in relation to those activities has been submitted to and approved by the MMO following consultation with the local planning authority, the Environment Agency and Natural England on matters related to their respective functions.

(2) The offshore construction environmental management plan submitted and approved under sub-paragraph (1) must be in accordance with the outline offshore construction environmental management plan, including the outline plans and skeleton management plans included in the outline offshore construction environmental management plan.

(3) The undertaker must undertake the capital dredge in accordance with the offshore construction environmental management plan approved under sub-paragraph (1).

Piling and marine construction works

12.—(1) Subject to sub-paragraph (2) below, the piling of marine piles in connection with the authorised development shall be subject to the following conditions—

(a) There shall be at least a 20 minutes "soft start" period prior to the commencement of any piling; and

(b) The form of soft start shall be submitted to and agreed in writing by the MMO in consultation with Natural England on matters related to its functions prior to the commencement of piling.

(2) An active and mobile 500 metre marine mammals observation zone, the centre point of which will be the location of the particular marine pile being driven percussively, shall be created, and 30 minutes prior to the commencement of percussive piling a search must be undertaken of the zone, with the purpose of identifying whether any marine mammals enter the zone, and if such mammals are observed within the zone, percussive piling must not be commenced until the mammals have cleared the zone or until 20 minutes after the last visual detection, subject to sub-paragraph (4).

(3) An active and mobile 500 metre marine mammals observation zone, the centre point of which will be the location of the particular marine pile being driven percussively, shall be maintained during percussive piling with the purpose of identifying whether any marine mammals enter the zone and if such mammals are observed, percussive piling must cease until the mammals have cleared the zone and there is no further detection after 20 minutes.

(4) Where percussive piling is paused for any reason other than the detection of marine mammals, then recommencement of the percussive piling shall be subject to the provisions be paragraph (2) save for where the active and mobile 500 metre marine mammals observation zone has been observed throughout the period of the pause in operations and no such mammals were observed entering the zone, in which case percussive piling may be recommenced immediately.

(5) Wherever possible the undertaker will use vibro-piling methodology whilst it is recognised that percussive piling may be required to drive the piles to their ultimately required depth.

(6) The undertaker must use a noise suppression system consisting of a piling sleeve with noise insulating properties for percussive piling.

(7) Subject to sub-paragraph (8) below, the undertaker must ensure that no marine construction activity for the approach jetty, linkspan, innermost pontoon and the inner finger pier shall take place between 1 October and 31 March inclusive in any year located within 200 metres of the exposed intertidal mudflat.

(8) During the restricted period between 1 October and 31 March inclusive in any year, marine construction activity may be undertaken provided that at distances less than 200 metres of exposed intertidal mudflat provided that an acoustic barrier/visual screening is installed on both sides of any semi-completed structure and construction activity will then be undertaken on the approach jetty itself, behind the screens, with no use of large heavy plant.

(9) During the period between 1 October and 31 March inclusive in any year, the undertaker must ensure that on all floating construction barges an acoustic barrier/screening is placed on the side of the barges closest to the foreshore, and construction activity can only be undertaken from the side of the barge facing away from the foreshore.

(10) No piling of marine piles within the waterbody is to take place between 1 March and 31 March, 1 June and 30 June and 1 August and 31 October inclusive in any one calendar year after sunset and before sunrise on any day, save for any—

(a) piling of marine piles undertaken on exposed mudflat outside the water column at periods of low water;

(b) emergency works; and

(c) piling operations that have been initiated where an immediate cessation of the activity would form an unsafe working practice.

(11) The undertaker must ensure that no percussive piling of marine piles within the waterbody shall take place between 1 April and 31 May inclusive in any one calendar year, save for any percussive piling of marine piles undertaken on exposed mudflat outside the water column at periods of low water.

(12) Percussive piling of marine piles is to be restricted at other times as follows—

(a) from 1 June to 30 June inclusive in any year, the maximum duration of percussive piling permitted within any four-week period must not exceed—

(i) 140 hours where a single piling rig is in operation; or

(ii) 196 hours where two or more rigs are in operation; and

(b) from 1 August to 31 October inclusive in any year, the maximum duration of percussive piling permitted within any four-week period must not exceed—

(i) 140 hours where a single piling rig is in operation; or

(ii) 196 hours where two or more rigs are in operation,

save for any percussive piling of marine piles undertaken on exposed mudflat outside the water column at periods of low water and save for percussive piling operations that have been initiated where an immediate cessation of the activity would form an unsafe working practice.

(13) The measurement of time during each work-block described in sub-paragraph (12) of this licence must begin at the start of each timeframe, roll throughout it, then cease at the end, where measurement will begin again at the start of the next timeframe, such process to be repeated until the end of piling works.

(14) Percussive piling must only be carried out in accordance with the cold weather construction restriction strategy.

Percussive piling reporting protocol

13.—(1) The undertaker must submit weekly reports to the MMO of the duration of percussive piling that is undertaken on any given day on which piling takes place during the construction of the authorised development, unless otherwise agreed in writing with the MMO.

(2) The reports submitted to the MMO pursuant to sub–paragraph (1) must include a log of the number and approximate location of piling rigs which are in operation on any given day, along with the number of piles driven.

(3) The undertaker will hold fortnightly meetings with the MMO to discuss the weekly reports submitted under sub-paragraph (1) and agree any corrective action if required, unless otherwise agreed in writing with the MMO.

(4) Subject to sub–paragraph (5), where percussive piling is paused, the recommencement of the percussive piling shall be subject to the provisions of sub–paragraph (1)(a) of paragraph 12 (“the contingency period”).

(5) The contingency period must not exceed a total of 80 minutes in any given day on which percussive piling takes place.

Concrete and cement

14. Waste concrete, slurry or wash water from concrete or cement activities must not be discharged, intentionally or unintentionally, into the marine environment. Concrete and cement mixing and washing areas must be contained and sited at least 10 metres from any water body or surface water drain.

Coatings and treatment

15. The undertaker must ensure that any coatings or treatments are suitable for use in the marine environment and are used in accordance with guidelines approved by the Health and Safety Executive and the Environment Agency Pollution Prevention Control Guidelines.

Pollution and Spills

16.—(1) Bunding and/or storage facilities must be installed to contain and prevent the release of fuel, oils, and chemicals associated with plant, refuelling and construction equipment, into the marine environment. Secondary containment must be used with a capacity of no less than 110% of the container's storage capacity.

(2) Any oil, fuel or chemical spill within the marine environment must be reported to the MMO Marine Pollution Response Team as soon as reasonably practicable, but in any event within 12 hours of being identified in accordance with the following, unless otherwise advised in writing by the MMO—

(a) within business hours on any business days: 0300 200 2024;

(b) any other time: 07770 977 825; or

(c) at all times if other numbers are unavailable: 0845 051 8486 or dispersants@marinemanagement.org.uk.

(3) All wastes must be stored in designated areas that are isolated from surface water drains, open water and contained to prevent any spillage.

(4) The undertaker must comply with the existing marine pollution contingency plan in place for the Port of Immingham as detailed in the construction environmental management plan.

Disposal at Sea

17.—(1) The undertaker must inform the MMO of the location and quantities of material deposited each month under the licence. This information must be submitted to the MMO by 15 February each year for the months August to January inclusive and by 15 August each year for the months February to July inclusive.

(2) The undertaker must ensure that only inert material of natural origin produced during dredging shall be deposited in the disposal sites—

(a) HU060 (alluvial materials); and

(b) HU056 (glacial clay),

or any other site approved in writing by the MMO.

Sediment sampling

18.—(1) Any sediment sampling analyses undertaken by a laboratory validated by the MMO and approved by the MMO as part of either the 2021 sediment sampling plan or any future sediment sampling plan is valid for a period of 3 years from the date when those analyses were undertaken.

(2) Where the validity period for sediment sampling analyses as set out in sub-paragraph (1) above expires, the undertaker must submit a future sediment sampling plan request to the MMO for its approval and any sediment sampling analyses from such future sediment sampling plan must be submitted to the MMO for consultation.

(3) The undertaker must undertake the capital dredge in accordance with the 2021 sediment sampling plan or the future sediment sampling plan approved under sub-paragraph (2).

19. The material to be disposed of within the disposal sites referred to in paragraph 4(4) must be placed evenly within the boundaries of that site.

20. During the course of disposal at sea, deposited material must be distributed evenly over the disposal site.

Dropped objects

21.—(1) The undertaker must report all dropped objects to the MMO using the dropped object procedure form as soon as reasonably practicable and in any event within 24 hours of becoming aware of an incident.

(2) On receipt of the dropped object procedure form, the MMO may require, acting reasonably, the undertaker to carry out relevant surveys. The undertaker must carry out surveys in accordance with the MMO's reasonable requirements and must report the results of such surveys to the MMO.

(3) On receipt of such survey results, the MMO may, acting reasonably, require the undertaker to remove specific obstructions from the seabed. The undertaker must carry out removals of specific obstructions from the seabed in accordance with the MMO's reasonable requirements and its own expense.

Notice to Mariners

22.—(1) Local mariners, fishermen's organisations and the UK Hydrographic Office must be notified of any licensed activity or phase of licensed activity through a local Notice to Mariners.

(2) A Notice to Mariners must be issued at least 5 days before the commencement of each licensed activity or phase of licensed activity.

(3) The MMO and Marine Coastguard Agency must be sent a copy of the notification within 24 hours of issue. The Notice to Mariners must include—

(a) the start and end dates for the works;

(b) a summary of the works to be undertaken;

(c) the location of the works area, including coordinated in accordance with World Geodetic System 1984 (WGS84); and

(d) any markings of the works area that will be put in place.

23. A copy of the notice must be provided to the MMO via MCMS within 24 hours of issue of a notice under sub-paragraph (1).

PART 3

PROCEDURE FOR THE DISCHARGE OF CONDITIONS

Meaning of "application"

24. In this Part, "application" means a submission by the undertaker for approval by the MMO of any document, strategy, information or plan under conditions 8 (cold weather construction restriction strategy), 9 (marine noise registry), 10 (marine written scheme of investigation), 11 (construction environmental management plan) and 18 (sediment sampling).

Further information regarding application

25. The MMO may request in writing such further information from the undertaker as is necessary to enable the MMO to consider an application.

Determination of application

26.—(1) In determining the application the MMO may have regard to—

(a) the application and any supporting information or documentation;

(b) any further information provided by the undertaker; and

(c) such other matters as the MMO thinks relevant.

(2) Having considered the application the MMO must—

(a) grant the application unconditionally;

(b) grant the application subject to the conditions as the MMO thinks fit; or

(c) refuse the application.

Notice of determination

27.—(1) Subject to sub-paragraph (2) or (3), the MMO must give notice to the undertaker of the determination of the application as soon as reasonably practicable after the application is received by the MMO.

(2) Where the MMO has made a request under paragraph 25, the MMO must give notice to the undertaker of the determination of the application as soon as reasonably practicable once the further information is received.

(3) Where the MMO refuses the application the refusal notice must state the reasons for the refusal.

SCHEDULE 4

Articles 12, 16, 24 and 41

PROTECTIVE PROVISIONS

PART 1

FOR THE PROTECTION OF THE STATUTORY CONSERVANCY AND NAVIGATION AUTHORITY FOR THE HUMBER

Interpretation

1. In this Part of this Schedule—

"area of jurisdiction" means the area within the harbour limits, being the area in which the powers of the dock master may be exercised;

"authorised works" means any work, operation or activity that the undertaker is authorised by this Order to construct or carry out;

"environmental document" means—

(a) the environment statement prepared for the purposes of the application for this Order together with any supplementary environmental information or other document so prepared by way of clarification or amplification of the environmental statement; and

(b) any other document containing environmental information provided by the undertaker to the Secretary of State or the Statutory Conservancy and Navigation Authority or Trinity House for the purposes of any tidal works approval under article 37 (provision against danger to navigation), article 38 (lights on tidal works during construction) or article 39 (permanent lights on tidal works);

"plans" includes sections, drawings, specifications, calculations and method statements;

"the river" means the River Humber; and

"the Statutory Conservancy and Navigation Authority" means for the purposes of this Protective Provision Associated British Ports in its capacity as statutory conservancy and navigation authority for the river Humber (as successor to the Conservancy Commissioners established under the Humber Conservancy Act 1868) and including in its role as competent harbour authority and local lighthouse authority for its statutory area.

General

2.—(1) The provisions of this Part of this Schedule, unless otherwise agreed in writing between the undertaker and the Statutory Conservancy and Navigation Authority, have effect until the commencement of the operation of the authorised development for the protection of the Statutory Conservancy and Navigation Authority and the users of the river.

(2) For the purposes of this Part of this Schedule, the definition of "tidal work" is taken to include—

(a) any projection over the river outside the area of jurisdiction by booms, cranes and similar plant or machinery, whether or not situated within the area of jurisdiction; and

(b) any authorised work which affects the river or any functions of the Statutory Conservancy and Navigation Authority , whether or not that authorised work is within the limits of the Statutory Conservancy and Navigation Authority.

Tidal Works: approval of detailed design

3.—(1) Prior to the commencement of the authorised development in the marine environment the undertaker must submit to the Statutory Conservancy and Navigation Authority plans and sections of the tidal works or operation and such further particulars as the Statutory Conservancy and Navigation Authority may, within 28 days from the day on which plans and sections are submitted under this sub-paragraph, reasonably require.

(2) Any approval of the Statutory Conservancy and Navigation Authority required under this paragraph shall be deemed to have been given if it is neither given nor refused (or is refused but without an indication of the grounds for refusal) within 28 days of the day on which the request for consent is submitted under sub-paragraph (1) must not be unreasonably withheld but may be given subject to such reasonable requirements as the Statutory Conservancy and Navigation Authority may make for the protection of—

(a) traffic in, or the flow or regime of, the river;

(b) the use of its operational land or the river for the purposes of performing its functions; or

(c) the performance of any of its functions connected with environmental protection.

(3) Requirements made under sub-paragraph (2) may include conditions as to—

(a) the relocation, provision and maintenance of works, moorings, apparatus and equipment necessitated by the tidal work; and

(b) the expiry of the approval if the undertaker does not commence construction of the tidal work approved within a prescribed period.

(4) Before making a decision on any such approval, the Statutory Conservancy and Navigation Authority must take into account any opinion on plans and sections provided to it by the Environment Agency.

(5) Whenever the undertaker provides the Secretary of State with an environmental document it must at the same time send a copy to the Statutory Conservancy and Navigation Authority.

Commencement of Tidal Works

4. Any operations for the construction of any tidal work approved in accordance with this Order, once commenced, must be carried out by the undertaker without unnecessary delay and to the reasonable satisfaction of the Statutory Conservancy and Navigation Authority so that river traffic, the flow or regime of the river and the exercise of the Statutory Conservancy and Navigation Authority's functions do not suffer more interference than is reasonably practicable, and an authorised officer of the Statutory Conservancy and Navigation Authority is entitled at all reasonable times, on giving such notice as may be reasonable in the circumstances, to inspect and survey such operations.

Discharges, etc.

5.—(1) The undertaker must not without the Consent of the Statutory Conservancy and Navigation Authority—

(a) deposit in or allow to fall or be washed into the river any gravel, soil or other material; or

(b) discharge or allow to escape either directly or indirectly into the river any offensive or injurious matter in suspension or otherwise.

(2) Any consent of the Statutory Conservancy and Navigation Authority under this paragraph must not be unreasonably withheld but may be given subject to such terms and conditions as the Statutory Conservancy and Navigation Authority may reasonably impose.

(3) Any such approval is deemed to have been given if it is neither given nor refused (or is refused but without an indication of the grounds for refusal) within 28 days of the day on which the request for consent is submitted under sub-paragraph (1).

(4) In its application to the discharge of water into the river, article 24 (discharge of water) has effect subject to the terms of any conditions attached to a consent given under this paragraph.

(5) The undertaker must not, in exercise of the powers conferred by article 24 (discharge of water), damage or interfere with the beds or banks of any watercourse forming part of the river unless such damage or interference is approved as a tidal work under this Order or is otherwise approved in writing by the Statutory Conservancy and Navigation Authority.

Obstruction in river

6. If any pile, stump or other obstruction to navigation becomes exposed in the course of constructing any tidal work (other than a pile, stump or other obstruction on the site of a structure comprised in any permanent work), the undertaker, as soon as reasonably practicable after the receipt of notice in writing from the Statutory Conservancy and Navigation Authority requiring such action, must remove it from the river or, if it is not reasonably practicable to remove it—

(a) cut the obstruction off at such level below the bed of the river as the Statutory Conservancy and Navigation Authority may reasonably direct; or

(b) take such other steps to make the obstruction safe as the Statutory Conservancy and Navigation Authority may reasonably require.

Removal etc. of the Statutory Conservancy and Navigation Authority 's moorings and buoys

7. If—

(a) by reason of the construction of any tidal work it is reasonably necessary for the Statutory Conservancy and Navigation Authority to incur reasonable costs in temporarily or permanently altering, removing, re-siting, repositioning or reinstating existing moorings or aids to navigation (including navigation marks or lights) owned by the Statutory Conservancy and Navigation Authority, or laying down and removing substituted moorings or buoys, or carrying out dredging operations for any such purpose, not being costs which it would have incurred for any other reason; and

(b) the Statutory Conservancy and Navigation Authority gives to the undertaker not less than 28 days' notice of its intention to incur such costs, and takes into account any representations which the undertaker may make in response to the notice within 14 days of the receipt of the notice,

the undertaker must pay the costs reasonably so incurred by the Statutory Conservancy and Navigation Authority.

Navigational lights, buoys, etc.

8. In addition to any requirement imposed under this Order the undertaker, at or near every tidal work, and any other work of which the undertaker is in possession in exercise of any of the powers conferred by this Order (being in either case a work which is below mean high water level forming

part of the River Humber), must exhibit such lights, lay down such buoys and take such other steps for preventing danger to navigation as the Statutory Conservancy and Navigation Authority may from time to time reasonably require.

Removal of temporary works

9. On completion of the construction of any part of a permanent authorised work, the undertaker must as soon as practicable remove—

(a) any temporary tidal work carried out only for the purposes of that part of the permanent work; and

(b) any materials, plant and equipment used for such construction,

and must make good the site to the reasonable satisfaction of the Statutory Conservancy and Navigation Authority.

Protective action

10.—(1) If any tidal work—

(a) is constructed otherwise than in accordance with the requirements of this Part of this Schedule or with any condition in an approval given pursuant to paragraph 3; or

(b) during construction gives rise to sedimentation, scouring, currents or wave action detrimental to traffic in, or the flow or regime of, the river,

then the Statutory Conservancy and Navigation Authority may by notice in writing require the undertaker at the undertaker's own expense to comply with the remedial requirements specified in the notice.

(2) The requirements that may be specified in a notice given under sub-paragraph (1) are—

(a) in the case of a tidal work to which sub-paragraph (1)(a) applies, such requirements as may be specified in the notice for the purpose of giving effect to the requirements of—

(i) this Part of this Schedule; or

(ii) the condition that has been breached; or

(b) in any case within sub-paragraph (1)(b), such requirements as may be specified in the notice for the purpose of preventing, mitigating or making good the sedimentation, scouring, currents or wave action so far as required by the needs of traffic in, or the flow or regime of, the river.

(3) If the undertaker does not comply with a notice under sub-paragraph (1), or is unable to do so, the Statutory Conservancy and Navigation Authority may in writing require the undertaker to—

(a) remove, alter or pull down the tidal work, and where the tidal work is removed to restore the site of that work (to such extent as the Statutory Conservancy and Navigation Authority reasonably requires) to its former condition; or

(b) take such other action as the Statutory Conservancy and Navigation Authority may reasonably specify for the purpose of remedying the non-compliance to which the notice relates.

(4) If a tidal work gives rise to environmental impacts over and above those anticipated by any environmental document, the undertaker, in compliance with its duties under any enactment and, in particular, under section 48A of the Harbours Act 1964(**a**), must take such action as is necessary to prevent or mitigate those environmental impacts and in doing so must consult and seek to agree the necessary measures with the Statutory Conservancy and Navigation Authority.

(5) If the Statutory Conservancy and Navigation Authority becomes aware that any tidal work is causing an environmental impact over and above those anticipated by any environmental

(**a**) 1964 c. 40.

document, the Statutory Conservancy and Navigation Authority must notify the undertaker of that environmental impact, the reasons why the Statutory Conservancy and Navigation Authority believes that the environmental impact is being caused by the tidal work and of measures that the Statutory Conservancy and Navigation Authority reasonably believes are necessary to counter or mitigate that environmental impact.

(6) The undertaker must implement the measures that the Statutory Conservancy and Navigation Authority has notified to the undertaker or must implement such other measures as the undertaker believes are necessary to counter the environmental impact identified, giving reasons to the Statutory Conservancy and Navigation Authority as to why it has implemented such other measures.

Abandoned or decayed works

11.—(1) If any tidal work or any other work of which the undertaker is in possession in exercise of any of the powers conferred by this Order (being in either case a work which is below mean high water level) is abandoned or falls into decay, the Statutory Conservancy and Navigation Authority may by notice in writing require the undertaker to take such reasonable steps as may be specified in the notice either to repair or restore the work, or any part of it, or to remove the work and (to such extent as the Statutory Conservancy and Navigation Authority reasonably requires) to restore the site to its former condition.

(2) If any tidal work is in such condition that it is, or is likely to become, a danger to or an interference with navigation in the river, the Statutory Conservancy and Navigation Authority may by notice in writing require the undertaker to take such reasonable steps as may be specified in the notice—

(a) to repair and restore the work or part of it; or

(b) if the undertaker so elects, to remove the tidal work and (to such extent as the Statutory Conservancy and Navigation Authority reasonably requires) to restore the site to its former condition.

(3) If after such reasonable period as may be specified in a notice under this paragraph the undertaker has failed to begin taking steps to comply with the requirements of the notice, or after beginning has failed to make reasonably expeditious progress towards their implementation, the Statutory Conservancy and Navigation Authority may carry out the works specified in the notice and any expenditure reasonably incurred by it in so doing is recoverable from the undertaker.

Facilities for navigation

12.—(1) The undertaker must not in the exercise of the powers conferred by this Order interfere with any marks, lights or other navigational aids in the river without the agreement of the Statutory Conservancy and Navigation Authority and must ensure that access to such aids remains available during and following construction of any tidal works.

(2) The undertaker must provide at any tidal works, or must afford reasonable facilities at such works (including an electricity supply) for the Statutory Conservancy and Navigation Authority to provide at the undertaker's cost, from time to time, such navigational lights, signals, radar or other apparatus for the benefit, control and direction of navigation of users of the river in general as the Statutory Conservancy and Navigation Authority may deem necessary by reason of the construction of any tidal works, and must ensure that access remains available to apparatus during and following construction of such works.

(3) The undertaker must comply with the directions of the Statutory Conservancy and Navigation Authority from time to time with regard to the lighting on the tidal works or within the harbour, or the screening of such lighting, so as to ensure safe navigation on the river.

Sedimentation, etc.: remedial action

13.—(1) This paragraph applies if any part of the river becomes subject to sedimentation, scouring, currents or wave action which—

(a) is, during the period beginning with the commencement of the construction of that tidal work and ending with the expiration of 10 years after the date on which all the tidal works constructed under this Order are completed, wholly or partly caused by a tidal work; and

(b) for the safety of navigation or for the protection of works in the river, should in the reasonable opinion of the Statutory Conservancy and Navigation Authority be removed or made good.

(2) The undertaker must either—

(a) pay to the Statutory Conservancy and Navigation Authority any additional expense to which the Statutory Conservancy and Navigation Authority may reasonably be put in dredging the river to remove the sedimentation or in making good the scouring so far as (in either case) it is attributable to the tidal work; or

(b) carry out the necessary dredging at its own expense and subject to the prior approval of the Statutory Conservancy and Navigation Authority, such prior approval not to be unreasonably withheld or delayed;

and the reasonable expenses payable by the undertaker under this paragraph include any additional expenses accrued or incurred by the Statutory Conservancy and Navigation Authority in carrying out surveys or studies in connection with the implementation of this paragraph.

Indemnity

14.—(1) The undertaker is responsible for and must make good to the Statutory Conservancy and Navigation Authority all reasonable financial costs or losses not otherwise provided for in this Part of this Schedule which may reasonably be incurred or suffered by the Authority by reason of—

(a) the construction or operation of the authorised works or the failure of the authorised works;

(b) anything done in relation to a mooring or buoy under paragraph 8; or

(c) any act or omission of the undertaker, its employees, contractors or agents or others whilst engaged upon the construction or operation of the authorised works or dealing with any failure of the authorised works,

and the undertaker must indemnify the Statutory Conservancy and Navigation Authority from and against all claims and demands arising out of or in connection with the authorised works or any such failure, act or omission.

(2) The fact that any act or thing may have been done—

(a) by the Statutory Conservancy and Navigation Authority on behalf of the undertaker; or

(b) by the undertaker, its employees, contractors or agents in accordance with plans or particulars submitted to or modifications or conditions specified by the Statutory Conservancy and Navigation Authority, or in a manner approved by the Statutory Conservancy and Navigation Authority, or under its supervision or the supervision of its duly authorised representative,

does not (if it was done or required without negligence on the part of the Statutory Conservancy and Navigation Authority or its duly authorised representative, employee, contractor or agent) excuse the undertaker from liability under the provisions of this paragraph.

(3) The Statutory Conservancy and Navigation Authority must give the undertaker reasonable notice of any such claim or demand as is referred to in sub-paragraph (1), and no settlement or compromise of any such claim or demand is to be made without the prior consent of the undertaker.

Statutory functions

15.—(1) Subject to article 3 (disapplication and modification of legislative provisions) and this paragraph, any function of the undertaker or any officer of the undertaker, whether conferred by or under this Order or any other enactment, is subject to—

(a) any enactment relating to the Statutory Conservancy and Navigation Authority;

(b) any byelaw, direction or other requirement made by the Statutory Conservancy and Navigation Authority under any enactment; and

(c) any other exercise by the Statutory Conservancy and Navigation Authority of any function conferred by or under any enactment.

(2) The undertaker must not take any action in the river outside the area of jurisdiction under sections 57 and 65 of the 1847 Act as incorporated by article 4 (incorporation of the Act of 1847) except with the consent of the harbour master, which must not be unreasonably withheld.

(3) The dock master must not give or enforce any special direction to any vessel under section 52 of the 1847 Act, as incorporated by article 4 (incorporation of the 1847 Act), if to do so would conflict with a special direction given to the same vessel by the harbour master.

(4) The Statutory Conservancy and Navigation Authority must consult the undertaker before making any byelaw which directly applies to or which could directly affect the construction, operation or maintenance of the authorised development.

(5) The Statutory Conservancy and Navigation Authority must consult the undertaker before giving any general direction which directly affects the construction, operation or maintenance of the authorised development.

Operating procedures

16.—(1) Before commencing marine commercial operations the undertaker must submit to the Statutory Conservancy and Navigation Authority for approval a written statement of proposed safe operating procedures for access to and egress from the authorised development.

(2) The undertaker must not submit the statement referred to in sub–paragraph (1) unless it has first consulted with the harbour master, the dock master for the Port of Immingham and the IOT Operators, as defined in Part 4 of this Schedule, and has had due regard to their representations.

(3) Prior to granting or refusing approval of the statement referred to in sub–paragraph (1), the Statutory Conservancy and Navigation Authority may carry out its own navigational risk assessment and may impose reasonable conditions on the approval for the purposes set out in paragraph 3(2)(a) to (c) of this Part of this Schedule.

(4) The undertaker must operate the authorised development only in accordance with such procedure as approved, including any approved alteration made from time to time.

Removal of wrecks and obstructions, etc. Oil Spillage Plan

17. The undertaker must consult the Statutory Conservancy and Navigation Authority before submitting any oil pollution emergency plan to the Maritime and Coastguard Agency and must ensure that any such plan is compatible with the Statutory Conservancy and Navigation Authority's existing plan known as "Humber Clean" or such other plan as supersedes "Humber Clean".

PART 2

FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

Application

18.—(1) The following provisions shall apply for the protection of the Agency unless otherwise agreed in writing between the undertaker and the Agency.

(2) In this part of this Schedule—

"the Agency" means the Environment Agency;

"construction" includes execution, placing, altering, replacing, relaying and removal and excavation and "construct" and "constructed" shall be construed accordingly;

"flood management infrastructure" includes any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage, flood defence or tidal monitoring;

"plans" includes sections, drawings, specifications, calculations and method statements; and

"specified work" means any part of the authorised development that intersects with or sits over or above, touches or otherwise interferes with the flood management infrastructure, including the maintenance and inspection thereof.

19.—(1) Prior to the commencement of any specified work, the undertaker must submit to the Agency plans of the specified work and such further particulars available to it as the Agency may within 28 days of receipt of the plans reasonably request.

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the Agency, or determined under paragraph 23.

(3) Any approval of the Agency required under this paragraph—

(a) must not be unreasonably withheld or delayed;

(b) is deemed to have been refused if it is neither given nor refused within 2 months of the submission of the plans or receipt of further particulars if such particulars have been requested by the Agency for approval; and

(c) may be given subject to such reasonable requirements as the Agency may have for the protection of any flood management infrastructure or for the prevention of flooding or pollution or in the discharge of its environmental duties.

(4) The Agency must use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (3)(b).

(5) In the case of a refusal, if requested to do so, the Agency must provide reasons for the grounds of refusal.

20. The undertaker must ensure—

(a) that the authorised development including the associated development does not touch any existing flood management infrastructure; and

(b) that the authorised development including the associated development does not impede the Agency's access to the flood management infrastructure for maintenance and inspection purposes and where required the development is constructed to a sufficient height above the flood management infrastructure to facilitate the aforesaid access.

21. On completion of the works, all debris and surplus material must be removed from the land adjacent to the flood defence to avoid erosion, to the satisfaction of the Agency.

22. The undertaker must bring the conditions contained in paragraphs 19 to 21 to the attention of any agent or contractor responsible for carrying out the authorised development.

23. Any dispute arising between the undertaker and the Agency under this part of this Schedule shall, if the parties agree, be determined by arbitration under article 35 (arbitration), but shall otherwise be determined by the Secretary of State for Environment, Food and Rural Affairs or its

successor and the Secretary of State for Transport or its successor acting jointly on a reference to them by the undertaker or the Agency, after notice in writing by one to the other.

PART 3

FOR THE PROTECTION OF EXOLUM

Application

24. For the protection of Exolum the following provisions, unless otherwise agreed in writing at any time between the undertaker and Exolum, have effect until the commencement of the operation of the authorised development.

Interpretation

25. In this Protective Provision—

"apparatus" means the pipe-line and storage system and ancillary apparatus owned, operated or maintained by Exolum and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

"Exolum" means Exolum Pipeline System Ltd and Exolum Immingham Limited and any successor in title;

"functions" includes powers and duties;

"in" in a context referring to apparatus in land, includes a reference to apparatus under, over or upon land;

"pipe-line" means the whole or any part of a pipe-line belonging to or maintained by Exolum and includes any ancillary works and apparatus; all protective wrappings, valves, sleeves and slabs, cathodic protection units, together with ancillary cables and markers; and such legal interest and benefit of property rights and covenants as are vested in Exolum in respect of those items;

"plan" includes all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed;

"premises" means land that Exolum owns, occupies or otherwise has rights to use including but not limited to storage facilities and jetties;

"specified work" means any work which will or may be situated on, over, under or within 15 metres measured in any direction of any apparatus, or (wherever situated) impose any load directly upon any apparatus or involve embankment works within 15 metres of any apparatus; and

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

Acquisition of apparatus

26. Irrespective of any provision in this Order or anything shown on the land plans—

(a) the undertaker may not acquire any apparatus, premises or any right of Exolum in respect of any apparatus or any of Exolum's interests in land;

(b) the undertaker must not obstruct or render less convenient the access to any apparatus or premises or interfere with or affect Exolum's ability to operate the apparatus, otherwise than by agreement with Exolum, agreement not to be unreasonably delayed or withheld;

(c) any right of Exolum to maintain, repair, renew, adjust, alter or inspect any apparatus may not be extinguished by the undertaker until any necessary alternative apparatus which

allows Exolum to fulfil its functions in a manner not less efficient than previously has been constructed and is in operation to the reasonable satisfaction of Exolum;

(d) the undertaker must not require that any apparatus is relocated or diverted or removed, otherwise than by agreement with Exolum; and

(e) where alternative apparatus is proposed or reasonably necessary in consequence of the exercise of any of the powers conferred by the Order, the undertaker must afford to Exolum the necessary facilities and rights for the construction of any alternative apparatus.

Relevant Works

27.—(1) In this paragraph—

"relevant works" means any works forming any part of the authorised development as do, will or are likely to affect any apparatus or Exolum's access to any apparatus including those which involve—

(a) a physical connection or attachment to any apparatus;

(b) works within 15 metres of any apparatus;

(c) the crossing of any apparatus by other utilities;

(d) the use of explosives within 400 metres of any apparatus; or

(e) piling, undertaking of a 3D seismic survey or the sinking of boreholes within 30 metres of any apparatus.

(2) Unless a shorter period is otherwise agreed in writing between the undertaker and Exolum, not less than 35 days before commencing any relevant works, the undertaker must submit to Exolum the works details for the relevant works and such further particulars as Exolum may reasonably require and submit to the Undertaker within 28 days of receipt of the works details and no relevant works are to be commenced until Exolum, acting reasonably, has approved the works details.

(3) The relevant works must be executed only in accordance with the works details approved by Exolum under this sub-paragraph 3 including any reasonable requirements notified to the undertaker by Exolum and Exolum shall be entitled to observe and inspect the execution of those works.

(4) Nothing in this Schedule shall authorise the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 3 metres of the apparatus unless that apparatus is redundant and disconnected from Exolum's remaining system.

(5) If Exolum, in accordance with sub-paragraph 27(2), and in consequence of the works proposed by the undertaker, reasonably requires the removal of any Apparatus and gives written notice to the undertaker of that requirement, this deed applies as if the removal of the Apparatus had been required by the undertaker and agreed with Exolum pursuant to sub-paragraph 27(2).

(6) Nothing in this sub-paragraph (6) precludes the undertaker from submitting at any time or from time to time, but (unless otherwise agreed in writing between the undertaker and Exolum) in no case less than 28 days before commencing the execution of any relevant works, new works details, instead of the works details previously submitted, and having done so the provisions of this sub-paragraph 6 apply to and in respect of the new works details.

(7) In relation to works which will or may be situated on, over, under or within 15 metres measured in any direction of the apparatus, or (wherever situated) impose any load directly upon the apparatus or involve embankment works within 15 metres of the apparatus, the works details to be submitted to Exolum under sub-paragraph 27(2) shall be detailed including a method statement describing—

(a) the exact position of the works;

(b) the level at which the works are to be constructed or renewed;

(c) the manner of their construction or renewal;

(d) the position of the apparatus; and

(e) by way of detailed drawings, every alteration proposed to be made to the apparatus.

Expenses

28.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to Exolum the reasonable costs and expenses incurred by Exolum in, or in connection with—

(a) the inspection, removal, alteration or works for the protection of any apparatus;

(b) the observation and inspection of the execution of any specified work including relevant works;

(c) the imposition of reasonable requirements for the protection or alteration of apparatus; and

(d) the undertaking by Exolum of its obligations under this protective provision including the review and assessment of plans and works details.

which may reasonably be required in consequence of the execution of any such works as are required under this protective provision.

(2) The undertaker shall pay Exolum's reasonable direct costs incurred in the management and handling of any expenses paid under this protective provision.

(3) There will be no deduction from any sum payable under this protective provision as a result of—

(a) the placing of apparatus of a better type, greater capacity or of greater dimensions, or at a greater depth than the existing apparatus; or

(b) the placing of apparatus in substitution of the existing apparatus that may defer the time for renewal of the existing apparatus in the ordinary course.

(4) Upon the submission of an invoice detailing the proper and reasonable costs and expenses incurred by Exolum, the undertaker shall pay Exolum within 30 days from the date on which the invoice is received.

Damage to property and other losses

29.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to Exolum the reasonable costs and expenses incurred by Exolum in, or in connection with—

(a) pay Exolum for all loss, damage, liability, costs and expenses reasonably suffered or incurred by Exolum for which Exolum is legally liable as a result of legally sustainable claims brought against Exolum by any third party solely arising out of the carrying out of any works associated with the authorised development;

(b) pay the cost reasonably incurred by Exolum in making good any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) arising from or caused by the carrying out of any works associated with the authorised development; and

(c) pay the cost reasonably incurred by Exolum in stopping, suspending and restoring the supply through its pipeline and make reasonable compensation to Exolum for any other expenses, losses, damages, penalty or costs incurred by Exolum by reason or in consequence of any such damage or interruption provided that the same arises in consequence of the carrying out of any works associated with the authorised development.

(2) Irrespective of anything to the contrary elsewhere in this protective provision—

(a) the undertaker and Exolum must at all times take reasonable steps to prevent and mitigate any loss, damage, liability, claim, cost or expense (whether indemnified or not) which either suffers as a result of the other's negligence or breach of this protective provision; and

(b) neither the undertaker nor Exolum are liable for any loss, damage, liability, claim, cost or expense suffered or incurred by the other to the extent that the same are incurred as a result of or in connection with the sole, partial or complete breach of this protective provision or negligence arising out of an act, omission, default or works of the other, its officers, servants, contractors or agents.

(3) Exolum must give to the undertaker reasonable notice of any claim or demand to which this paragraph 30 applies. The undertaker may at its own expense conduct all negotiations for the settlement of the same and any litigation that may arise therefrom. Exolum must not compromise or settle any such claim or make any admission which might be prejudicial to the claim. Exolum must, at the request of the undertaker, afford all reasonable assistance for the purpose of contesting any such claim or action, and is entitled to be repaid all reasonable expenses incurred in so doing.

(4) The requirement to give reasonable notice of any claim or demand to the undertaker in sub-paragraph (3) above shall not apply in the event of an emergency or where the safety of the apparatus is at risk, in which case Exolum may take necessary action and notify the undertaker of its costs promptly afterwards.

30.—(1) Where in consequence of the proposed construction of any of the authorised development, Exolum requires the protection or alteration of apparatus under the terms of this protective provision, the undertaker must use its best endeavours to co–ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of Exolum's undertaking.

(2) Exolum must use reasonable endeavours to cooperate with the undertaker for the purposes outlined in this paragraph 30.

(3) The undertaker and Exolum must act reasonably in respect of any given term of this protective provision and, in particular, (without prejudice to generality) where any consent or expression of satisfaction is required by this protective provision it must not be unreasonably withheld or delayed.

Miscellaneous

31. Nothing in this protective provision affects the provisions of any enactment or agreement regulating the relations between the undertaker and Exolum in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made provided that the terms of the relevant enactment or agreement are not inconsistent with the provisions of this Order. In the case of any inconsistency, in the context of the authorised development, the provisions of this Order prevail.

32. Any dispute arising between the Undertaker and Exolum under this Part of this Schedule is to be determined by arbitration in accordance with article 35 (arbitration).

Emergency circumstances

33.—(1) The undertaker acknowledges that Exolum provides services to His Majesty's Government, using its apparatus, which may affect any works to be carried under this Order.

(2) In the following circumstances, Exolum may on written notice to the undertaker immediately suspend all works that necessitate the stopping or suspending of the supply of product through any apparatus under this Order and Exolum shall not be in breach of its obligations to proceed—

(a) circumstances in which, in the determination of the Secretary of State, there subsists a material threat to national security, or a threat or state of hostility or war or other crisis or national emergency (whether or not involving hostility or war); or

(b) circumstances in which a request has been received, and a decision to act upon such request has been taken, by His Majesty's Government for assistance in relation to the occurrence or anticipated occurrence of a major accident, crisis or natural disaster; or

(c) circumstances in which a request has been received from or on behalf of NATO, the EU, the UN, the International Energy Agency (or any successor agency thereof) or the government of any other state for support or assistance pursuant to the United Kingdom's international obligations and a decision to act upon such request has been taken by His Majesty's Government or the Secretary of State; or

(d) any circumstances identified by the COBRA committee of His Majesty's Government (or any successor committee thereof); or

(e) any situation, including where the United Kingdom is engaged in any planned or unplanned military operations within the United Kingdom or overseas, in connection with which the Secretary of State requires fuel capacity.

(3) The parties agree to act in good faith and in all reasonableness to agree any revisions to any schedule, programme or costs estimate (which shall include costs of demobilising and remobilising any workforce, and any costs to protect Exolum's apparatus "mid-works") to account for the suspension.

(4) Exolum shall not be liable for any costs, expenses, losses or liabilities the undertaker incurs as a result of the suspension of any activities under this paragraph or delays caused by it.

PART 4

FOR THE PROTECTION OF THE IOT OPERATORS

Application

34. The provisions of this Part of this Schedule shall apply for the protection of the IOT Operators, unless otherwise agreed in writing at any time between the undertaker and the IOT Operators.

Interpretation

35. In this Part of this protective provision—

"apparatus" means the pipe-line and storage system owned or maintained by the IOT Operators and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

"Associated Petroleum Terminals (Immingham) Ltd" means Associated Petroleum Terminals (Immingham) Limited, company number 00564394 registered at Queens Road, Immingham, Grimsby, N E Lincolnshire, DN40 2PN, and any successor in title;

"functions" includes powers and duties;

"Humber Oil Terminal Trustees Ltd" means Humber Oil Terminal Trustees Limited, company number 00874993 registered at Queens Road, Immingham, Grimsby, N E Lincolnshire, DN40 2PN, and any successor in title;

"in" in a context referring to apparatus in land, includes a reference to apparatus under, over or upon land;

"IOT Operators" means Associated Petroleum Terminals (Immingham) Ltd and Humber Oil Terminal Trustees Ltd;

"pipe-line" means the whole or any part of a pipe-line belonging to or maintained by IOT Operators and includes any ancillary works and apparatus; all protective wrappings, valves, sleeves and slabs, cathodic protection units, together with ancillary cables and markers; and such legal interest and benefit of property rights and covenants as are vested in IOT Operators in respect of those items;

"specified work" means any work which will or may be situated on, over, under or within 15 metres measured in any direction of any apparatus, or (wherever situated) impose any load

directly upon any apparatus or involve embankment works within 15 metres of any apparatus; and

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

Acquisition of apparatus

36. Irrespective of any provision in this Order or anything shown on the land plans—

(a) the undertaker may not acquire any apparatus or obstruct or render less convenient the access to any apparatus, otherwise than by agreement with the IOT Operators; and

(b) any right of the IOT Operators to maintain, repair, renew, adjust, alter or inspect any apparatus may not be extinguished by the undertaker until any necessary alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the IOT Operators.

Expenses

37. Subject to the following provisions of this paragraph, during the construction of the authorised development the undertaker must pay to IOT Operators the reasonable costs and expenses incurred by the IOT Operators in, or in connection with—

(a) the inspection, removal, alteration or protection of any apparatus; or

(b) the watching and inspecting the execution of any specified work; or

(c) the imposition of reasonable requirements for the protection or alteration of apparatus,

which may reasonably be required in consequence of the execution of any such works as are required under this Schedule.

Damage to property and other losses

38.—(1) Subject to the following provisions of this paragraph, the undertaker must—

(a) grant the IOT Operators, upon reasonable notice access to any apparatus during the carrying out of any relevant works reasonably required for the purposes of inspection, maintenance and repair of such apparatus and upon reasonable notice. For the purposes of this subparagraph (a), 'apparatus' includes any connection into pipelines or associated infrastructure operated by the IOT Operators and/or any successor pipeline system operator.

(b) pay the IOT Operators for all loss, damage, liability, costs and expenses reasonably suffered or incurred by the IOT Operators for which the IOT Operators is legally liable as a result of legally sustainable claims brought against the IOT Operators by any third party solely arising out of the carrying out of any relevant works;

(c) pay the cost reasonably incurred by the IOT Operators in making good any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) arising from or caused by the carrying out of any relevant works; and

(d) pay the cost reasonably incurred by the IOT Operators in stopping, suspending and restoring the supply through its pipeline and make reasonable compensation to the IOT Operators for any other expenses, losses, damages, penalty or costs incurred by the IOT Operators by reason or in consequence of any such damage or interruption provided that the same arises in consequence of the carrying out of any relevant works.

(2) Irrespective of anything to the contrary elsewhere in this protective provision—

(a) the undertaker and the IOT Operators must at all times take reasonable steps to prevent and mitigate any loss, damage, liability, claim, cost or expense (whether indemnified or not) which either suffers as a result of the other's negligence or breach of this Part of this Schedule; and

(b) neither the undertaker nor the IOT Operators are liable for any loss, damage, liability, claim, cost or expense suffered or incurred by the other to the extent that the same are incurred as a result of or in connection with the sole, partial or complete breach of this protective provision or negligence arising out of an act, omission, default or works of the other, its officers, servants, contractors or agents.

(3) The IOT Operators must give to the undertaker reasonable notice of any claim or demand to which this paragraph 38 applies. The undertaker may at its own expense conduct all negotiations for the settlement of the same and any litigation that may arise therefrom. The IOT Operators must not compromise or settle any such claim or make any admission which might be prejudicial to the claim. The IOT Operators must, at the request of the undertaker, afford all reasonable assistance for the purpose of contesting any such claim or action, and is entitled to be repaid all reasonable expenses incurred in so doing.

(4) In this paragraph—

"relevant works" means such of the authorised development as—

(a) does, will or is likely to affect any apparatus; or

(b) involves a physical connection or attachment to any apparatus.

Co-operation and reasonableness

39.—(1) Where as a consequence of the construction of any part of the authorised development, the undertaker requires the removal of apparatus or the IOT Operators, acting reasonably, requires the protection or alteration of apparatus, the undertaker must, if it agrees that such works are necessary, use its best endeavours to co–ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of the IOT Operators' undertaking and the IOT Operators must use its best endeavours to cooperate with the undertaker for that purpose.

(2) the undertaker and the IOT Operators must act reasonably in compliance with the terms of this protective provision and, in particular, (without prejudice to generality) where any consent or expression of satisfaction is required it must not be unreasonably withheld or delayed.

Miscellaneous

40. Nothing in this protective provision affects the provisions of any enactment or agreement regulating the relations between the undertaker and the IOT Operators in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made provided that in connection with the construction of the authorised development, the terms of the relevant enactment or agreement are not inconsistent with the provisions of this Order, including this protective provision. In the case of any inconsistency in the context of the authorised development, the provisions of this Order, including this protective provision, prevail.

Emergency circumstances

41.—(1) The undertaker acknowledges that the IOT Operators provides services to His Majesty's Government, using its apparatus, which may affect any works to be carried under this Order.

(2) In the following circumstances, the IOT Operators may on written notice to the undertaker require the immediate suspension of works to construct the authorised development if such works necessitate the stopping or suspending of the supply of product through any apparatus and the IOT Operators shall not be in breach of its obligations under this protective provision in circumstances—

(a) in which, in the determination of the Secretary of State, there subsists a material threat to national security, or a threat or state of hostility or war or other crisis or national emergency (whether or not involving hostility or war); or

(b) in which a request has been received, and a decision to act upon such request has been taken, by His Majesty's Government for assistance in relation to the occurrence or anticipated occurrence of a major accident, crisis or natural disaster; or

(c) in which a request has been received from or on behalf of NATO, the EU, the UN, the International Energy Agency (or any successor agency thereof) or the government of any other state for support or assistance pursuant to the United Kingdom's international obligations and a decision to act upon such request has been taken by His Majesty's Government or the Secretary of State; or

(d) identified by the COBRA committee of His Majesty's Government (or any successor committee thereof) as identified as falling within any of the above sub-paragraphs of this paragraph; or

(e) where the United Kingdom is engaged in any planned or unplanned military operations within the United Kingdom or overseas, in connection with which the Secretary of State requires fuel capacity.

(3) The parties agree to act in good faith and in all reasonableness to agree any revisions to any schedule, programme or costs estimate (which shall include costs of demobilising and remobilising any workforce, and any costs to protect the IOT Operators' apparatus "mid-works") to account for the suspension.

(4) The IOT Operators shall not be liable for any costs, expenses, losses or liabilities the undertaker incurs as a result of the suspension of any activities under this paragraph or delays caused by it.

PART 5

FOR THE PROTECTION OF NORTHERN POWERGRID

Application

42. For the protection of Northern Powergrid the following provisions, unless otherwise agreed in writing between the undertaker and Northern Powergrid, have effect for the duration of the construction of the authorised works, including (for the avoidance of doubt)—

(a) where this Order is amended by way of supplementary order, then the following provisions have effect for the construction of the development authorised by such supplementary order; and

(b) where a diversion or replacement of Northern Powergrid's apparatus is required during the construction phase of this Order or any supplementary order, the following provisions have effect for as long as it takes for the diversion or replacement to be completed.

Interpretation

43. In this Part of this Schedule—

"alternative apparatus" means alternative apparatus adequate to enable Northern Powergrid to fulfil its statutory functions in a manner not less efficient than previously;

"apparatus" means electric lines or electrical plant (as defined in the Electricity Act 1989(**a**)), belonging to or maintained by Northern Powergrid and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

"authorised works" means so much of the works authorised by this Order which affect existing Northern Powergrid's apparatus within the Order limits;

"functions" includes powers and duties;

(**a**) 1989 c. 29.

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

"Northern Powergrid" means Northern Powergrid (Yorkshire) PLC (Company Number 04112320) whose registered address is Lloyds Court, 78 Grey Street, Newcastle upon Tyne NE1 6AF;

"plan" includes all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed and shall include measures proposed by the undertaker to ensure the grant of sufficient land or rights in land necessary to mitigate the impacts of the works on Northern Powergrid's undertaking;

"supplementary order" means any order that is made by the Secretary of State that supersedes or amends this Order, including for the avoidance of doubt a non-material change order or a new application for a development consent order in respect of the Immingham Eastern Ro-Ro Terminal development; and

"working day" means a day other than a Saturday or a Sunday or public holiday in England.

Acquisition of Land

44. Regardless of any provision in this Order or anything shown on the land plans the undertaker must not acquire any apparatus or override any easement or other interest of Northern Powergrid otherwise than by agreement with Northern Powergrid, such agreement not to be unreasonably withheld or delayed.

Removal of Apparatus

45.—(1) If, in the exercise of the powers conferred by this Order, the undertaker requires that Northern Powergrid's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of Northern Powergrid to maintain that apparatus in that land and gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided pursuant to a completed easement for a tenure no less than exists to the apparatus being relocated or diverted or is authorised by written agreement from Northern Powergrid, all to the reasonable satisfaction of Northern Powergrid in accordance with sub-paragraphs (2) to (5).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to Northern Powergrid 42 days' advance written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order the undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to Northern Powergrid the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed Northern Powergrid must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible and at the cost of the undertaker (subject to prior approval by the undertaker of its estimate of costs of doing so) use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between Northern Powergrid and the undertaker or in default of agreement settled by arbitration in accordance with article 35 (arbitration).

(5) Northern Powergrid must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 35 (arbitration), and after the grant to Northern Powergrid of any such facilities and rights as are referred to in sub-paragraphs (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

46.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the undertaker and Northern Powergrid or in default of agreement settled by arbitration in accordance with article 35 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to Northern Powergrid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to Northern Powergrid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus

47.—(1) Not less than 28 working days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to (including conducting any activities whether intentionally or unintentionally, through for example ground or machinery collapse, which may affect Northern Powergrid's apparatus or encroach on safety distances to live equipment), or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 45, the undertaker must submit to Northern Powergrid a plan, section and description of the works to be executed.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by Northern Powergrid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and Northern Powergrid is entitled to watch and inspect the execution of those works.

(3) Any requirements made by Northern Powergrid under sub-paragraph (2) must be made within a period of 24 working days beginning with the date on which a plan, section and description under sub-paragraph (1) is submitted to it.

(4) If Northern Powergrid in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, sub-paragraphs 1 to 3 and 5 and 6 apply as if the removal of the apparatus had been required by the undertaker under paragraph 45.

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to Northern Powergrid notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

Expenses and costs

48.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to Northern Powergrid within 50 days of receipt of a valid VAT invoice all reasonable and proper expenses costs or charges incurred by Northern Powergrid—

(a) in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 45(2) including without limitation—

(i) any costs reasonably incurred or compensation properly paid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation in the event that it is agreed Northern Powergrid elects to use compulsory purchase powers to acquire any necessary rights under paragraph 45(3) all costs reasonably incurred as a result of such action;

(ii) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;

(iii) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;

(iv) the approval of plans;

(v) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;

(vi) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule); and

(b) in assessing and preparing a design for its apparatus to address and accommodate the proposals of the undertaker whether or not the undertaker proceeds to implement those proposals or alternative or none at all provided that if it so prefers Northern Powergrid may abandon apparatus that the undertaker does not seek to remove in accordance with paragraph 46(1) having first decommissioned such apparatus;

(c) where any payment falls due pursuant to paragraph 48(1), Northern Powergrid shall—

(i) provide an itemised invoice or reasonable expenses claim to the undertaker; and

(ii) provide 'reminder letters' to the undertaker for payment to be made within the 50 days on the following days after the invoice or reasonable expenses claim to the undertaker:

(aa) 15 days ('reminder letter 1');

(bb) 29 days ('reminder letter 2');

(cc) 43 days ('reminder letter 3'); and

(iii) commence debt proceedings to recover any unpaid itemised invoice or reasonable expenses claim on the fiftieth day of receipt of the same where payment has not been made.

(2) There is to be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule that value being calculated after removal and for the avoidance of doubt, if the apparatus removed under the provisions of this Part of this Schedule has nil value, no sum will be deducted from the amount payable under sub-paragraph (1) if in accordance with the provisions of this Part of this Schedule—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was, and the placing of apparatus of that type or capacity or of those dimensions or the placing of

apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 35 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to Northern Powergrid by virtue of sub-paragraph (1) must be reduced by the amount of that excess save where it is not possible on account of project time limits and/or supply issues to obtain the existing type of operations, capacity, dimensions or place at the existing depth in which case full costs shall be borne by the undertaker.

(3) For the purposes of sub-paragraph (2)—

(a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such an extension is required in consequence of the execution of any such works as are referred to in paragraph 45(2); and

(b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(4) The undertaker shall not be liable for any claim by Northern Powergrid for charges, costs or expenses under this paragraph 48 unless prior to Northern Powergrid undertaking the relevant works and/or incurring those charges, costs or expenses, the undertaker has—

(a) received an estimate of that charge, cost or expense along with all necessary supporting information required to evidence the amount and reasonableness of, and the reasonable steps taken to minimise, the charge, cost or expense and a timescale in which the undertaker will be required to make payment, and

(b) approved the estimate in writing (approval not to be unreasonably withheld or delayed),

and Northern Powergrid may not commence any work in relation to which an estimate is submitted until it has been agreed in writing by the undertaker.

(5) The undertaker will use reasonable endeavours to agree the amount of any estimates submitted to it under sub-paragraph (4) within 15 working days of receipt, and must acknowledge as part of its approval that any estimate is only an estimate and may be subject to change.

(6) Subject to Northern Powergrid updating the undertaker by way of submission of an updated estimate for approval under sub-paragraph (4) where any charges, costs or expenses are anticipated to exceed an approved estimate, the undertaker's approval of an estimate shall in no way limit National Powergrid's recovery under this paragraph 48, and the undertaker shall pay the actual costs incurred by Northern Powergrid and submitted for payment whether such costs are above or below the estimate provided and upon making payment under this paragraph, the undertaker may—

(a) confirm to Northern Powergrid that the charge, cost or expense is accepted; or

(b) confirm to Northern Powergrid that the charge, cost or expense if not accepted and the reasons why it considers this to be the case,

and Northern Powergrid must take in to account any representations made by the undertaker in accordance with sub-paragraph (b) and must following receipt of such representations confirm whether or not the requested refund, or any part thereof, is accepted or rejected, and the reasons why it considered this to be the case; and make payment of the requested refund, or part thereof which is not rejected, as applicable such confirmation or payment not to be unreasonably withheld or delayed.

(7) Either party may refer any difference or dispute arising out of sub-paragraph (6) above to arbitration in accordance with article 35 (arbitration) of the Order.

Damage to property and other losses

49.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 45(2), or in consequence of the, maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by it) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Schedule any subsidence resulting from any of these works, any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of Northern Powergrid, or there is any interruption in any service provided by Northern Powergrid, or Northern Powergrid becomes liable to pay any amount to a third party as a consequence of any default, negligence or omission by the undertaker in carrying out the authorised works, the undertaker must—

(a) bear and pay the cost reasonably incurred by Northern Powergrid in making good such damage or restoring the supply; and

(b) indemnify Northern Powergrid for any other expenses, loss, damages, penalty, proceedings, claims or costs incurred by or recovered from Northern Powergrid,

by reason or in consequence of any such damage or interruption or Northern Powergrid becoming liable to any third party.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of Northern Powergrid, its officers, employees, servants, contractors or agents.

(3) Northern Powergrid must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Northern Powergrid must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 49 applies. If requested to do so by the undertaker, Northern Powergrid must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1). The undertaker shall only be liable under this paragraph 49 for claims reasonably incurred by Northern Powergrid.

(5) Where Northern Powergrid is liable to pay any amount to a third party as described in sub-paragraph (1), the total liability of the undertaker to Northern Powergrid under sub-paragraph (1) in respect of each third party claim shall be limited to the extent that Northern Powergrid has properly paid expenses, losses, demands, damages, claims, penalties, costs, interest or any other liability arising from any proceedings to such third party pursuant to—

(a) any statutory compensation scheme, obligation pursuant to its transmission license, or any agreement regulated thereby; or

(b) an award of damages by a court or a settlement or compromise of a claim, demand or proceeding provided that Northern Powergrid will not admit liability or offer to settle with a third party without the undertaker's consent (not to be unreasonably withheld or delayed).

50. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Northern Powergrid in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Cooperation

51. Where in consequence of the proposed construction of any of the authorised development, the undertaker or Northern Powergrid requires the removal of apparatus under paragraph 45 or otherwise or Northern Powergrid makes requirements for the protection or alteration of apparatus under paragraph 48, the undertaker must use its reasonable endeavours to co-ordinate the

execution of the works in the interests of safety and the efficient and the need to ensure the safe and efficient operation of Northern Powergrid's undertaking taking into account the undertaker's desire for the efficient and economic execution of the authorised development and the undertaker and Northern Powergrid shall use all reasonable endeavours to co-operate with the undertaker for those purposes.

52. If in consequence of an agreement reached in accordance with paragraph 44 or the powers granted under this Order the access to any apparatus or alternative apparatus is materially obstructed, the undertaker shall provide such alternative means of access to such apparatus or alternative apparatus as will enable Northern Powergrid to maintain or use the said apparatus no less effectively than was possible before such obstruction.

53. The plans submitted to Northern Powergrid by the undertaker pursuant to this Part of the Schedule must be sent to Northern Powergrid at property@northernpowergrid.com or such other address as Northern Powergrid may from time to time appoint instead for that purpose and notify to the undertaker in writing.

54. Where practicable, the undertaker and Northern Powergrid will make reasonable efforts to liaise and co-operate in respect of information that is relevant to the safe and efficient construction of the authorised development. Such liaison shall be carried out where any works are:

(a) within 15m of any above ground apparatus; and/or

(b) are to a depth of between 0–4m below ground level.

PART 6

FOR THE PROTECTION OF ANGLIAN WATER

Application

55. For the protection of Anglian Water the following provisions have effect until the commencement of the operation of the authorised development, unless otherwise agreed in writing between the undertaker and Anglian Water.

Interpretation

56. In this Part of this Schedule—

"1991 Act" means the New Roads and Street Works Act 1991;

"alternative apparatus" means alternative apparatus adequate to enable Anglian Water to fulfil its statutory functions in a manner no less efficient than previously;

"Anglian Water" means Anglian Water Services Limited;

"apparatus" means:

(a) works, mains, pipes or other apparatus belonging to or maintained by Anglian Water for the purposes of water supply and sewerage including for the avoidance of doubt any decommissioned works, mains, pipes or other apparatus;

(b) any drain or works vested in Anglian Water under the Water Industry Act 1991(**a**);

(c) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act;

(d) any drainage system constructed for the purpose of reducing the volume of surface water entering any public sewer belonging to Anglian Water; and

(e) includes a sludge main, disposal main or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and

(**a**) 1991 c. 56.

includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

and for the purpose of this definition, where words are defined by section 219 of that Act, they shall be taken to have the same meaning;

"functions" includes powers and duties;

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

"plan" includes all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed.

Protective works to buildings

57. The undertaker, in the case of the powers conferred by article 27 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus.

Acquisition of land

58. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

Removal of apparatus

59.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or requires that Anglian Water's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of Anglian Water to maintain that apparatus in that land must not be extinguished, until—

(a) alternative apparatus has been constructed and is in operation to the reasonable satisfaction of Anglian Water in accordance with sub-paragraphs (2) to (8); and

(b) facilities and rights have been secured for that alternative apparatus in accordance with paragraph 60.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to Anglian Water 28 days' written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order the undertaker reasonably needs to remove any of Anglian Water's apparatus) the undertaker must, subject to sub-paragraph (3), afford to Anglian Water the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed Anglian Water must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between Anglian Water and the undertaker or in default of agreement settled by arbitration in accordance with article 35 (arbitration).

(5) Anglian Water must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 35 (arbitration), and after the grant to Anglian Water of any such facilities and rights as are referred to in sub-paragraphs (2) or (3),

proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if Anglian Water gives notice in writing to the undertaker that it desires the undertaker to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker or to the extent that Anglian Water fails to proceed with that work in accordance with sub-paragraph (5) or the undertaker and Anglian Water otherwise agree, that work, instead of being executed by Anglian Water, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of Anglian Water.

(7) If Anglian Water fails either reasonably to approve, or to provide reasons for its failure to approve along with an indication of what would be required to make acceptable, any proposed details relating to required removal works under sub-paragraph (2) within 28 days of receiving a notice of the required works from the undertaker, then such details are deemed to have been approved. For the avoidance of doubt, any such "deemed consent" does not extend to the actual undertaking of the removal works, which shall remain the sole responsibility of Anglian Water or its contractors.

(8) Whenever alternative apparatus is to be or is being substituted for existing apparatus, the undertaker shall, before taking or requiring any further step in such substitution works, use best endeavours to comply with Anglian Water's reasonable requests for a reasonable period of time to enable Anglian Water to—

(a) make network contingency arrangements; or

(b) bring such matters as it may consider reasonably necessary to the attention of end users of the utility in question.

Facilities and rights for alternative apparatus

60.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to Anglian Water facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the undertaker and Anglian Water or in default of agreement settled by arbitration in accordance with article 35 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to Anglian Water than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to Anglian Water as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

(3) Such facilities and rights as are set out in this paragraph are deemed to include any statutory permits granted to the undertaker in respect of the apparatus in question, whether under the Environmental Permitting (England and Wales) Regulations 2016(**a**) or other legislation.

Retained apparatus

61.—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus (or any means of access to it) the removal of which has not been required by the undertaker under paragraph 59(2), the undertaker must submit to Anglian Water a plan of the works to be executed.

(**a**) S.I. 2016/1154.

(2) Those works must be executed only in accordance with the plan submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by Anglian Water for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and Anglian Water is entitled to watch and inspect the execution of those works.

(3) Any requirements made by Anglian Water under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan under sub-paragraph (1) is submitted to it.

(4) If Anglian Water in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, sub-paragraphs 1 to 3 and 6 to 8 apply as if the removal of the apparatus had been required by the undertaker under paragraph 59(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case must give to Anglian Water notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (3) in so far as is reasonably practicable in the circumstances, using its best endeavours to keep the impact of those emergency works on Anglian Water's apparatus, on the operation of its water and sewerage network and on end-users of the services Anglian Water provides to a minimum.

(7) For the purposes of sub-paragraph (1) and without prejudice to the generality of the principles set out in that sub-paragraph, works are deemed to be in land near Anglian Water's apparatus (where it is a pipe) if those works fall within the following distances measured from the medial line of such apparatus—

(a) 4 metres where the diameter of the pipe is less than 250 millimetres;

(b) 5 metres where the diameter of the pipe is between 250 and 400 millimetres; and

(c) 6 metres where the diameter of the pipe exceeds 400 millimetres.

Expenses and costs

62.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to Anglian Water all expenses reasonably incurred by Anglian Water in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in this Part of this Schedule.

(2) There must be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated, and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 35 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to

Anglian Water by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

(a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

63.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraphs 59 or 61(2), or by reason of any subsidence resulting from such development or works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of Anglian Water, or there is any interruption in any service provided, or in the supply of any goods, by Anglian Water, the undertaker must—

(a) bear and pay the cost reasonably incurred by Anglian Water in making good such damage or restoring the supply; and

(b) make reasonable compensation to Anglian Water for any other expenses, loss, damages, penalty or costs incurred by the undertaker,

by reason or in consequence of any such damage or interruption.

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

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the unlawful or unreasonable act, neglect or default of Anglian Water, its officers, servants, contractors or agents.

(4) Anglian Water must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made, without the consent of the undertaker (such consent not to be unreasonably withheld or delayed) who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

Cooperation

64. Where in consequence of the proposed construction of any of the authorised development, the undertaker or Anglian Water requires the removal of apparatus under paragraph 59(2) or Anglian Water makes requirements for the protection or alteration of apparatus under paragraph 59(4), the undertaker must use all reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of Anglian Water's undertaking, using existing processes where requested by Anglian Water, provided it is appropriate to do so, and Anglian Water must use all reasonable endeavours to co-operate with the undertaker for that purpose.

65. Where the undertaker identifies any apparatus which may belong to or be maintainable by Anglian Water but which does not appear on any statutory map kept for the purpose by Anglian Water, it shall inform Anglian Water of the existence and location of the apparatus as soon as reasonably practicable.

66. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Anglian Water in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

67. The undertaker and Anglian Water may by written agreement substitute any period of time for those periods set out in this Part of this Schedule.

PART 7

FOR THE PROTECTION OF NETWORK RAIL

Application

68. The following provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 81, any other person on whom rights or obligations are conferred by that paragraph.

Interpretation

69. In this Part of this Schedule—

"asset protection agreement" means an agreement, should such be required, to regulate the construction and maintenance of the specified work in a form to be agreed from time to time between the undertaker and Network Rail;

"construction" includes execution, placing, alteration and reconstruction and "construct" and "constructed" have corresponding meanings;

"the engineer" means an engineer appointed by Network Rail for the purposes of this Order;

"network licence" means the network licence, as the same is amended from time to time, granted to Network Rail by the Secretary of State in exercise of their powers under section 8 of the Railways Act 1993;

"Network Rail" means Network Rail Infrastructure Limited company number 02904587, registered at Waterloo General Office, London SE1 8SW, and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition "associated company" means any company which is (within the meaning of section 1159 of the Companies Act 2006) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited, and any successor to Network Rail Infrastructure Limited's railway undertaking;

"plans" includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

"protective works" means any works specified by the engineer under paragraph 72(4);

"railway operational procedures" means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

"railway property" means any railway belonging to Network Rail and—

(a) any station, land, works, apparatus and equipment belonging to Network Rail or a tenant or licensee of Network Rail or connected with any such railway; and

(b) any easement or other property interest held or used by Network Rail or a tenant or licensee of Network Rail for the purposes of such railway or works, apparatus or equipment; and

"regulatory consents" means any consent or approval required under:

(a) the Railways Act 1993;

(b) the network licence; and/or

(c) any other relevant statutory or regulatory provisions;

by either the Office of Rail and Road or the Secretary of State for Transport or any other competent body including change procedures and any other consents, approvals of any access or beneficiary that may be required in relation to the authorised development;

"specified work" means so much of any of the authorised development as is or is to be situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property and, for the avoidance of doubt, includes the maintenance of such works under the powers conferred by article 6 (maintenance of authorised development) in respect of such works.

70.—(1) Where under this Part of this Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) In so far as any specified work or the acquisition or use of railway property or rights over railway property is or may be subject to railway operational procedures, Network Rail must—

(a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and

(b) use its reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development pursuant to this Order.

71.—(1) The undertaker must not exercise the powers conferred by—

(a) article 5 (development consent granted by the Order);

(b) article 6 (maintenance of the authorised development);

(c) article 13 (power to override easements and other rights);

(d) article 16 (statutory undertakers and operator of the electronic communications code network);

(e) article 26 (authority to survey and investigate the land);

(f) the powers conferred by section 203 (power to override easements and rights) of the Housing and Planning Act 2016;

(g) the powers conferred by section 172 (right to enter and survey land) of the Housing and Planning Act 2016;

(h) any powers in respect of the temporary possession of land under the Neighbourhood Planning Act 2017,

in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(3) The undertaker must not exercise the powers conferred by sections 271 (extinguishment of rights of statutory undertakers: preliminary notices) or 272 (extinguishment of rights of electronic communications code network operators: preliminary notices) of the 1990 Act or article 16 (statutory undertakers and operator of the electronic communications code network) or article 13 (power to override easements and other rights or private rights of way) in relation to any right of access of Network Rail to railway property, but such right of access may be extinguished or diverted with the consent of Network Rail.

(4) No powers of compulsory acquisition are being sought in relation to railway property.

(5) The undertaker must not under the powers of this Order acquire or use or acquire new rights over or seek to impose any restrictive covenants over, any railway property, or extinguish any

existing rights of Network Rail in respect of any third party property except with the consent of Network Rail.

(6) The undertaker must not under the powers of this Order do anything which would result in railway property being incapable of being used or maintained or which would affect the safe running of trains on the railway.

(7) Where Network Rail is asked to give its consent under this paragraph, such consent must not be unreasonably withheld but may be given subject to reasonable conditions but it shall never be unreasonable to withhold consent for reasons of operational or railway safety (such matters to be in Network Rail's absolute discretion). The undertaker must enter into an asset protection agreement prior to the carrying out of any specified work.

72.—(1) The undertaker must, before commencing construction of any specified work, supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration under article 35 (arbitration).

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not communicated disapproval of those plans and the grounds of disapproval the undertaker may serve upon the engineer written notice requiring the engineer to communicate approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further 28 days the engineer has not communicated approval or disapproval, the engineer is deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail must construct it without unnecessary delay on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.

(4) When signifying approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's reasonable opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation decommissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes must be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works must be carried out at the expense of the undertaker in either case without unnecessary delay and the undertaker must not commence the construction of the specified works in question until the engineer has notified the undertaker that the protective works have been completed to the engineer's reasonable satisfaction.

73.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 72 must, when commenced, be constructed—

(a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 72;

(b) under the supervision (where appropriate) and to the reasonable satisfaction of the engineer;

(c) in such manner as to cause as little damage as is possible to railway property; and

(d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic on it and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction is caused by the carrying out of, or in consequence of the construction of a specified work or a protective work, the undertaker must, regardless of any such approval, make good such damage and must pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Part of this Schedule imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its employees, contractors or agents or any liability on Network Rail with respect to any damage, costs, expenses or loss attributable to the negligence of the undertaker or its employees, contractors or agents.

74. The undertaker must—

(a) at all times afford reasonable facilities to the engineer for access to a specified work or a protective work during its construction; and

(b) supply the engineer with all such information as the engineer may reasonably require with regard to a specified work or a protective work or the method of constructing it.

75. Network Rail must at all times afford reasonable facilities to the undertaker and its employees, contractors or agents for access to any works carried out by Network Rail under this Part of this Schedule during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

76.—(1) If any permanent or temporary alterations or additions to railway property are reasonably necessary in consequence of the construction of a specified work or a protective work, or during a period of 24 months after the completion of that work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations or additions may be carried out by Network Rail and if Network Rail gives to the undertaker 56 days' notice (or in the event of an emergency or safety critical issue such notice as is reasonable in the circumstances of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations or additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work or a protective work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work or the protective work because which in the opinion of the engineer it is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work or the protective work is to be constructed, Network Rail must assume construction of that part of the specified work or protective work and the undertaker must, regardless of any approval of the specified work or protective work in question under paragraph 72(3), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work or protective work.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 77(a), provide such details of the formula or method of calculation by which those sums have been calculated as the undertaker may reasonably require.

(4) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions, a capitalised sum representing such saving must be set off against any sum payable by the undertaker to Network Rail under this paragraph.

77. The undertaker must repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

(a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 72(3) or in constructing any protective works under the provisions of paragraph 72(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;

(b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work or a protective work;

(c) in respect of the employment or procurement of the services of any inspectors, signallers, watchkeepers and other persons whom it is reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work or a protective work;

(d) in respect of any special traffic working resulting from any speed restrictions which may in the reasonable opinion of the engineer be required to be imposed by reason or in consequence of the construction or failure of a specified work or a protective work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and

(e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work or a protective work.

78. If at any time after the completion of a specified work or a protective work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work or the protective work appears to be such as adversely affects the operation of railway property, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work or protective work in such state of maintenance as not adversely to affect railway property.

79. The undertaker must not provide any illumination or illuminated sign or signal on or in connection with a specified work or a protective work in the vicinity of any railway belonging to Network Rail unless it has first consulted Network Rail and it must comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

80. Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work or protective work must, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to Network Rail.

81.—(1) The undertaker must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule which may be occasioned to or reasonably incurred by Network Rail—

(a) by reason of the construction or maintenance or operation of a specified work or a protective work or the failure of it;

(b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work or a protective work,

(c) by reason of any act or omission of the undertaker or any person in its employ or of its contractors or others whilst accessing to or egressing from the authorised development—

(i) in respect of any damage caused to, or additional maintenance required to, railway property or any such interference or obstruction or delay to the operation of the railway as a result of access to or egress from the authorised development by the undertaker or any person in its employ or of its contractors or others;

(ii) in respect of costs incurred by Network Rail in complying with any railway operational procedures or obtaining any regulatory consents which procedures are required to be followed or consents obtained to facilitate the carrying out or operation of the authorised development,

and the undertaker indemnify and keep indemnified Network Rail in respect of such costs, from and against all claims and demands arising out of or in connection with a specified work or protective work or any such failure, act or omission and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision will not (if it was done without negligence on the part of Network Rail or its employees, contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(2) Network Rail must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of such a claim or demand is to be made without the prior written consent of the undertaker.

(3) The sums payable by the undertaker under sub-paragraph (1) shall if relevant include a sum equivalent to the relevant costs.

(4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(5) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs is, in the event of default, enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-paragraph (4).

(6) In this paragraph—

"the relevant costs" means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any specified work including but not limited to any restriction of the use of Network Rail's railway network as a result of the construction, maintenance or failure of a specified work or a protective work or any such act or omission as mentioned in sub-paragraph (1); and

"train operator" means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

82. Network Rail must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable pursuant to this Part of this Schedule (including the amount of the relevant costs mentioned in paragraph 81(3) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Part of this Schedule (including any claim relating to those relevant costs).

83. In the assessment of any sums payable to Network Rail under this Part of this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part of this Schedule or increasing the sums so payable.

84. Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part 1 of the Railways Act 1993.

85. The undertaker must give written notice to Network Rail where any application is proposed to be made by the undertaker for the Secretary of State's consent under article 9 (transfer of benefit of Order, etc.) and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

(a) the nature of the application to be made;

(b) the extent of the geographical area to which the application relates; and

(c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

86. The undertaker must no later than 28 days from the date that the plans and documents referred to in article 33 (certification of plans and documents etc.) are certified by the Secretary of State provide a set of those plans and documents to Network Rail.

87. Any dispute arising between the undertaker and Network Rail under this Part of this Schedule is to be determined by arbitration in accordance with article 35 (arbitration).

PART 8

FOR THE PROTECTION OF NORTH EAST LINCOLNSHIRE COUNCIL (AS LEAD LOCAL FLOOD AUTHORITY)

Application

88. The provisions of this Part of this Schedule apply until the commencement of the operation of the authorised development for the protection of North East Lincolnshire Council (as lead local flood authority within the meaning of the Flood and Water Management Act 2010) unless otherwise agreed between the undertaker and North East Lincolnshire Council.

Interpretation

89. In this Part of this Schedule—

"authorised officer" means an officer authorised to by North East Lincolnshire Council;

"construction" includes execution, placing, altering, replacing, relaying and removal and "construct" and "constructed" are construed accordingly;

"drainage work" means any ordinary watercourse and includes any land which is expected to provide flood storage capacity for an ordinary watercourse and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage or flood defence in connection with an ordinary watercourse;

"ordinary watercourse" has the meaning as given in section 72 (interpretation) of the Land Drainage Act 1991;

"plans" includes sections, drawings, specifications and method statements; and

"specified work" means any works carried out in relation to or which may affect any ordinary watercourse, drain or culvert in a manner that would be likely to affect the flow of the watercourse.

90.—(1) Before beginning to construct any specified work, the undertaker must submit to North East Lincolnshire Council plans of the specified work and such further particulars available to it as North East Lincolnshire Council may within 28 days of the receipt of the plans reasonably require.

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by North East Lincolnshire Council, or determined under sub-paragraph (3).

(3) Any approval of North East Lincolnshire Council required under sub-paragraph (2)—

(a) must not be unreasonably withheld or delayed;

(b) is deemed to have been given if it is neither given nor refused within 28 days of the receipt of the plans for approval or where further particulars are submitted under sub-paragraph (1) within 28 days of the submission of those particulars, or where further particulars are received under sub-paragraph (1), within 28 days of the receipt of those particulars, and, in the case of a refusal, accompanied by a statement of the grounds of refusal; and

(c) may be given subject to such reasonable requirements as it may make for the protection of any drainage work or for the prevention of flooding and

(d) North East Lincolnshire Council must use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (3)(b).

91. Without limitation on the scope of paragraph 90 the requirements which North East Lincolnshire Council may make include conditions requiring the undertaker at its own expense to construct such protective works, whether temporary or permanent, before or during the construction of the specified works (including any new works as well as alterations to existing works) as are reasonably necessary—

(a) to safeguard any drainage work against damage; or

(b) to secure that the efficiency of any ordinary watercourse for flood defence or land drainage purposes is not impaired and that the risk of flooding is not otherwise increased,

by reason of the specified work.

92.—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by North East Lincolnshire Council under paragraph 90 be constructed—

(a) without unnecessary delay in accordance with the plans approved or settled under this Part of this Schedule; and

(b) to the reasonable satisfaction of North East Lincolnshire Council,

and an authorised officer of North East Lincolnshire Council is entitled to watch and inspect the construction of such works.

(2) The undertaker must give to North East Lincolnshire Council not less than 14 days' notice in writing of its intention to commence construction of any specified work and notice in writing of its completion not later than 7 days after the date on which it is completed.

(3) If any part of a specified work or any protective work required by North East Lincolnshire Council over or under any ordinary watercourse is constructed otherwise than in accordance with the requirements of this Part of Schedule, North East Lincolnshire Council may by notice in writing require the undertaker at the undertaker's own expense to comply with the requirements of this Part of this Schedule or (if the undertaker so elects and North East Lincolnshire Council in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as North East Lincolnshire Council reasonably requires.

(4) Subject to sub-paragraph 5 and paragraph 90, if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (3) is served upon the undertaker, it has failed to begin taking steps to comply with the requirements of the notice and subsequently to make reasonably expeditious progress towards their implementation, North East Lincolnshire Council may execute the works specified in the notice and any reasonable expenditure incurred by it in so doing is recoverable from the undertaker.

(5) In the event of any dispute as to whether sub-paragraph (3) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, North East Lincolnshire Council must not except in an emergency exercise the powers conferred by sub-paragraph (4) until the dispute has been finally determined.

93.—(1) Subject to sub-paragraph 2 the undertaker must from the commencement of the construction of the specified works maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation and on land held by the undertaker for the purposes of or in connection with the specified works, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

(2) If any such drainage work which the undertaker is liable to maintain is not maintained to the reasonable satisfaction of North East Lincolnshire Council it may by notice in writing require the undertaker to repair and restore the work, or any part of such work, or (if the undertaker so elects

and North East Lincolnshire Council in writing consents, such consent not to be unreasonably withheld or delayed), to remove the work and restore the site to its former condition, to such extent and within such limits as North East Lincolnshire Council reasonably requires.

(3) Subject to sub-paragraph 4 and paragraph 90, if, within a reasonable period being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2) on the undertaker, the undertaker has failed to begin taking steps to comply with the reasonable requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, North East Lincolnshire Council may do what is necessary for such compliance and may recover any expenditure reasonably incurred by it in so doing from the undertaker.

(4) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph 2, North East Lincolnshire Council must not, except in a case of an emergency, exercise the powers conferred by sub-paragraph 3 until the dispute has been finally determined.

(5) This paragraph does not apply to—

(a) drainage works which are vested in North East Lincolnshire Council, or which North East Lincolnshire Council or another person is liable to maintain and is not precluded by the powers of the Order from doing so; and

(b) any obstruction of a drainage work for the purpose of a work or operation authorised by this Order and carried out in accordance with the provisions of this Part of this Schedule.

94. Subject to paragraph 93, if by reason of the construction of any specified work or of the failure of any such work the efficiency of any ordinary watercourse for flood defence or land drainage purposes is impaired, or that watercourse is otherwise damaged, so as to require remedial action, such impairment or damage must be made good by the undertaker to the reasonable satisfaction of North East Lincolnshire Council and if the undertaker fails to do so, North East Lincolnshire Council may make good the same and recover from the undertaker the expense reasonably incurred by it in so doing.

95.—(1) The undertaker must indemnify North East Lincolnshire Council in respect of all costs, charges and expenses which North East Lincolnshire Council may reasonably incur or have to pay or which it may sustain—

(a) in the examination or approval of plans under this Part of this Schedule; and

(b) in the inspection of the construction of the specified work in respect of an ordinary watercourse or any protective works required by North East Lincolnshire Council under this Part of this Schedule.

(2) The maximum amount payable to North East Lincolnshire Council under paragraph 92 or 94 is to be the same as would have been payable to North East Lincolnshire Council in accordance with the scale of charges for pre-application advice and land drainage consent applications published by North East Lincolnshire Council from time to time.

96.—(1) Without affecting the other provisions of this Part of this Schedule, the undertaker must indemnify North East Lincolnshire Council from all claims, demands, proceedings, costs, charges, penalties, damages, expenses and losses, which may be made or taken against, recovered from, or incurred by, North East Lincolnshire Council by reason of—

(a) any damage to any drainage work so as to impair its efficiency for flood defence or land drainage purposes;

(b) any raising or lowering of the water table in land adjoining or affected by a specified work or adjoining any sewers, drains and watercourses;

(c) any flooding, increased flooding or impaired drainage of any such lands as are mentioned in paragraph 93;

(d) any claim in respect of pollution under the Control of Pollution Act 1974(**a**);

(e) damage to property including property owned by third parties; or

(f) injury to or death of any person,

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

(2) North East Lincolnshire Council must give to the undertaker reasonable notice of any such claim or demand and no settlement or compromise may be made without the agreement of the undertaker which agreement must not be unreasonably withheld or delayed.

97. The fact that any work or thing has been executed or done by the undertaker in accordance with plans approved by North East Lincolnshire Council, or to its satisfaction, or in accordance with any directions or award of an arbitrator, does not (in the absence of negligence on the part of North East Lincolnshire Council, its officers, contractors or agents) relieve the undertaker from any liability under the provisions of this Part of this Schedule.

98. Any dispute arising between the undertaker and North East Lincolnshire Council under this Part of this Schedule is to be determined by arbitration in accordance with article 35 (arbitration).

PART 9

FOR THE PROTECTION OF CADENT GAS LIMITED AS GAS COMPANY

Application

99. The provisions of this Part of this Schedule shall apply for the protection of Cadent, unless otherwise agreed in writing between the undertaker and Cadent.

Interpretation

100. In this Part of this Schedule—

"alternative apparatus" means appropriate alternative apparatus to the satisfaction of Cadent to enable Cadent to fulfil its statutory functions in a manner no less efficient than previously;

"apparatus" means any gas mains, pipes, pressure governors, ventilators, cathodic protections, cables or other apparatus belonging to or maintained by Cadent for the purposes of gas supply together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of Cadent for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

"authorised works" means Work No. 6 as defined in Schedule 1 to this Order and includes any ancillary works (as defined in Schedule 1 to this Order) associated with Work No. 6;

"Cadent" means Cadent Gas Limited (Company Number 10080864) whose registered office is situated at Cadent, Pilot Way, Ansty, Coventry, England, CV7 9JU) and/or its successors in title and/or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986;

"commence" has the same meaning as in article 2 of this Order and commencement shall be construed to have the same meaning save that for the purposes of this Part of the Schedule the terms commence and commencement include operations for the purposes of archaeological or ecological investigations and investigations of the existing condition of the ground or of structures;

(**a**) 1974 c. 40.

"decommissioned apparatus" means any disused no longer maintained by Cadent as a consequence of the authorised development and for which rights have been surrendered and references to "decommission" and "decommissioned" shall be construed accordingly;

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

"functions" includes powers and duties;

"ground mitigation scheme" means a scheme approved by Cadent (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

"ground monitoring scheme" means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for Cadent's approval a ground mitigation scheme;

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

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

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

"rights" shall include rights and restrictive covenants, and in relation to decommissioned apparatus the surrender of rights, release of liabilities and transfer of decommissioned apparatus;

"specified works" means any of the authorised works or activities undertaken in association with the authorised works which—

(a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under sub-paragraph 103(2) or otherwise;

(b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under sub-paragraph 103(2) or otherwise; and/or

(c) include any of the activities that are referred to in CD/SP/SSW/22 (Cadent's policies for safe working in the vicinity of Cadent's Assets); and

"undertaker" means the undertaker as defined in article 2 of this Order.

Protective works to buildings

101.—(1) The undertaker, in the case of the powers conferred by article 27 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of Cadent and, if by reason of the exercise of those powers any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) or property of Cadent or any interruption in the supply of gas by Cadent, as the case may be, is caused, the undertaker must bear and pay on demand the cost reasonably incurred by Cadent in making good such damage or restoring the supply; and, subject to sub-paragraph (2), shall—

(a) pay compensation to Cadent for any loss sustained by it; and

(b) indemnify Cadent against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by Cadent, by reason of any such damage or interruption.

(2) Nothing in this paragraph imposes any liability on the undertaker with respect to any damage or interruption to the extent that such damage or interruption is attributable to the act, neglect or default of Cadent or its contractors or workmen; and Cadent will give to the undertaker reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made by Cadent, save in respect of any payment required under a statutory compensation scheme, without first consulting the undertaker and giving the undertaker an opportunity to make representations as to the claim or demand.

Acquisition of land

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

(2) As a condition of agreement between the parties in sub-paragraph 104(1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between Cadent and the undertaker) that are subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement and/or other legal or land interest of Cadent and/or affects the provisions of any enactment or agreement regulating the relations between Cadent and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as Cadent reasonably requires enter into such deeds of consent and variations upon such terms and conditions as may be agreed between Cadent and the undertaker acting reasonably and which must be no less favourable on the whole to Cadent unless otherwise agreed by Cadent, and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) The undertaker and Cadent agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus/including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by Cadent and/or other enactments relied upon by Cadent as of right or other use in relation to the apparatus, then the provisions in this Schedule shall prevail subject to the proviso in paragraph 99 above.

(4) Any agreement or consent granted by Cadent under paragraph 105 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph 104(1).

(5) As a condition of an agreement between the parties in sub-paragraph 104(1) that involves de-commissioned apparatus being left in situ the undertaker must accept a surrender of any existing easement and/or other interest of Cadent in such decommissioned apparatus subject to the satisfaction of the undertaker and consequently acquire title to such decommissioned apparatus and release Cadent from all liabilities in respect of such de-commissioned apparatus from the date of such surrender.

Removal of apparatus

103.—(1) If, for the purpose of executing any works in, on, under or over any land held or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to Cadent advance written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order Cadent reasonably needs to move or remove any of its apparatus) the undertaker must afford to Cadent to its satisfaction (taking into account sub-paragraph 104(1) below) the necessary facilities and rights—

(a) for the construction of alternative apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus);

(b) subsequently for the maintenance of that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus); and

(c) to allow access to that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus).

(2) If the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (1), in the land in which the alternative apparatus or part of such apparatus is to be constructed, Cadent may, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to assist the undertaker in obtaining the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for Cadent to use its compulsory purchase powers to this end unless it (in its absolute discretion) elects to so do.

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

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

(5) Where apparatus is to be decommissioned pursuant to sub–paragraph (4) such apparatus shall be filled with concrete save where Cadent determines (in its absolute discretion) that this method of decommissioning would not be appropriate and in such circumstances the undertaker shall be able to require the removal of such apparatus at the undertaker's expense unless such removal is not practicable in which case Cadent shall decommission the apparatus as it sees fit.

Facilities and rights for alternative apparatus

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

(2) If the facilities and rights to be afforded by the undertaker and agreed with Cadent under sub-paragraph (1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to Cadent than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed (in Cadent's opinion) then the terms and conditions to which those facilities and rights are subject in the matter will be referred to arbitration in accordance with paragraph 112 (arbitration) of this protective provision and the arbitrator shall make such provision for the payment of compensation by the undertaker to Cadent as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection of Cadent

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

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

(a) the exact position of the works;

(b) the level at which these are proposed to be constructed or renewed;

(c) the manner of their construction or renewal including details of excavation, positioning of plant etc.;

(d) the position of all apparatus;

(e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and

(f) any intended maintenance regimes.

(3) The undertaker must not commence any works to which sub-paragraphs (1) and (2) apply until Cadent has given written approval of the plan so submitted.

(4) Any approval of Cadent required under sub-paragraph (3)—

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (7); and

(b) must not be unreasonably withheld.

(5) In relation to any work to which sub-paragraphs (1) and/or (2) apply, Cadent may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works to which this paragraph applies must only be executed in accordance with the plan, submitted under sub-paragraph (1) and (2) or as relevant sub-paragraph (4), as approved or as amended from time to time by agreement between the undertaker and Cadent and in accordance with all conditions imposed under sub-paragraph (4)(a), and Cadent will be entitled to watch and inspect the execution of those works.

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

(8) If Cadent, in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 3 and 6 to 8 apply as if the removal of the apparatus had been required by the undertaker under sub-paragraph 103(2).

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

(10) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to Cadent notice as soon as is reasonably practicable and a plan of those works and must comply with—

(a) the conditions imposed under sub-paragraph (4)(a) insofar as is reasonably practicable in the circumstances; and

(b) sub-paragraph (11) at all times.

(11) At all times when carrying out any works authorised under the Order the undertaker must comply with the Cadent's policies for safe working in the vicinity of Cadent's Assets CD/SP /SSW22 and HSE's "HS(~G)47 Avoiding Danger from underground services".

(12) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker shall implement an appropriate ground mitigation scheme save that Cadent retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 106.

Expenses

106.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to Cadent on demand all charges, costs and expenses reasonably anticipated or incurred by Cadent in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works as are referred to in this Part of this Schedule including without limitation—

(a) any costs reasonably incurred by or paid by Cadent in connection with the negotiation of rights or the exercise of statutory powers for such apparatus including without limitation all costs (including professional fees) incurred by Cadent in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;

(b) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;

(c) the approval of plans;

(d) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;

(e) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule; and

(f) any watching brief pursuant to sub-paragraph 105(6).

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 35 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to Cadent by virtue of sub-paragraph (1) will be reduced by the amount of that excess save where it is not possible or appropriate in the circumstances (including due to statutory or regulatory changes) to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

(a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to Cadent in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on Cadent any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

Indemnity

107.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule (including without limitation relocation, diversion, decommissioning, construction and maintenance of apparatus or alternative apparatus) or in consequence of the construction, use, maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of Cadent, or there is any interruption in any service provided, or in the supply of any goods, by Cadent, or Cadent becomes liable to pay any amount to any third party, the undertaker will—

(a) bear and pay on demand the cost reasonably incurred by Cadent in making good such damage or restoring the supply; and

(b) indemnify Cadent for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from Cadent, by reason or in consequence of any such damage or interruption or Cadent becoming liable to any third party as aforesaid other than arising from any default of Cadent.

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

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

(a) any damage or interruption to the extent that it is attributable to the neglect or default of Cadent, its officers, servants, contractors or agents; and

(b) any authorised works and/or any other works authorised by this Part of this Schedule carried out by Cadent as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article 9 (transfer benefit of Order, etc.) subject to the proviso that once such works become apparatus ("new apparatus"), any authorised works yet to be executed and not falling within this sub-section 3(b) will be subject to the full terms of this Part of this Schedule including this paragraph 107.

(4) Cadent must give the undertaker reasonable notice of any such third party claim or demand and no settlement or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the promoter and considering their representations.

Enactments and agreements

108. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between Cadent and the undertaker, nothing in this Part of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between the undertaker and Cadent in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made and which will continue to have effect.

Co-operation

109. Where in consequence of the proposed construction of any of the authorised works, the undertaker or Cadent requires the removal of apparatus under sub-paragraph 103(2) or Cadent makes requirements for the protection or alteration of apparatus under paragraph 105, the undertaker shall use its best endeavours to co-ordinate the execution of the works in the interests of

safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of Cadent's undertaking and Cadent shall use its best endeavours to co-operate with the undertaker for that purpose.

110. For the avoidance of doubt whenever Cadent's consent, agreement or approval is required in relation to plans, documents or other information submitted by Cadent or the taking of action by Cadent, it must not be unreasonably withheld or delayed.

Access

111. If in consequence of the agreement reached in accordance with sub-paragraph 104(1) or the powers granted under this Order the access to any apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus) is materially obstructed, the undertaker must provide such alternative rights and means of access to such apparatus as will enable Cadent to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

112. Save for differences or disputes arising under sub-paragraphs 103(2), 103(4), 105(1), and paragraph 106 any difference or dispute arising between the undertaker and Cadent under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and Cadent, be determined by arbitration in accordance with article 35 (arbitration) to be referred to and settled by a single arbitrator to be agreed between the parties, or failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) to the President of the Institute of Civil Engineers and in settling any difference or dispute, the arbitrator must have regard to the requirements of Cadent for ensuring the safety, economic and efficient operation of Cadent's apparatus.

Notices

113. The plans submitted to Cadent by the undertaker pursuant to sub-paragraph 105(1) must be sent to Cadent Gas Limited Plant Protection by e-mail to plantprotection@cadentgas.com copied by e-mail to landservices@cadentgas.com and sent to the General Counsel Department at Cadent's registered office or such other address as Cadent may from time to time appoint instead for that purpose and notify to the undertaker.

PART 10

FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

Application

114. For the protection of any operator, referred to in this Part of this Schedule, the following provisions have effect until the commencement of the operation of the authorised development, unless otherwise agreed in writing between the undertaker and the operator.

Interpretation

115. In this Part of this Schedule—

"the 2003 Act" means the Communications Act 2003;

"the code rights" has the same meaning as in the Paragraph 3 of the electronic communications code;

"electronic communications apparatus" has the same meaning as in electronic communications code;

"the electronic communications code" has the same meaning as in Chapter 1 of Part 2 of the 2003 Act;

"the electronic communications code network" means—

(a) so much of an electronic communications network or infrastructure system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the 2003 Act; and

(b) an electronic communications network which the undertaker is providing or proposing to provide;

"electronic communications code operator" means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act;

"infrastructure system" has the same meaning as in the electronic communications code and references to providing an infrastructure system are to be construed in accordance with paragraph 7(2) of that code; and

"operator" means the operator of an electronic communications code network.

116. The exercise of the powers of article 16 (statutory undertakers and operator of the electronic communications code network) is subject to Part 10 (undertaker's works affecting electronic communications apparatus) of the electronic code.

117.—(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised development or its construction, or of any subsidence resulting from any of the authorised development—

(a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised development), or other property of an operator; or

(b) there is any interruption in the supply of the service provided by an operator, the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and make reasonable compensation to that operator for any other expenses, loss, damages, penalty or costs incurred by it, by reason, or in consequence of, any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.

(3) The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the undertaker and if such consent, is withheld, the undertaker has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Any difference arising between the undertaker and the operator under this Part of this Schedule must be referred to and settled by arbitration under article 35 (arbitration).

118. This Part of this Schedule does not apply to—

(a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act; or

(b) any damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised development.

119. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus in land belonging to the undertaker on the date on which this Order is made.

PART 11

FOR THE PROTECTION OF DFDS SEAWAYS PLC

Application

120. The provisions of this Part of this Schedule shall apply for the protection of DFDS, unless otherwise agreed in writing at any time between the undertaker and DFDS.

Interpretation

121. In this Part of this Schedule—

"authorised work" means any work specified in Schedule 1;

"DFDS" means DFDS Seaways plc, company number 01554521 registered at Nordic House, Western Access Road, Immingham Dock, Immingham, DN40 2LZ; and

"environmental document" means the environmental statement prepared for the purposes of the application for this Order together with any supplementary environmental information or other document so prepared by way of clarification or amplification of the environmental statement.

Consultation and notification

122. The undertaker must, at least 28 days before the undertaker commences the construction of any authorised work, or any phase of any authorised work, that has been assessed in any environmental document as being likely to interfere with DFDS' use of the Port of Immingham or the surrounding road network, inform DFDS in writing stating what is proposed and have regard to any response received from DFDS.

Indemnity

123.—(1) The undertaker is responsible for and must make good to DFDS all reasonable financial costs or losses not otherwise provided for in this Part of this Schedule which may reasonably be incurred or suffered by DFDS by reason of—

(a) the construction of the authorised works; or

(b) any act or omission of the undertaker, its employees, contractors or agents or others whilst engaged in the construction of the authorised works.

(2) DFDS must give the undertaker no less than 28 days' notice in writing, providing a detailed explanation and justification for any such claim, as is referred to in sub-paragraph (1), and no settlement or compromise of any such claim or demand is to be made without the prior consent of the undertaker.

(3) Nothing in sub-paragraph (1) imposes any liability on the Undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of DFDS, its officers, servants, contractors or agents.

Operations

124. Before commencing any marine commercial operations the undertaker must provide DFDS with a copy of the Statutory Conservancy and Navigation Authority's approval of the written statement of proposed safe operating procedures for access to and egress from the authorised development, including any approved alteration made from time to time.

Disputes

125. Any dispute arising between the undertaker and DFDS under this Part of this Schedule is to be determined by arbitration as provided in article 35 (arbitration).

PART 12

FOR THE PROTECTION OF CLDN PORTS KILLINGHOLME LIMITED

Application

126. The provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and CLdN, for the protection of CLdN until the commencement of operation of the authorised development.

Interpretation

127.—(1) Where the terms defined in article 2 (interpretation) of this Order are inconsistent with sub-paragraph (2), the latter prevail.

(2) In this part of this Schedule—

"CLdN" means CLdN Ports Killingholme Limited, company number 00278815, whose principal office is at 130 Shaftesbury Avenue, 2nd Floor, London, W1D 5EU as statutory harbour authority for and operator of the Port and any successor in title or function to the Port;

"the CLdN disposal site" means Humber 3A/Clay Huts (HU060) disposal site situated adjacent to Clay Huts and Holme Ridge in the river Humber;

"environmental document" means environmental statement prepared for the purposes of the application for this Order together with any supplementary environmental information or other document so prepared by way of clarification or amplification of the environmental statement;

"the Port" means any land (including land covered by water) at Killingholme for the time being owned or used by CLdN for the purposes of its statutory undertaking, together with any quays, jetties, docks, river walls or works held in connection with that undertaking;

"specified work" means any work, activity or operation authorised by this Order, by the Town and Country Planning Act (General Permitted Development) Order 2015 or by any planning permission given under the Town and Country Planning Act 1990, and any vessel movements, which has been assessed in any environmental document as being likely to interfere with—

(a) the Port or access (including over water) to and from the Port; or

(b) CLdN's ability to carry out disposal activities at the CLdN disposal site; or

(c) the functions of CLdN as the statutory harbour authority for the Port.

Cooperation

128. The undertaker and CLdN must each act in good faith and use reasonable endeavours to co-operate with, and provide assistance to, each other as may be required to give effect to the provisions of this Part of this Schedule.

Notice of and consultation on works and vessel movements

129. The undertaker must inform CLdN in writing of the intended start date and the likely duration of the carrying out of any specified work at least 20 days prior to the commencement of the specified work.

130. Any operations for the construction of any specified work, once commenced, must be carried out by the undertaker so that CLdN does not suffer more interference than is reasonably necessary.

Indemnity

131.—(1) During the construction of the authorised development, the Undertaker must indemnify CLdN against all financial losses, costs, charges, damages, expenses, claims and

demands which may reasonably be incurred or occasioned to CLdN by reason or arising in connection with—

(a) any obstruction which prevents or materially hinders access into or out of the Port, which is caused by or attributable to the undertaker or its agents or contractors in exercising the power of this Order, save for where such an obstruction is as a result of the lawful actions or direction of the Statutory Conservancy and Navigation Authority;

(b) the undertaking by CLdN of works or measures to prevent or remedy a danger or impediment to navigation or access to or from the Port arising from the exercise by the undertaker of its powers under this Order; or

(c) any additional costs of disposal of dredging arisings from the Port incurred by CLdN as a result of the undertaker's use of the CLdN disposal site.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of CLdN, its officers, servants, contractors or agents.

(3) Without limiting the generality of sub-paragraph (1), the undertaker must indemnify CLdN from and against all claims and demands arising out of, or in connection with, such construction, maintenance or failure or act or omission as is mentioned in that sub-paragraph until the commencement of the operation of the authorised development.

Arbitration

132. Unless otherwise agreed in writing, any dispute arising between the undertaker and CLdN under this Part of this Schedule is to be determined by arbitration as provided in article 35 (arbitration).

PART 13

FOR THE PROTECTION OF THE INTERNAL DRAINAGE BOARD

Application

133. The provisions of this Part of this Schedule have effect for the protection of the Board unless otherwise agreed in writing between the undertaker and the Board.

Interpretation

134. In this part of this Schedule—

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

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

"evidence" includes hydraulic modelling, infiltration test results and geotechnical evaluations;

"ordinary watercourse" has the meaning given in section 72 (Interpretation) of the Land Drainage Act 1991(**a**);

"plans" includes sections, drawings, specifications and method statements;

"specified work" means—

(**a**) 1991 c. 59. There are amendments to section 72 but none are relevant.

(a) the making of any opening into or connections with any watercourse or drain in connection with the authorised development; and/or

(b) so much of any work or operation of the authorised development as is in, on, under, over or within 9 metres of a drainage work for which the Board has responsibility or is otherwise likely to—

(i) affect any drainage work;

(ii) affect the total volume or volumetric rate of flow of water in or flowing to or from any drainage work;

(iii) affect the flow of water in any drainage work; or

(iv) affect the conservation, distribution or use of water resources.

135. The undertaker must not make any opening into or connections with any watercourse or drain in connection with the authorised development or carry out any specified work except—

(a) in accordance with plans approved by the Board in accordance with this Part of this Schedule; and

(b) where the Board has been given the opportunity to supervise the making of the opening or connection,

and no discharge of water under article 24 (discharge of water) shall be made until details of the location and rate of discharge have been submitted to and approved in writing by the Board.

(2) Before beginning to construct any specified work, the undertaker must submit to the Board plans of the specified work, evidence to support said plans and any such further particulars available to it as the Board may within 28 days of the submission of the plans reasonably require (or submission of further particulars if required by the Board).

(3) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the Board or determined under paragraph 143.

(4) Any approval of the Board required under this paragraph—

(a) must not be unreasonably withheld or delayed;

(b) is deemed to have been given if it is neither given nor refused within 2 months of the submission of the plans for approval (or the submission of further particulars if applicable) or, in the case of a refusal, if it is not accompanied by a statement of the grounds of refusal; and

(c) may be given subject to such reasonable requirements and conditions as the Board may consider appropriate.

(5) The Board must use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (4).

(6) Where under this Part of this Schedule the Board is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that the Board complies with its obligations to consult other appropriate agencies, to have regard to any guidance issued by any appropriate supervisory body and has regard to its obligations under statute.

136. Without limiting paragraph 135, the requirements which the Board may make under that paragraph include conditions requiring the undertaker at its own expense to construct such protective works, whether temporary or permanent, during the construction of the specified work (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

(a) to safeguard any drainage work against damage; or

(b) to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased,

by reason of any specified work or the authorised development.

137.—(1) Subject to sub–-paragraph (2), any specified work, and all protective works required by the Board under paragraph 136, must be constructed—

(a) without unreasonable delay in accordance with the plans approved or deemed to have been approved or settled under this Part; and

(b) to the reasonable satisfaction of the Board, and an officer of the Board is entitled to give such notice as may be reasonably required in the circumstances to watch and inspect the construction of such works.

(2) The undertaker must give to the Board—

(a) not less than 14 days' notice in writing of its intention to commence construction of any specified work; and

(b) notice in writing of its completion not later than 7 days after the date on which it or the authorised development is brought into use.

(3) If the Board reasonably requires, the undertaker must construct all or part of the protective works so that they are in place before the construction of the specified work.

(4) If any part of a specified work or any protective work required by the Board is constructed otherwise than in accordance with the requirements of this Part of this Schedule, the Board may by notice in writing require the undertaker at the undertaker's expense to comply with the requirements of this Part of this Schedule or (if the undertaker so elects and the Board in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as the Board reasonably requires.

(5) Subject to sub-paragraph (6), if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (4) is served on the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and subsequently to make reasonably expeditious progress towards their implementation, the Board may execute the works specified in the notice, and any expenditure reasonably incurred by it in so doing is recoverable from the undertaker

(6) In the event of any dispute as to whether sub-paragraph (4) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the Board must not except in emergency exercise the powers conferred by sub-paragraph (4) until the dispute has been finally resolved by agreement or determined under paragraph 143.

138. If by reason of the construction of the authorised development or any specified work or of the failure of any such work the efficiency of any drainage work for flood defence purposes is impaired, or the drainage work is otherwise damaged, the impairment or damage must be made good by the undertaker to the reasonable satisfaction of the Board and, if the undertaker fails to do so, the Board may make good the impairment or damage and recover from the undertaker the expense reasonably incurred by it in doing so.

139. If the Board considers that, as a direct result of the construction and/or operation of the authorised development the outfall of the Habrough Drain has been obstructed or impaired and either—

(a) the obstruction has the potential to impede or affect the flow of water from the Habrough Drain into the River Humber; or

(b) the efficiency of any ordinary watercourse for flood defence or land drainage purposes is impaired, or that watercourse is otherwise damaged, so as to require remedial action,

such obstruction, impairment or damage must be made good by the undertaker to the reasonable satisfaction of the Board and if the Undertaker fails to do so, the Board may make good the same and recover from the undertaker the expense reasonably incurred by it in so doing.

140. The undertaker must compensate the Board in respect of all costs, charges and expenses that the Board may reasonably incur, have to pay or may sustain—

(a) in the examination or approval of plans and evidence under this Part of this Schedule;

(b) in inspecting the proposed site for and construction of any specified work or any protective works required by the Board under this Part of this Schedule; and

(c) in carrying out of any surveys or tests by the Board that are reasonably required in connection with the authorised development and/or construction of the specified work.

141. Without limiting the other provisions of this Part of this Schedule, the undertaker must compensate the Board in respect of all claims, demands, proceedings, costs, damages, expenses or loss that may be made or taken against, reasonably recovered from or reasonably incurred by the Board by reason of—

(a) any damage to any drainage work so as to impair its efficiency for the purposes of flood defence; and

(b) any flooding or increased flooding of any such land which is caused by, or results from, the authorised development, the construction of the specified work or any act or omission of the undertaker, its contractors, agents or employees whilst engaged upon the work.

142. The fact that any work or thing has been executed or done by the undertaker in accordance with a plan approved or deemed to be approved by the Board, or to its satisfaction, or in accordance with any directions or award of an arbitrator, does not relieve the undertaker from any liability under this Part of this Schedule.

143. Any dispute between the undertaker and the Board under this Part of this Schedule, unless otherwise agreed, must be determined by arbitration under article 35 (arbitration).

SCHEDULE 5

Article 10

MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS

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

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

(2) For section 5A(5A)(relevant valuation date) of the 1961 Act substitute—

"(5A) If—

(a) the acquiring authority enters on land for the purpose of exercising a right in pursuance of a notice of entry under section 11(1) (powers of entry) of the 1965 Act(**a**) (as modified by paragraph 5(5) of Schedule 5 (modification of compensation and compulsory purchase enactments) to the Associated British Ports (Immingham Eastern Ro-Ro Terminal) Development Consent Order 2024);

(b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act (as substituted by paragraph 5(8) of Schedule 5 to the Associated British Ports (Immingham Eastern Ro-Ro Terminal) Development Consent Order 2024 to acquire an interest in the land; and

(c) the acquiring authority enters on and takes possession that land,

the authority is deemed for the purposes of subsection (3)(a) to have entered on that land when it entered on that land for the purposes of exercising that right.".

(**a**) Section 5A was inserted by section 103 of the Planning and Compulsory Purchase Act 2004 (c. 5) and amended by section 199(2) of, and paragraph 9 of Schedule 18 to, the Housing and Planning Act 2016. There are other amendments to section 5A which are not relevant to this Order.

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

(2) In section 44(1)(**b**) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 (measure of compensation in case of severance) of the 1965 Act as substituted by paragraph 5(3)—

(a) for "land is acquired or taken" substitute "a right over land is purchased";

(b) for "acquired or taken from him" substitute "over which the right is exercisable".

Application of Part 1 of the 1965 Act

4. Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act, as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and modified by article 14 (modification of Part 1 of the 1965 Act)), applies to the compulsory acquisition of a right by the creation of a new right under article 10 (compulsory acquisition of rights)—

(a) with the modifications specified in paragraph 5; and

(b) with such other modifications as may be necessary.

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

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

(a) the right acquired or to be acquired; or

(b) the land over which the right is or is to be exercisable.

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

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

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

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

(b) paragraph 10(3) of Schedule 1 (owners under incapacity);

(c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and

(d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

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

(5) Section 11(**c**) (powers of entry) of the 1965 Act is modified so as to secure that, where the acquiring authority has served notice to treat in respect of any right, as well as the notice of entry required by subsection (1) of that section (as it applies to compulsory acquisition under article 10 (compulsory acquisition of rights), it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right; and sections—

(**a**) 1973 c. 26.

(**b**) There are amendments to section 44 which are not relevant to this Order.

(**c**) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1), sections 186(2), 187(2) and 188 of, and paragraph 6 of Schedule 14 and paragraph 3 of Schedule 16 to, the Housing and Planning Act 2016 and S.I. 2009/1307.

(a) 11A(**a**) (powers of entry: further notices of entry);

(b) 11B(**b**) (counter-notice requiring possession to be taken on a specified date);

(c) 12(**c**) (penalty for unauthorised entry); and

(d) 13(**d**) (entry on warrant in the event of obstruction) of the 1965 Act,

are modified correspondingly.

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

(7) Section 22 (interests omitted from purchase) of the 1965 Act as modified by article 14(4) is also modified so as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

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

"SCHEDULE 2A

COUNTER-NOTICE REQUIRING PURCHASE OF LAND

Introduction

1. This Schedule applies where an acquiring authority serve a notice to treat in respect of a right over the whole or part of a house, building or factory and have not executed a general vesting declaration under section 4 (execution of declaration) of the 1981 Act as applied by article 15 (application of the 1981 Act) of the Associated British Ports (Immingham Eastern Ro-Ro Terminal) Development Consent Order 2024 in respect of the land to which the notice to treat relates.

2. In this Schedule, "house" includes any park or garden belonging to a house.

Counter-notice requiring purchase of land

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

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

Response to counter-notice

5. On receiving a counter-notice, the acquiring authority must decide whether to—

(a) withdraw the notice to treat,

(b) accept the counter-notice, or

(**a**) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016.
(**b**) Section 11B was inserted by section 187(2) of the Housing and Planning Act 2016.
(**c**) Section 12 was amended by section 56(2) of, and Part 1 of Schedule 9 to, the Courts Act 1971 (c. 23).
(**d**) Section 13 was amended by sections 62(3), 139(4) to (9) and 146 of, and paragraphs 27 and 28 of Schedule 13 and Part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).
(**e**) Section 20 was amended by section 70 of, and paragraph 4 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34) and S.I. 2009/1307.

(c) refer the counter-notice to the Upper Tribunal.

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

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

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

9. If the acquiring authority serves notice of a decision to accept the counter-notice, the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in the house, building or factory.

Determination by Upper Tribunal

10. On a referral under paragraph 7, the Upper Tribunal must determine whether the acquisition of the right would—

(a) in the case of a house, building or factory, cause material detriment to the house, building or factory; or

(b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

11. In making its determination, the Upper Tribunal must take into account—

(a) the effect of the acquisition of the right,

(b) the use to be made of the right proposed to be acquired, and

(c) if the right is proposed to be acquired for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.

12. If the Upper Tribunal determines that the acquisition of the right would have either of the consequences described in paragraph 10, it must determine how much of the house, building or factory the acquiring authority ought to be required to take.

13. If the Upper Tribunal determines that the acquiring authority ought to be required to take some or all of the house, building or factory, the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in that land.

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

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

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

SCHEDULE 6

Article 10

LAND IN WHICH ONLY NEW RIGHTS ETC., MAY BE ACQUIRED

(1)	*(2)*	*(3)*
Plot reference number shown	*Works for which Plots are*	*Extent of acquisition*

on land plans	*required*	
1	Work Nos. 4 and 7	Acquisition of permanent rights (including restrictive covenants) over land
2a	Work Nos. 4 and 7	Acquisition of permanent rights (including restrictive covenants) over land
2b	Work Nos. 4 and 7	Acquisition of permanent rights (including restrictive covenants) over land
3	Work Nos. 4 and 7	Acquisition of permanent rights (including restrictive covenants) over land
4	Work Nos. 4 and 7	Acquisition of permanent rights (including restrictive covenants) over land
5a	Work Nos. 4 and 7	Acquisition of permanent rights (including restrictive covenants) over land
5b	Work Nos. 4 and 7	Acquisition of permanent rights (including restrictive covenants) over land
6	Work Nos. 4 and 7	Acquisition of permanent rights (including restrictive covenants) over land
9	Work No. 6	Acquisition of permanent rights (including restrictive covenants) over land
14	Work Nos. 1, 2 and 3	Acquisition of interests and rights over land

SCHEDULE 7

Articles 2 and 33

PLANS AND DOCUMENTS TO BE CERTIFIED

(1) *Document*	*(2)* *Document Reference*
the book of reference	Document Reference 4.1 v2
the drainage plan	Document Reference 2.7
the engineering sections, drawings and plans	Document Reference 2.6 v4
the Enhanced Operational Controls	Document Reference 10.2.109
the environmental statement	The environmental statement chapters (Document Reference 8.2), figures (Document Reference 8.3), appendices (Document Reference 8.4) subject to the substitutions set out below: (a) volume 1, chapter 2: proposed development document reference 8.2.2 v2; (b) volume 1, chapter 3: details of project construction and operation 8.2.3 v2; (c) volume 1, chapter 6: impact assessment approach document

	reference 8.2.6 v2; (d) volume 1, chapter 20: cumulative and in-combination effects document reference 8.2.20 v2; (e) volume 2, figure 8.3.20: location of projects, developments and activities that are scoped into the inter-project effects assessment document reference 8.3.20 v2; (f) volume 3, appendix (g) volume 3, appendix 10.1: navigational risk assessment document reference 8.4.10(a) v2; (h) volume 3, appendix 10.2: navigation simulation study – part 1 document reference 8.4.10(b) v2; (i) volume 3, appendix 10.2: navigation simulation study – part 2 document reference 8.4.10(b) v2; (j) volume 3, appendix 10.3: navigational simulation – stakeholder demonstrations document reference 8.4.10(c) v2; (k) volume 3, appendix 17.1: transport assessment document reference 8.4.17(a) v2; and (l) volume 3, transport assessment addendum document reference 8.4.17(a).1.
the environmental statement addendum	Document Reference 10.3.8
the flood risk assessment	Document Reference 8.4.11
the general arrangement plans	Document Reference 2.5 v2
the land plans	Document Reference 2.2 v2
the lighting plan	Document Reference 2.8 v2
the operational freight management plan	Document Reference 10.2.76 v2
the outline offshore construction environmental management plan	Document Reference 9.2.2 v2
the outline onshore construction environmental management plan	Document Reference 9.2.1 v2
the supplementary navigation information report with appendices	Document Reference 10.2.72
the travel plan	Document Reference 8.4.17(b) v2
the WEMP	Document Reference 9.4
the works plans	Document Reference 2.3 v2

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises Associated British Ports (referred to in this Order as the undertaker) to construct, operate and maintain a new RoRo facility with three berths additional marine infrastructure, a dredged berthing pocket, and associated development within the Port of Immingham.

The Order would permit the undertaker to acquire, compulsorily or by agreement, land and rights in land and to use land for this purpose.

A copy of all documents mentioned in this Order and certified in accordance with article 33 (certification of plans and documents etc.) of this Order may be inspected free of charge during working hours at ABP's Registered Office, 25 Bedford Street, London, WC2E 9ES.

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