STATUTORY INSTRUMENTS

2025 No. 165

INRASTRUCTURE PLANNING

The Associated British Ports (Immingham Green Energy Terminal) Order 2025

Made - - - - *6th February 2025*

Coming into force *27th February 2025*

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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") and 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 five members ("the Panel") (appointed by the Secretary of State) in accordance with Chapter 4 of Part 6 of the 2008 Act, and the Infrastructure Planning (Examination Procedure) Rules 2010(**c**).

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considered the application with the documents that accompanied the application, and the representations made and not withdrawn, has, in accordance with section 74(2) of the 2008 Act, submitted a report and recommendation to the Secretary of State.

The Secretary of State has considered the representations made and not withdrawn and the report and the recommendation of the Panel.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

(**a**) 2008 c. 29. Parts 1 to 7 were amended by Chapter 6 of Part 6 of 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. 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.

The Secretary of State, in exercise of the powers conferred by sections 114(**a**), 115(**b**), 120(**c**), 122(**d**) and 123(**e**) of, and paragraphs 1 to 4, 10 to 15, 17, 20, 22, 26, 30A, 30B, 32, 33, 36 and 37 of Schedule 5(**f**) to, the 2008 Act, makes the following Order.

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Associated British Ports (Immingham Green Energy Terminal) Order 2025 and comes into force on 27th February 2025.

Interpretation

2.—(1) In this Order, unless the context requires otherwise—

"the 1847 Act" means the Harbours, Docks, and Piers Clauses Act 1847(**g**);

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

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

"the 1967 Act" means the Forestry Act 1967(**j**);

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

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

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

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

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

"the 2003 Act" means the Communications Act 2003(**p**);

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

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

"the 2010 Regulations" means the Community Infrastructure Levy Regulations 2010(**s**);

"the 2017 Regulations" means the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017(**t**);

(**a**) Section 114 was amended by paragraph 55 of Part 1 of Schedule 13 to the Localism Act 2011.
(**b**) Section 115 was amended by paragraph 56 of Part 1 of Schedule 13 and Part 20 of Schedule 25 to the Localism Act 2011, section 160 of the Housing and Planning Act 2016 (c. 22) and section 43 of the Wales Act 2017 (c. 4).
(**c**) Section 120 was amended by section 140 and paragraph 60 of Part 1 of Schedule 13 to the Localism Act.
(**d**) Section 122 was amended by paragraph 62 of Part 1 of Schedule 13 to the Localism Act 2011.
(**e**) Section 123 was amended by paragraph 62 of Part 1 of Schedule 13 to the Localism Act 2011.
(**f**) 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 Part 3 of Schedule 6 to the Wales Act 2017.
(**g**) 1847 c. 27.
(**h**) 1961 c. 33.
(**i**) 1965 c. 56.
(**j**) 1967 c. 10.
(**k**) 1980 c. 66.
(**l**) 1981 c. 66.
(**m**) 1984 c. 27.
(**n**) 1990 c. 8.
(**o**) 1991 c. 22.
(**p**) 2003 c. 21.
(**q**) 2008 c. 29.
(**r**) 2009 c. 23.
(**s**) S.I. 2010/948.
(**t**) S.I. 2017/572.

"ancillary works" means the ancillary works described in Part 2 of Schedule 1 (authorised project) and any other works authorised by the Order which are not development within the meaning of section 32 (meaning of "development") of the 2008 Act;

"Air Products" means Air Products (BR) Limited (company number 02532156) whose registered office is at Hersham Place Technology Park, Molesey Road, Walton on Thames, Surrey KT12 4RZ or such other person as the Secretary of State agrees;

"apparatus" has the same meaning as in Part 3 (street works in England and Wales) of the 1991 Act except that, unless otherwise provided, it further includes pipelines, aerial markers, cathodic protection test posts, field boundary markers, transformer rectifier kiosks, electricity cables, telecommunications equipment (including masts and cables), electricity cabinets and any pipe sleeves, ducts and culverts in which any apparatus is lodged;

"area of jurisdiction" means so far as it falls within the UK marine area, the area extending to a distance of 186 metres in every direction from any part of Work No. 1;

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

"authorised project" means the authorised development and the ancillary works;

"Board" means the North East Lindsey Drainage Board;

"book of reference" means the document of that description listed in the table at Schedule 15 (documents and plans to be certified) and which has been 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 which is not Christmas Day, Good Friday or a bank holiday under section 1 (bank holidays) of the Banking and Financial Dealings Act 1971(**a**);

"carriageway" has the same meaning as in section 329(1) (further provision as to interpretation) of the 1980 Act;

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

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

"deemed marine licence" means the marine licence granted by article 47 (deemed marine licence);

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

"the electronic communications code" has the same meaning as in Chapter 1 (electronic communications networks and services) of Part 2 (networks, services and the radio spectrum) 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 (application of the electronic communications code) of the 2003 Act; and

(b) an electronic communications network which the undertaker is providing or proposing to provide;

"electronic transmission" means a communication transmitted by means of an electronic communications network or by other means provided it is in electronic form and in this

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

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

"existing early works planning permission" means the planning permission granted by the relevant planning authority on 1 November 2024 with reference number DM/0326/24/FUL and any amendments or variations made or granted in respect of it pursuant to section 96A, section 73(**b**) (determination of applications to develop land without compliance with conditions previously attached), section 73A(**c**) (planning permission for development already carried out) or section 73B(**d**) (applications for permission not substantially different from existing permission) of the 1990 Act;

"environmental statement" means the document of that description listed in the table at Schedule 15 and which has been certified by the Secretary of State as the environmental statement for the purposes of this Order;

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

"highway" and "highway authority" respectively have the same meaning as in section 328 (meaning of "highway") and section 1 (highway authorities: general provision) of the 1980 Act;

"land plans" means the plans of that description listed in the table at Schedule 15 and which are certified by the Secretary of State as the land plans for the purposes of this Order;

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

"Long Strip" means the area shown edged blue and labelled "Tree Preservation Order" on the plan of potentially affected hedgerows and trees subject to preservation orders;

"Long Strip construction environmental management plan" means the document of that name identified in the table at Schedule 15 (documents and plans to be certified) and which has been certified by the Secretary of State as the Long Strip construction environmental management plan for the purposes of this Order;

"maintain" includes inspect, repair, adjust, alter, remove or reconstruct, 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";

"MMO" means the Marine Management Organisation;

"new early works planning permission" means any planning permission granted under the 1990 Act prior to the service of notice under article 55(3) for works also comprised in Work No. 2, Work No. 3, Work No 5 or Work No. 7 (including any further associated development to which paragraph 11 of Part 1 (authorised development) of Schedule 1 (authorised project) refers) or any part of them, and any amendments or variations made or granted in respect of such planning permission pursuant to section 96A(**e**) (power to make non-material changes to planning permission or permission in principle), section 73, section 73A or section 73B of the 1990 Act, except an existing early works planning permission;

"operational use" means the relevant part of the authorised project being in operation after construction and commissioning is complete;

"Order land" means the land shown shaded pink, blue, green and purple and shown shaded and hatched blue (in each case) on the land plans and described in the book of reference;

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

(**b**) Section 73 was amended by paragraph 4 of Schedule 3 to the Neighbourhood Planning Act 2017 (c. 20), section 51(3) of, and Schedule 9 to, the Planning and Compulsory Purchase Act (c. 5), paragraph 3(5) of Schedule 14 to the Environment Act 2021 (c. 3), section 114(6) of the Levelling-up and Regeneration Act 2023 (c. 55) and S.I. 2024/44 and S.I. 2024/49.

(**c**) Section 73A was inserted by paragraph 16(1) of Schedule 7 to the Planning and Compensation Act 1991 (c. 34).

(**d**) Section 73B was inserted by section 110(1) and (2) of the Levelling-up and Regeneration Act 2023.

(**e**) Section 96A was inserted by the Planning Act 2008 and amended by paragraph 3(10) of Schedule 14 to the Environment Act 2021 (c. 30) and section 114(7) of the Levelling-up and Regeneration Act 2023 and by S.I. 2017/276.

"Order limits" means the Order limits shown on the works plans within which the authorised development may be carried out;

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

"plan of potentially affected hedgerows and trees subject to preservation orders" means the plan of that description listed in the table at Schedule 15 and which has been certified by the Secretary of State as the plan of potentially affected hedgerows and trees subject to preservation orders for the purposes of this Order;

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

"relevant planning authority" means the local planning authority for the land in question, being North East Lincolnshire Council or any successor to it as the local planning authority;

"requirements" means the requirements listed in Schedule 2 (requirements), and any reference to a numbered requirement is to be construed accordingly;

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

"sea" has the same meaning as that given at section 42(3) (UK marine area) of the 2009 Act;

"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(**b**)) and includes its role as competent harbour authority and local lighthouse authority for its statutory area;

"statutory harbour authority" means the Company 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 that port;

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

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

"street authority", in relation to a street, has the same meaning as in section 49(**d**) (the street authority) of the 1991 Act;

"street works" means the works listed in article 7 (street works);

"stopping up and restriction of use of streets and public rights of way plan" means the plan of that description listed in the table at Schedule 15 and which has been certified by the Secretary of State as the stopping up and restriction of use of streets and public rights of way plan for the purposes of this Order;

"street works and accesses plan" means the plan of that description listed in the table at Schedule 15 and which has been certified by the Secretary of State as the street works and accesses plan for the purposes of this Order;

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

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

(**a**) 1981 c. 67. The definition of "owner" was amended by paragraph 9 of Schedule 15 to the Planning Compensation Act 1991 (c. 34). There are other amendments to section 7 which are not relevant to this Order.
(**b**) 1868 c. lviii.
(**c**) Section 48 was amended by section 124 of the Local Transport Act 2008 (c. 26).
(**d**) Section 49 was amended by paragraph 117 of Schedule 1 to the Infrastructure Act 2015 (c. 7).
(**e**) Section 121A was inserted by section 168(1) of, and paragraph 70 of Schedule 8 to, the New Roads and Street Works Act 1991 (c. 22), and subsequently amended by section 1(6) of, and paragraph 95(2) and (3) of Schedule 1 to, the Infrastructure Act 2015 (c. 7) and S.I. 2001/1400.

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

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

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

"undertaker" means, subject to article 46 (benefit of the Order)—

(a) the Company;

(b) Air Products in respect of the following provisions—

(i) article 19 (authority to survey and investigate the land);

(ii) article 20 (protective works);

(iii) article 0 (temporary use of land for constructing the authorised project);

(iv) article 32 (temporary use of land for maintaining the authorised project),

so far as they relate to the land shown as plots 3/2, 4/5, 4/7, 4/8, 4/9, 4/16, 4/17, 4/18, 4/19, 4/20, 4/21, 4/22, 4/23, 4/26, 4/28, 4/29, 4/30, 4/32, 5/3, 5/4, 5/7, 5/8, 5/10, 5/11, 5/12, 5/13, 5/14, 5/15, 5/18, 5/20, 5/22, 5/23, 5/24, 5/25, 5/27, 5/28, 5/29, 5/30, 5/32, 5/33, 5/36, 5/37, 5/38, 5/39, 5/45, 6/6, 6/14, 6/15, 6/16, 6/18, 6/19, 7/1, 7/2, 7/3, 7/4, 7/5, 7/6, 7/7, 7/8, 7/9, 7/10, 7/11, 7/12, 7/15, 7/16, 7/17, 7/18, 7/20, 7/21, 7/22 and 7/23 on the land plans and described in the book of reference and (where applicable on the terms of those provisions) land outside the Order limits except (in each aforementioned case) in respect of any interests of the Company; and

(c) any person who has the benefit of the Order in accordance with section 156 (benefit of order granting development consent) of the 2008 Act;

"vessel" means every description of vessel, however propelled or moved, and includes a displacement and 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 in water and which is at the time in, on, or over water;

"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; and

"works plans" means the plans of that description listed in the table at Schedule 15 and which are certified by the Secretary of State as the works plans for the purposes of this Order.

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

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

(4) References in this Order to numbered works are references to the works comprising the authorised project as numbered in Part 1 of Schedule 1 (authorised project) and shown on the works plans and a reference in this Order to a work designated by a number, or by a combination of letters and numbers, is a reference to the work so designated in that Schedule.

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

(6) 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.

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

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

Disapplication of legislative provisions

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

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

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

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

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

(e) the provisions of the Neighbourhood Planning Act 2017(**e**) insofar as they relate to temporary possession of land under articles 0 (temporary use of land for carrying out the authorised project) and 32 (temporary use of land for maintaining the authorised project) of this Order.

(2) 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(**f**), sections 5 (removal of obstructions) and 9 (licences for execution of works) of the Humber Conservancy Act 1899(**g**) and sections 6 (no erections in Humber below river lines or without licence above river lines) and 8 (sand not to be removed from bed or foreshore of River Humber without licence of Commissioners) of the Humber Conservancy Act 1905(**h**) do not apply to the authorised project.

Incorporation of the 1847 Act

4.—(1) The 1847 Act, except sections 5 to 13, 16 to 25, 47 to 50, 77, 79, 80, 85 to 102 and 104, so far as applicable for the purposes of and not inconsistent with this Order, is incorporated with and forms part of this Order, subject to the modifications set out in paragraph (2).

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

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

(b) the expressions "the Promoters of the undertaking" and "the undertakers" have the meaning given to "the Company" in article 2(1) of this Order;

(c) the expression "the harbour, dock or pier" means the area of jurisdiction;

(d) the expression "the harbour master" so far as applicable to the authorised project, has the meaning given to "the dock master" in article 2(1) of this Order;

(e) the meaning given to the word "vessel" by section 3 of the 1847 Act is substituted by that given to "vessel" in article 2(1) of this Order;

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

(**b**) Section 66 was amended by paragraph 38 of Schedule 2 to the Flood and Water Management Act 2010, section 86 of the Water Act 2014 (c. 21) and S.I. 2013/755.

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

(**d**) S.I. 2016/1154, amended by S.I. 2018/110.

(**e**) 2017 c. 20.

(**f**) 1852 c. cxxx.

(**g**) 1899 c. cci.

(**h**) 1905 c. clxxix.

(f) section 53 of the 1847 Act is not to be construed as requiring the dock master to serve on 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;

(g) reference in section 69 of the 1847 Act to "£2" is to be read as to "level 3 on the standard scale";

(h) section 33 of the 1847 Act, as so incorporated, must not be construed as derogating from the power of the dock master (which has the meaning given in article 2(1) of this Order) to discontinue any part of its undertaking; and

(i) any requirement to comply with a notice or direction given by the harbour master is to be construed as including a requirement that, in complying with such notice or direction, a person who is subject to the notice or direction must also comply with any relevant notice or direction given by the dock master or the harbour master (which both have the meaning given in article 2(1) of this Order) in the exercise by either or both of them of any function conferred by or under any enactment (including this Order).

PART 2

WORKS PROVISIONS

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—

(a) development consent for the authorised development; and

(b) consent for the ancillary works,

to be carried out within the Order limits.

Extent of certain works

6.—(1) Subject to paragraph (2), in carrying out the authorised project comprising the works numbered in Part 1 (authorised development) of Schedule 1 (authorised project) the undertaker must, where the works plans set out the lateral extent of the area in which the numbered work comprised in the authorised project is to be located, carry out, maintain, use or decommission the numbered work within the lateral extent of the area set out for it on those plans.

(2) For the purposes of paragraph (1), the lateral extent of the area for the dredged pocket described in paragraph 1(b) of Part 1 (authorised development) of Schedule 1 (authorised project) is not to be taken as the area set out on the works plans, which is shown on those plans for indicative purposes only, and the area within which the dredged pocket described in paragraph 1(b) of Part 1 (authorised development) of Schedule 1 (authorised project) must be carried out is instead to be taken from time to time to be the area bounded by the grid coordinates specified in paragraph 5(2) of the deemed marine licence or such other area for the dredged pocket as is specified in any marine licence granted or varied pursuant to the 2009 Act (including any variation of the deemed marine licence).

Streets

Street works

7.—(1) The undertaker may, for the purposes of the authorised project, enter on so much of any of the streets as are within the Order limits and may—

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

(b) tunnel or bore under the street, or carry out works to strengthen or repair the carriage way or to provide protection to apparatus installed in or on the street;

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

(d) maintain or renew the position of apparatus in or on the street or change its position;

(e) demolish, remove, replace and relocate any street furniture (including any bus shelter and associated bus stop infrastructure);

(f) execute any works to provide or improve sight lines required by the highway authority;

(g) execute and maintain any works to provide hard and soft landscaping;

(h) carry out re-lining and placement of new temporary and permanent markings; and

(i) execute any works required for, or incidental to, any works referred to in sub-paragraphs (a) to (h) above.

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

(3) The undertaker must not construct works to any street under paragraph (1) for which it is not the street authority without the consent of the street authority, which may attach reasonable conditions to any consent and the undertaker must comply with any reasonable conditions so attached.

(4) Paragraph (3) does not apply to works described in column (3) of the table at Schedule 4 (streets subject to street works) carried out to the corresponding street specified in columns (1) and (2) of that table.

Application of the 1991 Act

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

(a) they are of a description mentioned in any of paragraphs (a), (c) to (e), (g) and (h) of section 86(3) (highway authorities, highways and related matters) of the 1991 Act; or

(b) they are works which, had they been executed by the relevant highway authority, might have been carried out in exercise of the powers conferred by section 64(**a**) (dual carriageways and roundabouts) of the 1980 Act.

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

(3) The following provisions of the 1991 Act do not apply in relation to any works constructed under the powers of this Order—

(a) section 56(**b**) (directions as to timing as to timing of street works);

(b) section 56A(**c**) (powers to give directions as to placing of apparatus);

(c) section 58(**d**) (restriction on works following substantial road works);

(d) section 58A(**e**) (restriction on works following substantial street works);

(e) section 73A(**f**) (power to require undertaker to re-surface street);

(**a**) Section 64 was amended by Schedule 17 to the Local Government Act 1985 (c. 51) and Schedule 9 to the New Roads and Street Works Act 1991 (c. 22).
(**b**) Section 56 was amended by sections 40 and 43 of, and paragraph 1 of Schedule 1 to, the Traffic Management Act 2004 (c. 18).
(**c**) Section 56A was inserted by section 44 of the Traffic Management Act 2004.
(**d**) Section 58 was amended by sections 40 and 51 of the Traffic Management Act 2004.
(**e**) Section 58A was inserted by section 52 of the Traffic Management Act 2004.
(**f**) Section 73A was inserted by section 55 of the Traffic Management Act 2004.

(f) section 73B(**a**) (power to specify timing etc. of re-surfacing);

(g) section 73C(**b**) (materials, workmanship and standard of re-surfacing);

(h) section 78A(**c**) (contributions to costs of re-surfacing by undertaker); and

(i) Schedule 3A(**d**) (restriction on works following substantial street works).

(4) The provisions of the 1991 Act referred to in paragraph (5) (which, together with other provisions of that Act, apply in relation to the execution of street works) and any regulations made, or code of practice issued or approved under those provisions, apply (with necessary modifications) in relation to—

(a) any stopping up, alteration or diversion of a street of a temporary nature by the undertaker under the powers conferred by article 13 (temporary stopping up and prohibition or restriction of use of streets and public rights of way) whether or not the stopping up, alteration or diversion constitutes street works within the meaning of that Act; and

(b) any alteration of the layout of or the carrying out of any works in the street by the undertaker under the powers conferred by article 9 (power to alter layout, etc., of streets) whether or not the alteration of the layout of or the carrying out of the works constitutes street works within the meaning of that Act.

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

(a) section 54(**f**) (advance notice of certain works), subject to paragraph (6);

(b) section 55(**g**) (notice of starting date of works), subject to paragraph (6);

(c) section 57(**h**) (notice of emergency works);

(d) section 59(**i**) (general duty of street authority to co-ordinate works);

(e) section 60 (general duty of undertakers to co-operate);

(f) section 68 (facilities to be afforded to street authority);

(g) section 69 (works likely to affect other apparatus in the street);

(h) section 75(**j**) (inspection fees);

(i) section 76 (liability for cost of temporary traffic regulation); and

(j) section 77 (liability for cost of use of alternative route),

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

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

(7) Nothing in article 10 (construction and maintenance of new, altered or diverted streets)—

(a) affects the operation of section 87 (prospectively maintainable highways) of the 1991 Act, and the undertaker is not by reason of any duty under that article to maintain a street or to be taken to be the street authority in relation to that street for the purposes of Part 3 of that Act; or

(b) has effect in relation to street works as respects which the provisions of Part 3 of the 1991 Act apply.

(**a**) Section 73B was inserted by section 55 of the Traffic Management Act 2004.
(**b**) Section 73C was inserted by section 55 of the Traffic Management Act 2004.
(**c**) Section 78A was inserted by section 57 of the Traffic Management Act 2004.
(**d**) Schedule 3A was inserted by section 52(2) of, and Schedule 4 to, the Traffic Management Act 2004.
(**e**) Sections 54, 55, 57, 60, 68 and 69 were amended by section 40(1) and (2) of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).
(**f**) Section 54 was amended by section 49(1) of the Traffic Management Act 2004.
(**g**) Section 55 was also amended by section 49(2) and 51(9) of the Traffic Management Act 2004.
(**h**) Section 57 was also amended by section 52(3) of the Traffic Management Act 2004.
(**i**) Section 59 was amended by section 42 the Traffic Management Act 2004.
(**j**) Section 75 was substituted by section 58(2) of the Traffic Management Act 2004.

Power to alter layout, etc., of streets

9.—(1) The undertaker may, for the purposes of the authorised project, alter the layout of or carry out any works in the street—

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

(b) in the case of the streets specified in columns (1) and (2) of the table in Part 2 (temporary alteration of layout) of Schedule 5 temporarily in the manner specified in relation to that street in column (3).

(2) Without limitation on the specific powers conferred by paragraph (1) but subject to paragraphs (3) and (4), the undertaker may, for the purposes of constructing, operating, maintaining or decommissioning the authorised project, permanently or temporarily alter the layout of any street (and carry out works ancillary to such alterations) whether or not within the Order limits and the layout of any street having a junction with such a street and, without limiting the scope of this paragraph, the undertaker may—

(a) increase the width of the carriageway of the street by reducing the width of any kerb, footpath, footway, cycle track, central reservation or verge within the street;

(b) alter the level or increase the width of any such kerb, footpath, footway, cycle track, central reservation or verge;

(c) reduce the width of the carriageway of the street;

(d) execute any works to widen or alter the alignment of pavements;

(e) make and maintain crossovers and passing places;

(f) execute any works of surfacing or resurfacing of the highway;

(g) carry out works for the provision or alteration of parking places, loading bays and cycle tracks;

(h) execute any works related to signage and street markings;

(i) execute any works necessary to alter or provide facilities for the management and protection of pedestrians; and

(j) execute any works to provide or improve sight lines required by the highway authority.

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

(4) The powers conferred by paragraph (2) may not be exercised without the consent of the street authority, which may attach any reasonable conditions to any consent but such consent is not to be unreasonably withheld or delayed.

Construction and maintenance of new, altered or diverted streets and other structures

10.—(1) Subject to paragraph (5), any street to be constructed under this Order must be completed to the reasonable satisfaction of the street authority and must, unless otherwise agreed in writing with the street authority, be maintained by and at the expense of the undertaker to the reasonable satisfaction of the street authority for a period of 12 months from its completion and thereafter by the street authority.

(2) Subject to paragraph (5), where a street is permanently altered or diverted under this Order, the altered or diverted part of the street must be completed to the reasonable satisfaction of the street authority and, unless otherwise agreed in writing with the street authority, that part of the street must be maintained by and at the expense of the undertaker to the reasonable satisfaction of the street authority for a period of 12 months from its completion and thereafter by the street authority.

(3) Subject to paragraph (5), where a street is temporarily altered or diverted under this Order, the altered or diverted part of the street must be completed to the reasonable satisfaction of the

street authority and the temporary alterations must be maintained by and at the expense of the undertaker.

(4) Where land not previously part of the highway comes to form part of the highway by virtue of the construction, diversion or alteration of streets under this Order, unless otherwise agreed in writing with the street authority, the land is deemed to have been dedicated as highway on the expiry of a period of 12 months from completion of the street that has been constructed, altered or diverted and is thereafter to be maintained by and at the expense of the street authority.

(5) In the case of any bridge or any other structure constructed under this Order to carry a street, both the street surface and structure of the bridge or other structure must be completed to the reasonable satisfaction of the street authority and, unless otherwise agreed in writing with the street authority, must be maintained by and at the expense of the undertaker to the reasonable satisfaction of the street authority for a period of 24 months from its completion and thereafter by the street authority.

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

(7) For the purposes of a defence under paragraph (6), the court must in particular have regard to the following matters—

(a) the character of the street and the traffic which was reasonably to be expected to use it;

(b) the standard of maintenance appropriate for a street of that character and used by such traffic;

(c) the state of repair in which a reasonable person would have expected to find the street;

(d) whether the undertaker knew, or could reasonably have been expected to know, that the condition of the part of the street to which the action relates was likely to cause danger to users of the street; and

(e) where the undertaker could not reasonably have been expected to repair that part of the street before the cause of action arose, what warning notices of its condition had been displayed,

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

(8) The date of completion of any works referred to in paragraphs (1), (2), (3), (4) and (5) is to be agreed between the undertaker and the street authority, acting reasonably.

Permanent stopping up of streets

11.—(1) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised project, stop up each of the streets specified in column (2) of Schedule 6 (permanent stopping up of highways) and identified on the stopping up and restriction of use of streets and public rights of way plan to the extent specified and described in column (3) of that Schedule.

(2) No street specified in column (2) of Schedule 6 (being a street to be stopped up for which no substitute is to be provided) is to be wholly or partly stopped up under this article unless the condition specified in paragraph (3) is satisfied in relation to all the land which abuts on either side of the street to be stopped up.

(3) The condition referred to in paragraph (2) is that—

(a) the undertaker is in possession of the land;

(b) there is no right of access to the land from the street concerned;

(c) there is reasonably convenient access to the land otherwise than from the street concerned; or

(d) the owners and occupiers of the land have agreed to the stopping up.

(4) Where a street has been stopped up under this article—

(a) all rights of way over or along the street so stopped up are extinguished; and

(b) the undertaker may appropriate and use for the purposes of the authorised project so much of the site of the street as is bounded on both sides by land owned by the undertaker.

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

(6) This article is subject to article 17 (apparatus and rights of statutory undertakers in stopped up streets).

(7) The undertaker must give the highway authority notice of any street having been stopped up under paragraph (1) specifying the date of such stopping up and providing a plan of the extent of the street which has been stopped up.

Permanent stopping up of public rights of way

12.—(1) From the date upon which the authorised project begins for the purposes of section 155 (when development begins) of the 2008 Act, the section of each public right of way specified in columns (1) and (2) of Schedule 7 (public rights of way to be permanently stopped up) and shown on the stopping up and restriction of use of streets and public rights of way plan is extinguished to the extent specified in column (3) of that Schedule, the undertaker must erect a site notice at each end of the rights of way to be extinguished no less than 28 days prior to the extinguishment of that right of way.

(2) The notice to be erected under paragraph (1) must include—

(a) details of the public rights of way to be extinguished;

(b) the date on which the extinguishment will take effect; and

(c) details of any public rights of way being provided in substitution; and details of the places where a copy of this Order and the documents listed in Schedule 15 (documents and plans to be certified) may be inspected.

Temporary stopping up and prohibition or restriction of use of streets and public rights of way

13.—(1) The undertaker, during and for the purposes of carrying out the authorised project, may temporarily stop up, alter, divert, or prohibit or restrict the use of any street or public right of way and may for any reasonable time—

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

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

(c) subject to paragraph (3), prevent all persons from passing along the street or public right of way.

(2) Without limitation on the scope of paragraph (1), the undertaker may use as a temporary working site any street or public right of way which has been temporarily stopped up, altered or diverted or the use of which has been prohibited or restricted under the powers conferred by this article.

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

(4) Without limitation on the scope of paragraph (1) the undertaker may temporarily prohibit the use of, use, restrict the use of, alter or divert—

(a) the streets or public rights of way specified in column (2) of the table in Part 1 (temporary prohibition or restriction of the use or diversion of streets or public rights of way) of Schedule 8 (temporary restriction or alteration, etc. of the use of streets or public rights of way) in the manner specified in column (3) of that table; and

(b) the public rights of way specified in column (2) of the table in Part 2 (temporary use of motor vehicles on public rights of way) of Schedule 8 in the manner specified in column (3) of that table.

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

(a) any street or public right of way specified in paragraph (4) without first consulting the street authority during a period of not less than 28 days; or

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

(6) If the undertaker temporarily closes under the powers conferred by this article any part of Bridleway Number 36 to which columns (1), (2) and (3) of the table in Part 1 of Schedule 8 refer it must provide the temporary diversion specified in column (3) of that table but the temporary diversion is not required to be of a higher standard than the temporarily closed Bridleway Number 36.

(7) The undertaker must make good to the reasonable satisfaction of the highway authority any damage caused to any part of Bridleway Number 36 to which columns (1), (2) and (3) of the table in Part 1 of Schedule 8 refer by the exercise of the undertaker of any powers conferred by this article.

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

Use of private roads for construction

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

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

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

Access to works

15. The undertaker may, for the purposes of the authorised project—

(a) form and lay out the permanent means of access, or improve existing means of access, in the locations specified in Part 1 (permanent means of access to works) of Schedule 9 (access to works);

(b) form and lay out the temporary means of access in the locations specified in Part 2 (temporary means of access to works) of Schedule 9; and

(c) with the consent of the relevant planning authority (such consent not to be unreasonably withheld or delayed), after consultation with the relevant highway authority, form and lay out such other means of access or improve existing means of access, at such locations

within the Order limits as the undertaker reasonably requires for the purposes of the authorised project.

Agreements with street authorities

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

(a) the construction of any new street including any structure carrying the street, whether or not over or under any part of the authorised project;

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

(c) the maintenance of any street or of the structure of any bridge or tunnel carrying a street over or under the authorised project;

(d) any stopping up, prohibition, restriction, alteration or diversion of a street under the powers conferred by this Order;

(e) the construction in the street of any of the authorised project;

(f) the undertaking in the street of any of the works referred to in article 7 (street works), article 9 (power to alter layout, etc., of streets) and article 10 (construction and maintenance of new, altered or diverted streets);

(g) such other works as the parties may agree; or

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

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

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

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

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

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

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

Apparatus and rights of statutory undertakers in temporary stopped up streets

17. Where a street is altered or diverted or its use is temporarily prohibited or restricted under article 7 (street works), article 9 (power to alter layout, etc., of streets), article 10 (construction and maintenance of new, altered or diverted streets) or article 13 (temporary stopping up and prohibition or restriction of use of streets and public rights of way) any statutory undertaker whose apparatus is under, in, on, along or across the street has the same powers and rights in respect of that apparatus, subject to Schedule 14 (protective provisions), as if this Order had not been made.

Supplementary

Discharge of water

18.—(1) Subject to paragraphs (4), (5) and (7), the undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised project 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 public sewer or drain.

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

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

(4) The undertaker must not make any opening into any public sewer or drain in connection with the authorised project except—

(a) in accordance with plans approved by the person to whom the sewer or drain belongs but such approval must not be unreasonably withheld; and

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

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

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

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

(8) A person who receives an application for consent or approval under paragraph (3) or under paragraph (4)(a)—

(a) may not refuse the application on a ground which is inconsistent with a relevant drainage strategy approved by the relevant planning authority pursuant to requirement 12 (surface water drainage) of Schedule 2 (requirements); and

(b) may not make such consent or approval subject to any term or condition which is inconsistent with such a drainage strategy.

(9) Any application to which this article applies must include a statement that the provisions of paragraphs (7) and (8) apply to that application.

(10) In this article—

(a) "public sewer or drain" means a sewer or drain which belongs to the Board, the Environment Agency, a joint planning board, a local authority or a sewerage undertaker; and

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

Authority to survey and investigate the land

19.—(1) The undertaker may for the purposes of this Order enter on any land within the Order limits except the land shaded yellow on the land plans and, where reasonably necessary, any land which is adjacent to but outside the Order limits or which may be affected by the authorised project and—

(a) survey, monitor or investigate the land (including any watercourses, groundwater, static water bodies or vegetation on the land);

(**a**) 1991 c. 56. Section 106 was amended by sections 35(1) and (8), 43(2) and 56(7) 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 section 32 of, and paragraph 16(1) of Schedule 3 to, the Flood and Water Management Act 2010 (c. 29).
(**b**) S.I. 2016/1154.
(**c**) 1991 c. 57.

(b) without prejudice to the generality of sub-paragraph (a), survey, monitor or investigate the land and any buildings on that land for the purpose of investigating the potential effects of the authorised project on that land or buildings on that land or for enabling the construction, use and maintenance of the authorised project;

(c) without limitation on the scope of sub-paragraph (a)—

(i) make trial holes, boreholes, excavations or take horizontal cores in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer, subsoil, groundwater and other materials below ground level and remove soil, rock, water and other material samples and discharge water from sampling operations on to the land;

(ii) carry out ecological or archaeological investigations and monitoring on the land, including making any excavations or trial holes on the land for such purposes; and

(d) place on, leave on and remove from the land apparatus (including but not limited to welfare facilities and apparatus attached to buoys) for use in connection with the survey, monitoring or investigation of land, making of trial holes, boreholes, excavations and cores and the carrying out of ecological or archaeological investigations or monitoring.

(2) The power conferred by paragraph (1) includes, without prejudice to the generality of that paragraph, the power to take, and process, samples of or from any of the following found on, in or over the land—

(a) water;

(b) air;

(c) soil or rock;

(d) flora;

(e) bodily excretions, or dead bodies, of non-human creatures; or

(f) any non-living thing present as a result of human action.

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

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

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

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

(5) No surveying, monitoring or investigation to which paragraph (1) refers may be carried out under this article—

(a) in land located within the boundary of any highway for which the highway authority is responsible without its consent; or

(b) in a private street without the consent of the street authority,

but such consent must not be unreasonably withheld or delayed.

(6) As soon as reasonably practicable following the completion of any activities carried out under paragraph (1), the undertaker must remove the apparatus used in connection with the activities and restore the land on which the activities were carried out to the reasonable satisfaction of the owners of the land; but the undertaker is not required to breach or fail to comply with a term of this Order.

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

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

Protective works

20.—(1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any land, building, structure, apparatus or equipment, lying within the Order limits or which may be affected by the construction or operation of the authorised project and is adjacent to but outside 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 land, building, structure, apparatus or equipment of any part of the authorised project; or

(b) after the completion of any part of the authorised project in the vicinity of the land, building, structure, apparatus or equipment, at any time up to the end of the period of 5 years beginning with the day on which that part of the authorised project is first brought into operational use.

(3) For the purpose of determining how the functions under this article are to be exercised, the undertaker may enter and survey—

(a) any land, building, structure, apparatus or equipment, falling within paragraph (1) and any land within its curtilage; and

(b) where reasonably necessary, any land which is adjacent to the land, building, structure, apparatus or equipment, whether or not within Order limits,

and place on, leave on and remove from the land, building, structure, apparatus or equipment any apparatus and equipment for use in connection with the survey.

(4) For the purpose of carrying out protective works under this article to any land, building, structure, apparatus or equipment, the undertaker may (subject to paragraphs (5) and (6))—

(a) enter the land, building or structure 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 land, building or structure but outside its curtilage, enter the adjacent land (but not any building erected on it).

(5) Before exercising—

(a) a right under paragraph (2) to carry out protective works to any land, building, structure, apparatus or equipment;

(b) a right under paragraph (3) to enter and survey any land, building, structure, apparatus or equipment, and land within its curtilage or any adjacent land;

(c) a right under paragraph (4)(a) to enter the land, building or structure 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), specify 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 land, building, structure, apparatus or equipment 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

(**a**) Section 13 was amended by section 139 of, and paragraph 28(2) of Schedule 13 and Part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).
(**b**) Section 125 was amended by paragraph 17 of Schedule 16 to the Housing and Planning Act 2016 (c. 22).

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 61 (arbitration).

(7) The undertaker must compensate the owners and occupiers of any land, building, structure, apparatus or equipment, 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 any land, building, structure, apparatus or equipment; and

(b) within the period of five years beginning with the day on which the part of the authorised project carried out in the vicinity of the land, building, structure, apparatus or equipment is first brought into operational use it appears that the protective works are inadequate to protect the land, building, structure, apparatus or equipment against damage caused by the carrying out or use of that part of the authorised project,

the undertaker must compensate the owners and occupiers of the land, building, structure, apparatus or equipment for any loss or damage sustained by them.

(9) Subject to article 39 (no double recovery), nothing in this article relieves the undertaker from any liability to pay compensation under section 152(**a**) of the 2008 Act (compensation in case where no right to claim in nuisance).

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

(11) 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.

(12) In this article "protective works" in relation to any land, building, structure, apparatus, equipment or part of the authorised project means—

(a) underpinning, strengthening, ground strengthening, earthing and any other works the purpose of which is to prevent damage which may be caused to the land, building, structure, apparatus, equipment or the authorised project by the carrying out, maintenance or use of the authorised project;

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

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

(13) This article does not apply to the land shaded yellow on the land plans.

(14) No protective works may be carried out under this article in land located within the boundary of any highway for which the highway authority is responsible without its consent but such consent must not be unreasonably withheld or delayed.

Removal of human remains

21.—(1) In this article "the specified land" means any land within the Order limits.

(**a**) Section 152 was amended by S.I. 2009/1307.
(**b**) 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 Tribunals, Courts and Enforcement Act 2007 (c. 15).
(**c**) Section 125 was amended by section 190 of, and paragraph 17 of Schedule 16 to, the Housing and Planning Act 2016 (c. 22).

(2) Before the undertaker carries out any development or works which will or may disturb any human remains in the specified land it must remove those human remains from the specified land, or cause them to be removed, in accordance with the following provisions of this article.

(3) Before any such remains are removed from the specified land the undertaker must give notice of the intended removal, describing the specified land and stating the general effect of the following provisions of this article, by—

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

(b) displaying a notice in a conspicuous place on or near to the specified land.

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

(5) At any time within 56 days after the first publication of a notice under paragraph (3), any person who is a personal representative or relative of any deceased person whose remains are interred in the specified land may give notice in writing to the undertaker of that person's intention to undertake the removal of the remains.

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

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

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

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

(7) If the undertaker is not satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be, or that the remains in question can be identified, the question is to be determined on the application of either party in a summary manner by the county court, and the court may make an order specifying who must remove the remains and as to the payment of the costs of the application.

(8) The undertaker must pay the reasonable expenses both of responding to notices under this article and of removing and re-interring or cremating the remains of any deceased person under this article.

(9) If—

(a) within the period of 56 days referred to in paragraph (5) no notice under that paragraph has been given to the undertaker in respect of any remains in the specified land;

(b) such notice is given and no application is made under paragraph (7) within 56 days after the giving of the notice but the person who gave the notice fails to remove the remains within a further period of 56 days;

(c) within 56 days after any order is made by the county court under paragraph (7) any person, other than the undertaker, specified in the order fails to remove the remains; or

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

subject to paragraph (10), the undertaker must remove the remains and cause them to be re-interred in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose; and, so far as possible, remains from individual graves must be re-interred in individual containers which must be identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

(10) If the undertaker is satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be and that the remains in question can be identified, but that person does not remove the remains, the undertaker must comply with any reasonable request that person may make in relation to the removal and re-interment or cremation of the remains.

(11) On the re-interment or cremation of any remains under this article—

(a) a certificate of re-interment or cremation is to be sent by the undertaker to the Registrar General giving the date of re-interment or cremation and identifying the place from which the remains were removed and the place in which they were re-interred or cremated; and

(b) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (9) is to be sent by the undertaker to the relevant planning authority mentioned in paragraph (4).

(12) No notice is required under paragraph (3) before the removal of any human remains where the undertaker is satisfied—

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

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

(13) In the case of remains in relation to which paragraph (12) applies, the undertaker—

(a) may remove the remains;

(b) must apply for direction from the Secretary of State under paragraph (15) as to their subsequent treatment; and

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

(14) In this article—

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

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

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

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

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

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

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

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

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

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

(19) Sections 238 and 239 (use and development of consecrated land and burial grounds) of the 1990 Act apply—

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

(b) in relation to a right over land so acquired (whether or not by agreement), or the temporary use of land pursuant to articles 0 (temporary use of land for constructing the authorised project) and 32 (temporary use of land for maintaining the authorised project), so as to permit the exercise of that right or the temporary use by the undertaker in accordance with the provisions of this Order, without prejudice to the status of the land over which the right is exercised as consecrated land,

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(**a**) 1857 c. 81. Section 25 was substituted by section 2 of the Church of England (Miscellaneous Provisions) Measure 2014 (No. 1) and amended by section 96(1) of, and paragraph 1 of Schedule 3 to, the Ecclesiastical Jurisdiction and Care of Churches Measure 2018 (No. 3).

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

and in section 238(1)(b) of the 1990 Act reference to a "planning permission" includes this Order, in section 240(1) of the 1990 Act reference to "regulations made for the purposes of sections 238(3) and (4) and 239(2)" means, so far as applicable to land or a right over land acquired under this Order, paragraphs (2) to (16) of this article and in section 240(3) of the 1990 Act reference to a "statutory undertaker" includes the undertaker and reference to "any other enactment" includes this Order.

PART 3

ACQUISITION AND POSSESSION OF LAND

Powers of acquisition

Compulsory acquisition of land

22.—(1) The undertaker may—

(a) acquire compulsorily so much of the land shaded pink on the land plans and described in the book of reference as is required for the construction, operation, use or maintenance of the authorised project, or to facilitate it, or which is incidental to it; and

(b) use any land so acquired for the purposes authorised by this Order or for any other purposes in connection with or ancillary to the construction, operation, or maintenance of the authorised project.

(2) This article is subject to article 23 (time limit for exercise of powers to acquire land compulsorily or to possess land temporarily), article 24(1) (compulsory acquisition of rights), article 25 (acquisition of subsoil or airspace only), article 28 (rights over or under streets), article 0 (temporary use of land for constructing the authorised project) and article 59 (Crown rights).

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

23.—(1) After the end of the period of five years beginning with the day on which this Order comes into force—

(a) no notice to treat may be served under Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act as modified by article 30 (modification of Part 1 of the 1965 Act); and

(b) no declaration may be executed under section 4 (execution of declaration) of the 1981 Act as applied by article 29 (application of the 1981 Act),

in relation to any part of the Order land shown shaded pink, blue or shown shaded and hatched blue on the land plans and described in the book of reference.

(2) The authority conferred by article 0 (temporary use of land for constructing the authorised project) ceases after the end of the period of five years beginning with the day on which this Order comes into force except that—

(a) in relation to plots 7/1, 7/2, 7/3, 7/4, 7/5, 7/6, 7/7, 7/8, 7/9, 7/10 and 7/11 shown on sheet 7 of the land plans such authority ceases at the end of the period of ten years beginning with the day on which this Order comes into force; and

(b) nothing in this paragraph prevents the undertaker remaining in possession of land after the end of such applicable period if the land was entered and possession was taken before the end of that period.

Compulsory acquisition of rights and restrictive covenants

24.—(1) Subject to the following provisions of this article—

(a) the undertaker may acquire compulsorily such rights over the land shaded pink on the land plans and described in the book of reference or impose restrictive covenants

affecting such land as may be required for any purpose for which that land may be acquired under article 22 (compulsory acquisition of land), by creating them as well as by acquiring rights already in existence;

(b) the undertaker may in the case of the land shaded blue or shaded and hatched blue on the land plans, described in the book of reference and specified in columns (1) and (2) of Schedule 12 (land in which only new rights and restrictive covenants, etc. may be acquired) acquire compulsorily the existing rights and create and acquire compulsorily the new rights and impose the restrictive covenants for the purpose specified in relation to that land in column (3) of that Schedule and relating to that part of the authorised project specified in column (4) of that Schedule.

(2) Subject to section 8(**a**) (other provisions as to divided land) of, and Schedule 2A(**b**) (counter-notice requiring purchase of land not in notice to treat) to, the 1965 Act, (as substituted by paragraph 5(8) of Schedule 11 (modification of compensation and compulsory purchase enactments for the creation of new rights and imposition of new restrictive covenants)), where the undertaker creates or acquires a right over land or the benefit of a restrictive covenant under paragraph (1) the undertaker is not required to acquire a greater interest in that land.

(3) Schedule 11 has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of restrictive covenants.

(4) This article is subject to article 59 (Crown rights).

Acquisition of subsoil or airspace only

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

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

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

(a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act (as modified by article 30 (modification of Part 1 of the 1965 Act));

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

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

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

Private rights

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

(**a**) Section 8 was amended by paragraphs 1 and 2 of Schedule 17 to the Housing and Planning Act 2016 (c. 22) and S.I. 2009/1307.
(**b**) Schedule 2A was inserted by paragraphs 1 and 3 of Schedule 17 to the Housing and Planning Act 2016.
(**c**) Section 153(4A) was inserted by section 200(1) and (2) of the Housing and Planning Act 2016.

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

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

whichever is the earlier.

(2) Subject to the provisions of this article, all private rights or restrictive covenants over land owned by the undertaker which are—

(a) within the Order limits except the land shaded yellow on the land plans; and

(b) required for the purposes of this Order,

cease to have effect in so far as their continuance would be inconsistent with any activity authorised by this Order which interferes with or breaches such rights or such restrictive covenants as from the date on which that activity has begun.

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

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

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

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

whichever is the earlier.

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

(5) All restrictive covenants contained in a transfer dated 19 April 1979 and made between (1) the right Honourable John Edward Pelham Earl of Yarborough and (2) Samuel James Parker and Maud Parker relating to land shown as plot 5/4 on sheet 5 of the land plans and described in the book of reference are extinguished on the date on which the authorised project is begun (within the meaning given in section 155 (when development begins) of the 2008 Act.

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

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

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

(a) any notice given by the undertaker before—

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

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

(**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 sections 186(1) and (2), 187 and 188 of the Housing and Planning Act 2016.

(**b**) Section 138 was amended by section 23(1) and (4) of the Growth and Infrastructure Act 2013 (c. 27) and S.I. 2017/1285.

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

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

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

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

(9) If any such agreement as is referred to in sub-paragraph (8)(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.

(10) References in this article to private rights and restrictive covenants over land include any right of way, restrictive covenant, easement, trust, incident, wayleave, liberty, privilege, right or advantage annexed to land (including any land forming part of a common, open space or fuel or field garden allotment) 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

27.—(1) Any authorised activity which takes place on land within the Order limits (whether the activity is undertaken by the undertaker or by any person deriving title from the undertaker or by any 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 or maintenance of any part of the authorised project;

(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 sections 7 (measure of compensation in case of severance) or 10(**a**) (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,

(**a**) Section 10 was amended by section 4 of, and paragraph 13(2) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11) and by S.I. 2009/307.

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 (1) of this article.

(7) Paragraph (1) has effect subject to—

(a) any notice given by the undertaker, before the authorised activity which—

(i) interferes with an interest or right to which this article applies; or

(ii) breaches a restriction as to the user of land to which this article applies,

is begun that the paragraph does not apply to any interest, right or restriction as to the user of land specified in the notice; and

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

(8) If any such agreement as is referred to in sub-paragraph (7)(b)—

(a) is made with a person in or to whom the interest, right or restriction 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.

(9) This article does not apply to the land shaded yellow on the land plans.

Rights over or under streets

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

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

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

(a) any subway or underground building; or

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

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

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

Application of the 1981 Act

29.—(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(**a**) (earliest date for execution of declaration), in subsection (2), omit the words from ", and this subsection" to the end.

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

(6) In section 5B(1)(**c**) (extension of time limit during challenge) for "section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 5A" substitute "section 118 (legal challenges relating to applications for orders granting development consent) of the Planning Act 2008, the five year period mentioned in article 23 (time limit for exercise of powers to acquire land compulsorily or to possess land temporarily) of the Associated British Ports (Immingham Green Energy Terminal) Order 2025".

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

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

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

> "(2) But see article 25 (acquisition of subsoil or airspace only) of the Associated British Ports (Immingham Green Energy Terminal) Order 2025, which excludes the acquisition of subsoil only from this Schedule.".

(10) References to the 1965 Act in the 1981 Act are to be construed as references to the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and as modified by article 30 (modification of Part 1 of the 1965 Act)) to the compulsory acquisition of land under this Order.

Modification of Part 1 of the 1965 Act

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

(2) In section 4A(1)(**h**) (extension of time limit during challenge) for "section 23 of the Acquisition of Land Act 1981 (application to the High Court in respect of compulsory purchase order)", the three year period mentioned in section 4 substitute "section 118(**i**) (legal challenges relating to applications for orders granting development consent) of the Planning Act 2008, the five year period mentioned in article 23 (time limit for exercise of powers to acquire land compulsorily or to possess land temporarily) of the Associated British Ports (Immingham Green Energy Terminal) Development Consent Order 2025".

(3) In section 11A(**j**) (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".

(**a**) Section 5 was amended by paragraphs 4 and 6 of Schedule 15 to the Housing and Planning Act 2016.
(**b**) Section 5A was inserted by section 182(2) of the Housing and Planning Act 2016.
(**c**) Section 5B was inserted by section 202(2) of the Housing and Planning Act 2016.
(**d**) Section 6 was amended by 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.
(**e**) Section 7 was substituted by paragraph 3 of Schedule 18 to the Housing and Planning Act 2016 and amended by section 186(2) of the Levelling-up and Regeneration Act 2023 (c. 55).
(**f**) Schedule A1 was inserted by paragraph 6 of Schedule 18 to the Housing and Planning Act 2016.
(**g**) Section 125 was amended by section 190 of, and paragraph 17 of Schedule 16 to, the Housing and Planning Act 2016.
(**h**) Section 4A(1) was inserted by section 202(1) of the Housing and Planning Act 2016.
(**i**) Section 118 was amended by paragraphs 1, 58 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).
(**j**) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016.

(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 23 (time limit for exercise of powers to acquire land compulsorily or to possess land temporarily) of the Associated British Ports (Immingham Green Energy Terminal) Development Consent Order 2025".

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

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

"(2) But see article 25 (acquisition of subsoil or airspace only) of the Associated British Ports (Immingham Green Energy Terminal) Development Consent Order 2025, which excludes the acquisition of subsoil only from this Schedule."; and

(b) after paragraph 29 insert—

"PART 4

INTERPRETATION

30. In this Schedule, references to entering on and taking possession of land do not include doing so under article 20 (protective works), article 0 (temporary use of land for constructing the authorised project) or article 32 (temporary use of land for maintaining the authorised project) of the Associated British Ports (Immingham Green Energy) Order 2025.
".

Temporary possession of land

Temporary use of land for constructing the authorised project

31.—(1) The undertaker may, in connection with the carrying out of the authorised project but subject to article 23(2) (time limit for exercise of powers to acquire land compulsorily or to possess land temporarily)—

(a) enter on and take temporary possession of—

(i) the land shown shaded green on sheets 3, 4, 5, 6 and 7 of the land plans, described in the book of reference and specified in column (2) of Schedule 13 (land of which only temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule; and

(ii) any other Order land shown shaded pink, blue or shown shaded and hatched blue on the land plans and described in the book of reference in respect of which no notice of entry has been served under section 11(**b**) (powers of entry) of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4(**c**) (execution of declaration) of the 1981 Act; except that in respect of the land shaded and hatched blue on the land plans and described in the book of reference such entry and temporary possession pursuant to this sub-paragraph 31(a)(ii) may only be taken of the subsoil of that land;

(b) subject to article 33 (statutory undertakers), remove or reposition the apparatus belonging to statutory undertakers or the operators of any electronic communications code network;

(**a**) Schedule 2A was inserted by section 199(1) of, and paragraphs 1 and 3 of Schedule 17 to, the Housing and Planning Act 2016.

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

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

(c) remove any buildings, agricultural plant and apparatus, drainage, fences, debris and vegetation from the land referred to in sub-paragraph 31;

(d) install apparatus to enable utility connections to temporary buildings and construct temporary works (including the provision of means of access), haul roads, security fencing, bridges, structures and buildings on the land referred to in sub-paragraph 31;

(e) use the land referred to in sub-paragraph 31 for the purposes of a temporary working site with access to the working site in connection with the authorised project;

(f) construct any works on the land referred to in sub-paragraph (a)(ii) as are mentioned in Schedule 1 (authorised project); and

(g) carry out mitigation works required under the requirements in Schedule 2 (requirements) on the land referred to in sub-paragraph 31.

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

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

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

except that the undertaker may take temporary possession of any garden or part of a garden belonging to a house in plots 7/1, 7/2, 7/3, 7/4, 7/5, 7/6, 7/7, 7/8, 7/9, 7/10 and 7/11 shown on sheet 7 of the land plans for the purposes of removing or repositioning apparatus belonging to statutory undertakers or the operators of any electronic communications code network pursuant to article 33 (statutory undertakers).

(3) Not less than 14 days before entering on and taking temporary possession of land under this article, the undertaker must serve notice of the intended entry on the owners and occupiers of the land and explain the purpose for which entry is taken in respect of land specified under paragraph (1)(a)(ii).

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

(a) in the case of land referred to in paragraph (1)(a)(i), after the end of the period of one year beginning with the date of completion of the part of the authorised project specified in relation to that land in column (3) of Schedule 13 (land of which only temporary possession may be taken); or

(b) in the case of land referred to in paragraph (1)(a)(ii), after the end of the period of one year beginning with the date of completion of the works, use of facilities or other purpose for which temporary possession of the land was taken unless the undertaker has, by the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act in relation to that land.

(5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not required to—

(a) replace a building removed under this article;

(b) restore the land on which any permanent works have been constructed under paragraph (1)(f);

(c) remove any ground strengthening works which have been placed on the land to facilitate construction of the authorised project;

(d) remove or reposition any apparatus belonging to statutory undertakers, or measures installed over or around statutory undertakers' apparatus to protect that apparatus from the authorised project;

(e) remove or reposition necessary mitigation works;

(f) remove any drainage works; or

(g) restore ground levels adjusted as part of the authorised project.

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

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

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

(9) Subject to article 39 (no double recovery), nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the carrying out of the authorised project, other than loss or damage for which compensation is payable under paragraph (7).

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

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

(12) Nothing in this article prevents the undertaker from taking temporary possession more than once in relation to any land specified in paragraph 31.

Temporary use of land for maintaining the authorised project

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

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

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

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

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

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

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

(c) any land shaded yellow on the land plans; or

(d) any land located within the boundary of any highway for which the highway authority is responsible.

(3) Not less than 28 days before entering upon and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land and that notice must state the period for which temporary possession will be taken and the purpose for which the undertaker intends to take possession of the land except as provided in paragraph (11).

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

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

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

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

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

(8) Subject to article 39 (no double recovery), nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the maintenance of the authorised project, other than loss or damage for which compensation is payable under paragraph (6).

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

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

(11) Where the undertaker has identified a potential risk to the safety of—

(a) the authorised project or any part of it;

(b) the public; or

(c) the surrounding environment,

the requirement to serve notice under paragraph (3) does not apply and the undertaker may enter the land pursuant to paragraph (1) subject to giving such period of notice (if any) as is reasonably practicable in all the circumstances.

(12) In this article "the maintenance period" in relation to any part of the authorised project means the period of five years beginning with the date on which that part of the authorised project is brought into operational use by the undertaker.

Supplementary

Statutory undertakers

33.—(1) Subject to the provisions of paragraph (1)(b) of article 24 (compulsory acquisition of rights), Schedule 14 (protective provisions) and paragraph (2), the undertaker may—

(a) acquire compulsorily, or acquire new rights or impose restrictive covenants over, any Order land belonging to statutory undertakers or the operators of any electronic communications code network;

(b) extinguish the rights of statutory undertakers or the operators of any electronic communications code network over or within the Order land;

(c) remove or reposition the apparatus belonging to statutory undertakers or the operators of any electronic communications code network over or within the Order land; and

(d) construct the authorised project in such a way as to cross underneath or over apparatus belonging to statutory undertakers or the operators of any electronic communications code network within the Order land.

(2) Paragraph (1)(b) has no effect in relation to apparatus in respect of which the following provisions apply—

(a) Part 3 (street works in England and Wales) of the 1991 Act; and

(b) Article 17 (apparatus and rights of statutory undertakers in stopped up streets).

Recovery of costs of new connections

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

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

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

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

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

(3) This article does not have effect in relation to apparatus to which article 17 (apparatus and rights of statutory undertakers in stopped up streets) or Part 3 of the 1991 Act applies.

(4) In this article—

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

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

Acquisition of part of certain properties

35.—(1) This article applies where—

(a) a notice to treat is served on a person ("the owner") under the 1965 Act (as so applied) in respect of land forming only part of a house, building or manufactory or of land consisting of a house with a park or garden ("the land subject to the notice to treat"); and

(b) a copy of this article is served on the owner with the notice to treat.

(2) In such a case, the owner may, within the period of 28 days beginning with the day on which the notice was served, serve on the undertaker a counter-notice objecting to the sale of the land subject to the notice to treat which states that the owner is willing and able to sell the whole ("the land subject to the counter-notice").

(3) If no such counter-notice is served within that period, the owner is required to sell the land subject to the notice to treat.

(4) If such a counter-notice is served within that period, the question whether the owner is required to sell only the land subject to the notice to treat must, unless the undertaker agrees to take the land subject to the counter-notice, be referred to the Upper Tribunal.

(5) If on such a reference the Upper Tribunal determines that the land subject to the notice to treat can be taken—

(a) without material detriment to the remainder of the land subject to the counter-notice; or

(b) where the land subject to the notice to treat consists of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the owner is required to sell the land subject to the notice to treat.

(6) If on such a reference the Tribunal determines that only part of the land subject to the notice to treat can be taken—

(a) without material detriment to the remainder of the land subject to the counter-notice; or

(b) where the land subject to the notice to treat consists of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the notice to treat is deemed to be a notice to treat for that part.

(7) If on such a reference the Upper Tribunal determines that—

(a) the land subject to the notice to treat cannot be taken without material detriment to the remainder of the land subject to the counter-notice; but

(b) the material detriment is confined to a part of the land subject to the counter-notice,

the notice to treat is deemed to be a notice to treat for the land to which the material detriment is confined in addition to the land already subject to the notice, whether or not the additional land is land which the undertaker is authorised to acquire compulsorily under this Order.

(8) If the undertaker agrees to take the land subject to the counter-notice, or if the Upper Tribunal determines that—

(a) none of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice or, as the case may be, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house; and

(b) the material detriment is not confined to a part of the land subject to the counter-notice,

the notice to treat is deemed to be a notice to treat for the land subject to the counter-notice whether or not the whole of that land is land which the undertaker is authorised to acquire compulsorily under this Order.

(9) Where by reason of a determination by the Upper Tribunal under this article a notice to treat is deemed to be a notice to treat for less land or more land than that specified in the notice, the undertaker may, within the period of six weeks beginning with the day on which the determination is made, withdraw the notice to treat; and, in that event, must pay the owner compensation for any loss or expense occasioned to the owner by the giving and withdrawal of the notice, to be determined in case of dispute by the Upper Tribunal.

(10) Where the owner is required under this article to sell only part of a house, building or manufactory or of land consisting of a house with a park or garden, the undertaker must pay the owner compensation for any loss sustained by the owner due to the severance of that part in addition to the value of the interest acquired.

Compulsory acquisition of land – incorporation of the mineral code

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

(a) paragraph 8(3) is not incorporated;

(b) for "the acquiring authority" there is substituted "the undertaker";

(c) for "undertaking" substitute "authorised project"; and

(d) for "compulsory purchase order" substitute "this Order".

Compensation

Disregard of certain interests and improvements

37.—(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 Upper Tribunal must not take into account—

(**a**) 1981 c. 67. Sub-paragraph (5) of paragraph 1 of Part 1 of Schedule 2 was amended by section 67 of, and paragraph 27(3) of Schedule 9 to, the Coal Industry Act 1994 (c. 21) and paragraph 8 of Part 3 of Schedule 3 was amended by section 46 of the Criminal Justice Act 1982 (c. 48). There are other amendments to the 1981 Act which are not relevant to this Order.

(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 Upper Tribunal is satisfied that the creation of the interest, the erection of the building, the execution of the works or the making of the improvement or alteration as part of the authorised project was not reasonably necessary and was undertaken with a view to obtaining compensation or increased compensation.

(2) In paragraph (1) "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 executed or the improvement or alteration made as part of the authorised project, directly or indirectly concerned.

Set-off for enhancement in value of retained land

38.—(1) In assessing the compensation payable to any person in respect of the acquisition from that person under this Order of any land (including any subsoil) the Upper 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 project.

(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 24 (compulsory acquisition of rights), the Upper 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 project.

(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

39. 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

Authorisation of operation and use

40. Subject to the provisions of this Order and to the requirements set out in Schedule 2 (requirements), the undertaker and any persons authorised by the undertaker may operate and use the authorised project for which development consent is granted by this Order.

Maintenance of authorised project

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

(2) This article does not authorise the carrying out of any works which are likely to give rise to any materially new or materially different effects that have not been assessed in the environmental statement or in any environmental information supplied under the 2017 Regulations.

Limits of dock master's jurisdiction

42.—(1) Subject to the provisions of paragraph (2) of this article, the limits within which the powers of the dock master under any enactment may be exercised include the area of jurisdiction.

(2) The powers conferred by this article are, so far as applicable to vessels, limited to vessels going to, moored at or departing from any part of the area of jurisdiction and must not be exercised so as to affect vessels navigating or at anchor in the channels of the River Humber unless such vessels obstruct access to the area of jurisdiction.

Area of jurisdiction to form part of the undertaking and application of byelaws

43.—(1) The area of jurisdiction for all purposes forms part of the undertaking.

(2) The Immingham Dock Byelaws 1929 apply in relation to the limits within which the powers of the dock master may be exercised under article 42(1) (limits of dock master's jurisdiction) of this Order and may be enforced by the Company accordingly until such time as new byelaws relating to the area within such limits are made by the Company and come into operation.

(3) In the Immingham Dock Byelaws 1929, as applied by paragraph (1) above—

(a) references to "the prescribed limits" include limits within which the powers of the dock master may be exercised under article 42(1) (limits of dock master's jurisdiction) of this Order; and

(b) any activity carried out pursuant to this Order is not a breach of byelaw 52 if it is with the written approval of the Company.

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

Power to appropriate

44.—(1) Regardless of anything in section 33 of the 1847 Act (harbour, dock and pier to be free to the public on payment of rates) or any other enactment, the dock master may from time to time set apart and appropriate any part of the area of jurisdiction 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 dock master may think fit.

(2) No person or vessel may make use of any part of the authorised project or such area 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 project or such area without such consent to be removed; and

(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.

Powers to dredge

45.—(1) The Company may dredge, deepen, scour, cleanse, alter and improve the river bed and foreshore within any part of the Order limits situated within the River Humber as may be required for the purpose of constructing, maintaining and operating the authorised project.

(2) Subject to paragraph (3), the Company 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(**a**)) as it thinks fit.

(**a**) 1995 c. 21.

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

(4) In respect of any activities falling within paragraph (1) this Order is deemed to be 'legislation' falling within section 75(3) (exemptions for certain dredging, etc. activities) of the 2009 Act.

PART 5

MISCELLANEOUS AND GENERAL

Benefit of Order

46.—(1) Subject to the remaining paragraphs of this article—

(a) the provisions of this Order conferring a power only on the Company, the dock master or the statutory harbour authority have effect solely for the benefit of (as applicable) the Company, the dock master or the statutory harbour authority; and

(b) the other provisions of this Order have effect solely for the benefit of the undertaker.

(2) Paragraph (1)(b) does not apply to the following provisions, of which the Company has the sole benefit—

(a) article 22 (compulsory acquisition of land);

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

(c) article 25 (acquisition of subsoil or airspace only);

(d) articles 33(1)(a) and (b) (statutory undertakers); and

(e) article 35 (acquisition of part of certain properties),

unless the Secretary of State consents to the transfer of the benefit of those provisions.

(3) Paragraph (1)(b) does not apply to the following provisions, of which the Company and, to the extent specified in paragraph (4), Air Products have the benefit—

(a) article 19 (authority to survey and investigate the land);

(b) article 20 (protective works);

(c) article 0 (temporary use of land for constructing the authorised project); and

(d) article 32 (temporary use of land for maintaining the authorised project),

unless the Secretary of State consents to the transfer of the benefit of those provisions.

(4) Air Products has the benefit of the provisions to which paragraph (3) refers solely so far as they relate to the land shown as plots 3/2, 4/5, 4/7, 4/8, 4/9, 4/16, 4/17, 4/18, 4/19, 4/20, 4/21, 4/22, 4/23, 4/26, 4/28, 4/29, 4/30, 4/32, 5/3, 5/4, 5/7, 5/8, 5/10, 5/11, 5/12, 5/13, 5/14, 5/15, 5/18, 5/20, 5/22, 5/23, 5/24, 5/25, 5/27, 5/28, 5/29, 5/30, 5/32, 5/33, 5/36, 5/37, 5/38, 5/39, 5/45, 6/6, 6/14, 6/15, 6/16, 6/18, 6/19, 7/1, 7/2, 7/3, 7/4, 7/5, 7/6, 7/7, 7/8, 7/9, 7/10, 7/11, 7/12, 7/15, 7/16, 7/17, 7/18, 7/20, 7/21, 7/22 and 7/23 on the land plans and described in the book of reference and (where applicable on the terms of those provisions) land outside the Order limits except (in each aforementioned case) in respect of any interests of the Company.

(5) Paragraph (1)(b) does not apply to article 26(8) (private rights) or article 27(7) (power to override easements and other rights) insofar as only the Company has the benefit of the powers conferred on the undertaker to give the notices or make the agreements to which those articles refer, unless the Secretary of State consents to the transfer of the benefit of those powers.

(6) Paragraph (1) does not apply to article 55(2) (planning legislation) insofar as only the Company has the benefit of the power conferred on the undertaker to serve a notice to which that article refers, unless the Secretary of State consents to the transfer of the benefit of that power.

(7) Paragraph (8) applies in any case where the benefit of a provision of this Order is required by a statutory undertaker for the purpose of—

(a) the installation, connection, removal or alteration of the position of services and apparatus including overhead cables and lines and above ground or below ground pipes, pipelines, sewers, watercourses, drains and cables and other conducting media and any pipe sleeves, ducts and culverts in which any apparatus is lodged (in each aforementioned case) comprised in Schedule 1 (authorised project); or

(b) diverting, replacing or protecting apparatus of that statutory undertaker.

(8) Where the undertaker has the benefit of a provision to which paragraph (7) refers, it may—

(a) transfer to a statutory undertaker to which paragraph (7) refers any or all of the benefit of the provision and such related statutory rights as may be agreed between the undertaker and the statutory undertaker;

(b) grant to such a statutory undertaker to which paragraph (7) refers, for a period agreed between the undertaker and the statutory undertaker any or all of the benefit of the provision and such related statutory rights as may be so agreed between the undertaker and the statutory undertaker.

(9) The consent of the Secretary of State is required for the purposes of paragraph (8) where the provision to be transferred or granted to the paragraph (7) statutory undertaker is listed in paragraph (11) except where the transfer or grant is to—

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

(b) a gas transporter within the meaning of Part 1 of the Gas Act 1986;

(c) a water undertaker or sewerage undertaker for the purposes of the Water Act 1989; or

(d) the operator of an electronic communications code network.

(10) Where the Company has with the benefit of any provision of this Order it may pursuant to this paragraph—

(a) transfer to Air Products any or all of the benefit of the provision (excluding the deemed marine licence) and such related statutory rights as may be agreed between the undertaker and that person; and

(b) grant to Air Products for a period agreed between the undertaker and that person any or all of the benefit of the provision (excluding the deemed marine licence) and such related statutory rights as may be so agreed between the undertaker and that person,

except this paragraph does not apply to any provision listed in paragraph (11).

(11) The provisions to which paragraphs (9) and (10) refer are—

(a) article 19 (authority to survey and investigate the land);

(b) article 20 (protective works);

(c) article 22 (compulsory acquisition of land);

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

(e) article 25 (acquisition of subsoil or airspace only);

(f) article 31 (temporary use of land for constructing the authorised project);

(g) article 32 (temporary use of land for maintaining the authorised project);

(h) articles 33(1)(a) and (b) (statutory undertakers); and

(i) article 35 (acquisition of part of certain properties).

(12) Where the undertaker has the benefit of any provision of the deemed marine licence it may, with the consent of the Secretary of State—

(a) transfer to any person any or all of the benefit of the provision and such related statutory rights as may be agreed between the undertaker and that person;

(b) grant to any person for a period agreed between the undertaker and that person any or all of the benefit of the provision and such related statutory rights as may be so agreed between the undertaker and that person,

but the Secretary of State must consult the MMO before giving such consent to the transfer or grant to another person of the benefit of the provision and such related statutory rights.

(13) Any transfer or grant under paragraph (12) does not take effect until the undertaker has given notice to the MMO stating—

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

(b) the date on which the transfer or grant will take effect (which must be at least 28 days after the date on which the notice is given); and

(c) the provision to be transferred or granted,

and providing a copy of the consent given by the Secretary of State to the transfer or grant and a copy of the transfer or grant itself; and the MMO may update its records in respect of the deemed marine licence accordingly.

(14) Section 72(7) and (8) (variation, suspension, revocation and transfer) of the 2009 Act do not apply to a transfer or grant of the benefit of any provision of the deemed marine licence pursuant to paragraph (12).

(15) Paragraph (12) does not prevent an application to the MMO pursuant to section 72(7) of the 2009 Act to transfer the deemed marine licence to another person and vary it accordingly.

(16) Where a transfer or grant has been made in accordance with this article references in this Order to the undertaker, except in paragraph (17), include references to the person to whom the benefit of provisions of this Order have been transferred or granted to the extent that the person has the benefit of such provisions and paragraph (17) applies to that person.

(17) Where the undertaker has transferred any benefit ("transferor"), or for the duration of any period during which the undertaker has granted any benefit ("grantor"), under this article the exercise by a person of any benefits or rights conferred in accordance with any transfer or grant, is subject to the same restrictions, liabilities and obligations under this Order as would apply if those benefits or rights were exercised by the transferor or grantor.

(18) Where a transfer or grant has been made in accordance with this article—

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

(b) the transferred benefit resides exclusively with the person to whom the benefit has been transferred or, as the case may be, granted and the transferred benefit will not be enforceable against the undertaker.

(19) Paragraph (1)(b) does not apply to the works for which consent is granted by this Order for the express benefit of owners and occupiers of land, statutory undertakers, operators of the electronic communications code network and other persons affected by the authorised project.

(20) Where both the Company and Air Products have the benefit in relation to the same land of—

(a) article 19 (authority to survey and investigate the land);

(b) article 20 (protective works);

(c) article 0 (temporary use of land for constructing the authorised project); or

(d) article 32 (temporary use of land for maintaining the authorised project),

each may exercise the powers conferred by the article in question on its terms at the same time on such terms as they may agree with each other in writing; and the exercise of such a power by one on its terms does not prevent subsequent exercise of it on its terms by the other.

(21) No person may be—

(a) held liable in any manner for breaching or otherwise failing to comply with a term of this Order except where they are the person who (as applicable) has carried out, or caused to be carried out, that part of the authorised project to which the breach or failure relates or

has exercised, or caused to be exercised, the provision of this Order to which the breach or failure relates; or

(b) required to comply with a term of this Order except where they are the person who (as applicable) has carried out, or caused to be carried out, that part of the authorised project to which the term relates or has exercised, or caused to be exercised, the provision of this Order to which the term relates.

Deemed marine licence

47. The undertaker is granted a deemed marine licence under Part 4 (marine licensing) of the 2009 Act 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.

Saving for Trinity House

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

Provision against danger to navigation

49. 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 statutory harbour authority and the Statutory Conservancy and Navigation Authority (as relevant) and must lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as Trinity House and the statutory harbour authority or Statutory Conservancy and Navigation Authority (as relevant) may from time to time direct.

Lights on tidal works during construction

50.—(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 part of the authorised project within the area of seaward construction activity in the River Humber,

during the whole time of their construction, alteration, replacement or extension, 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 and the statutory harbour authority or Statutory Conservancy and Navigation Authority (as relevant) 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

51. After a completion of a tidal work, the undertaker must at the outer extremity of the tidal work exhibit every night from sunset to sunrise such lights, and take such steps for the prevention of danger to navigation as Trinity House and the statutory harbour authority or Statutory Conservancy and Navigation Authority (as relevant) may from time to time direct.

Application of landlord and tenant law

52.—(1) This article applies to—

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

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

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

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

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

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

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

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

Felling or lopping of trees and removal of hedgerows

53.—(1) Subject to article 54 (trees subject to tree preservation orders), the undertaker may fell, lop, prune, coppice, pollard, or reduce in height or width, any tree or shrub under or within or overhanging any part of the land within the Order limits, or cut back its roots, if the undertaker reasonably believes it to be necessary to do so to prevent the tree, shrub, hedgerow or important hedgerow—

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

(b) from constituting a danger to persons constructing, maintaining, operating or decommissioning the authorised project.

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

(a) the undertaker must not cause any unnecessary damage to any tree, shrub or hedgerow, or important hedgerow;

(b) the undertaker must pay compensation to any person for any loss or damage arising from such activity;

(c) the duty in section 206(1) (replacement of trees) of the 1990 Act does not apply; and

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

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

(4) Subject to paragraph (2), the undertaker may, for the purposes of carrying out the authorised project—

(a) remove any hedgerow within the area edged and shaded purple and labelled "area of hedgerows to be removed" on the plan of potentially affected hedgerows and trees subject to preservation orders; and

(**a**) Section 9 was amended by section 4 of, and paragraph 14(1) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11) and S.I. 2013/755. There are other amendments to section 9 that are not relevant to this Order.

(b) without limitation on the scope of sub-paragraph (a) and with the consent of the relevant planning authority, remove or translocate any other hedgerow within the Order limits that is required to be removed.

(5) The grant of consent of the relevant planning authority pursuant to paragraph (4)(b) must not be unreasonably withheld.

(6) The undertaker may not, pursuant to paragraph (1), fell or lop a tree within or overhanging the extent of highway maintainable at the public expense without the consent of the highway authority.

(7) The power conferred by paragraph (1) removes any obligation upon the undertaker to secure any consent to remove hedgerows or any part thereof under the Hedgerows Regulations 1997(**a**).

(8) In this article "hedgerow" has the same meaning as in the Hedgerow Regulations 1997 and includes important hedgerows.

Trees subject to tree preservation orders

54.—(1) The undertaker may fell, lop, prune or cut back the roots of—

(a) any tree subject to a tree preservation order within the area edged and shaded green and labelled "area of TPO trees to be removed (including tree canopy)" on the plan of potentially affected hedgerows and trees subject to preservation orders; and

(b) any other tree within the Order limits subject to a tree preservation order, if it reasonably believes it to be necessary in order to do so to prevent the tree—

(i) from obstructing or interfering with the construction, maintenance, operation or decommissioning of the authorised project or any apparatus used in connection with the authorised project; or

(ii) from constituting a danger to persons constructing, maintaining, operating or decommissioning the authorised project.

(2) In carrying out any activity authorised by paragraph (1)(b) the undertaker must—

(a) obtain the written approval of the relevant planning authority prior to that activity taking place; and

(b) do no unnecessary damage to any tree in respect of which the activity is carried out.

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

(a) the undertaker must do no unnecessary damage to any tree or shrub;

(b) the undertaker must pay compensation to any person for any loss or damage arising from such activity;

(c) the duty in section 206(1) (replacement of trees) of the 1990 Act does not apply; and

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

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

(5) Any dispute as to a person's entitlement to compensation under paragraph (1), or as to the amount of compensation, must be determined as if it were a dispute under Part 1 of the 1961 Act.

(**a**) S.I. 1997/1160, amended by S.I. 2006/1177, S.I. 2009/1307, S.I. 2013/755 and S.I. 2015/377.

Planning legislation

55.—(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) As from the date on which the authorised project is begun if the undertaker serves a notice on the relevant planning authority that any of the conditions to which a planning permission granted pursuant to section 57 (planning permission required for development) of the 1990 Act is subject prior to the making of this Order and which relate to the Order limits cease to have effect to the extent that they are inconsistent with the authorised project or anything done or approved pursuant to this Order then the notice will immediately have that effect; except that this sub-paragraph (2) does not apply to any existing early works planning permission or new early works planning permission.

(3) Before beginning Work No. 2, Work No. 3, Work No. 5 or Work No. 7 (as applicable) under this Order, the undertaker must serve notice on the relevant planning authority—

(a) that it intends to begin Work No. 2, Work No. 3, Work No. 5 or Work No. 7 (as applicable) under this Order; and

(b) specifying in that notice any existing early works planning permission or new early works planning permission under which works also comprised within Work No. 2, Work No. 3, Work No 5 or Work No. 7 (as applicable) have begun and whether or not such works have been completed.

(4) From the date of service of any notice pursuant to paragraph (3)—

(a) the undertaker must cease to carry out development under any existing early works planning permission or new early works planning permission specified in that notice; and

(b) the conditions to which an existing early works planning permission or new early works planning permission specified in that notice are subject will be unenforceable except in respect of—

(i) any breach that occurred prior to the undertaker serving notice pursuant to paragraph (3); and

(ii) any conditions of the existing early works planning permission or new early works planning permission that relate to the statutory requirement under Schedule 7A (biodiversity gain in England) to the 1990 Act for biodiversity net gain.

(5) The undertaker must not begin Work No. 2, Work No. 3, Work No. 5 or Work No. 7 (as applicable) under this Order until notice has been served under paragraph (3).

(6) Notwithstanding paragraphs (3) and (4), the undertaker may exercise any other powers under this Order in respect of any part of the authorised project prior to or following service of notice under paragraph (3).

(7) Without prejudice to the generality of paragraph (6), the undertaker may discharge any requirement in Schedule 2 (requirements) of this Order at any time prior to or following the service of notice under paragraph (3).

(8) Where details, documents, plans, works or any other matters have been imposed as a condition, or approved or agreed pursuant to a condition, of any existing early works planning permission or new early works planning permission prior to the date on which the undertaker serves notice under paragraph (3), the relevant planning authority and the undertaker must agree in writing which details, documents, plans, works or other matters under the existing early works planning permission or new early works planning permission will be deemed to have been discharged, approved, agreed, obtained or undertaken for the purposes of the requirements in Schedule 2 (requirements) of this Order relating to all or part of Work No. 2, Work No. 3, Work No. 5 or Work No. 7 (as applicable); and upon that agreement being reached in writing it will immediately have that effect.

(9) In this article "begin" and "begun" mean for the purposes of section 155 (when development begins) of the 2008 Act.

(10) 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, used, operated or decommissioned 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 (transport related development) of Schedule 2 (permitted development rights) to the Town and County Planning (General Permitted Development) (England) Order 2015(**a**)); and nothing done pursuant to any such planning permission prevents the undertaker from constructing, operating, using, maintaining or decommissioning any part of the authorised project pursuant to this Order which has not been carried out pursuant to such planning permission.

(11) This Order does not constitute a planning permission for the purposes of Part 11 (community infrastructure levy) of the 2008 Act notwithstanding the definition of planning permission contained within article 5 (meaning of planning permission) of the 2010 Regulations.

(12) The authorised project, including any part of it, may be delivered in severable phases subject to paragraph 5 (phasing) of Schedule 2 (requirements).

Traffic regulation measures

56.—(1) Subject to the provisions of this article, the undertaker may, for the purposes of the authorised project—

(a) make provision, in respect of those lengths of road specified in column (2) of Part 1 (permanent speed limits) of Schedule 10 (traffic regulation measures), imposing the permanent speed limit specified in column (3) of that Part of that Schedule;

(b) make provision, in respect of those lengths of road specified in column (2) of Part 2 (temporary prohibition of parking) of Schedule 10 (traffic regulation measures) prohibiting the parking of vehicles to the extent specified in column (3) of that Part of that Schedule;

(c) make provision, in respect of those lengths of road specified in column (2) of Part 3 (temporary road closures) of Schedule 10 (traffic regulation measures) temporarily closing that road to the classes of road user specified in column (3) of that Part of that Schedule;

(d) make provision, in respect of those lengths of road specified in column (2) of Part 4 (priority of vehicular traffic) of Schedule 10 (traffic regulation measures), as to the priority of vehicular traffic as specified in column (3) of that Part of that Schedule; and

(e) revoke, amend or suspend in whole or in part any order made, or having effect as if made, under the 1984 Act in so far as it is inconsistent with any prohibition, restriction or other provision made by the undertaker under this paragraph.

(2) No speed limit imposed by or under this Order applies to vehicles falling within regulation 3(4) (regulations in relation to orders and notices under the 1984 Act) of the Road Traffic Exemptions (Special Forces) (Variation and Amendment) Regulations 2011(**b**) when used in accordance with regulation 3(5) of those regulations.

(3) Subject to the provisions of this article, and the consent of the traffic authority in whose area the road is situated, the undertaker may for the purposes of construction, operation, maintenance and decommissioning of the authorised project, temporarily place traffic signs and signals on any road and, subject to the consent of the traffic authority in whose area the road is situated, the placing of those traffic signs and signals is deemed to have been permitted by the traffic authority for the purposes of section 65 of the 1984 Act and the Traffic Signs Regulations and General Directions 2016(**c**).

(**a**) S.I. 2015/596.
(**b**) S.I. 2011/935.
(**c**) S.I. 2016/362.

(4) Without limiting the scope of the specific powers conferred by paragraph (1) but subject to the provisions of this article and the consent of the traffic authority in whose area the road concerned is situated, the undertaker may, in so far as expedient or necessary for the purposes of, in connection with, or in consequence of the construction, maintenance, operation and decommissioning of the authorised project—

(a) revoke, amend or suspend in whole or in part any order made, or having effect as if made, under the 1984 Act;

(b) permit, prohibit or restrict the stopping, parking, waiting, loading or unloading of vehicles on any road;

(c) authorise the use as a parking place of any road;

(d) make provision as to the maximum speed, routes, direction or priority of vehicular traffic on any road; and

(e) permit, prohibit or restrict vehicular access or use to or on any road,

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

(5) The undertaker must not exercise the powers in paragraphs (1), (3) and (4) unless it has—

(a) given not less than—

(i) 12 weeks' notice in writing of the undertaker's intention so to do in the case of a prohibition, restriction or other provision intended to have effect permanently; and

(ii) 4 weeks' notice in writing of the undertaker's intention so to do in the case of a prohibition, restriction or other provision intended to have effect temporarily,

to the chief officer of police and to the traffic authority in whose area the road is situated and that notice must include the time periods within which the traffic authority may specify the manner in which, under sub-paragraph (b), the undertaker must advertise its intention to exercise the powers conferred by paragraphs (1), (3) and (4); and

(b) advertised its intention in such manner as the traffic authority may specify in writing within—

(i) 28 days of its receipt of notice of the undertaker's intention in the case of sub-paragraph (a)(i); or

(ii) within seven days of its receipt of notice of the undertaker's intention in the case of sub-paragraph (a)(ii).

(6) Any prohibition, restriction or other provision made by the undertaker under paragraphs (1), (3) or (4)—

(a) has effect as if duly made by, as the case may be—

(i) the traffic authority in whose area the road is situated as a traffic regulation order under the 1984 Act; or

(ii) the local authority in whose area the road is situated as an order under section 32 (power of local authorities to provide parking places) of the 1984 Act,

and the instrument by which it is effected, to be in such form as the undertaker considers appropriate, may specify savings and exemptions to which the prohibition, restriction or other provision is subject; and

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

(c) must be advertised in the same manner as the undertaker's intention to make the prohibition, restriction or other provision was under paragraph (5)(b).

(**a**) 2004 c. 18.

(7) Any prohibition, restriction or other provision made under this article may be suspended, varied or revoked by the undertaker from time to time by subsequent exercise of the powers conferred by paragraphs (1), (3) and (4).

(8) Before exercising the powers conferred by paragraphs (1), (3) or (4) the undertaker must consult such persons as the undertaker considers necessary and appropriate and have regard to the representations made to the undertaker by any such person.

(9) An order made under paragraph (4)(a) may be varied or revoked by an order made by the highway authority under the 1984 Act.

Defence to proceedings in respect of statutory nuisance

57.—(1) Where proceedings are brought under section 82(1)(**a**) of the Environmental Protection Act 1990 (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraphs (b), (d), (e), (fb), (g), (ga) and, so far as relevant to sections 259(1)(a) and (b) of the Public Health Act 1936(**b**), (h) of section 79(1)(**c**) (statutory nuisances and inspections thereof) of the Environmental Protection Act 1990 no order is to be made, and no fine may be imposed, under section 82(2) of that Act if the defendant shows that the nuisance—

(a) relates to premises used by the undertaker for the purposes of or in connection with the construction, maintenance, operation or decommissioning of the authorised project and that the nuisance is attributable to such activity or use in accordance with—

(i) a notice served under section 60 of the Control of Pollution Act 1974(**d**) (control of noise on construction site);

(ii) a consent given under section 61 (prior consent for work on a construction site) of that Act; or

(iii) the applicable controls and measures relating to smoke, dust, accumulations, deposits, light, noise, vibration, lighting or ponds, pools, ditches, gutters or watercourses described in the relevant construction environmental management plan, construction traffic management plan, drainage strategy, lighting strategy, noise management scheme or decommissioning environmental management plan approved (as applicable) by—

(aa) the relevant planning authority pursuant to the relevant provision of Schedule 2 (requirements);

(bb) by the MMO pursuant to the relevant term of the deemed marine licence or of any marine licence granted or varied pursuant to the 2009 Act (including any variation of the deemed marine licence), or in the Long Strip construction environmental management plan,

or in accordance with noise and lighting levels set out in an environmental permit relating to the construction, maintenance, operation or decommissioning of the relevant part of the authorised project; or

(b) is a consequence of the construction, maintenance, operation or decommissioning of the authorised project and that it cannot reasonably be avoided.

(2) Section 61(9) of the Control of Pollution Act 1974(**e**) (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(**f**)) does not apply where the consent relates to the use

(**a**) 1990 c. 43. Section 82 was amended by section 103 of the Clean Neighbourhoods and Environment Act 2005 (c. 16).
(**b**) 1936 c. 49. Section 259(1) was amended by section 162(1) of, and paragraph 4(3) of Schedule 15 to, the Environmental Protection Act 1990.
(**c**) Sub-paragraphs (fb) and (ga) of section 79(1) were inserted by section 102(2) of the Clean Neighbourhoods and Environment Act 2005 (c. 16) and by section 107 of, and paragraph 2(a) of Schedule 17 to, the Environment Act 1995 (c. 25).
(**d**) 1974 c. 40.
(**e**) 1974 c. 40. Sections 61(9) was amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990 (c. 25). There are other amendments to the 1974 Act which are not relevant to this Order.
(**f**) 1990 c. 43.

of premises by the undertaker for the purposes of or in connection with the construction, maintenance or decommissioning of the authorised project.

(3) In proceedings for an offence under section 80(4) of the Environmental Protection Act 1990 (offence of contravening abatement notice) in respect of a statutory nuisance falling within paragraphs (b), (d), (e), (fb), (g), (ga) and, so far as relevant to section 259 of the Public Health Act 1936, (h) of the Environmental Protection Act 1990 where the offence consists in contravening requirements imposed by virtue of section 80(1)(a) or (b) of that Act, it is a defence to show that the nuisance—

(a) relates to premises used by the undertaker for the purposes of or in connection with the construction, maintenance, operation or decommissioning of the authorised project and that the nuisance is attributable to such use in accordance with—

(i) a notice served under section 60 of the Control of Pollution Act 1974 (control of noise on construction site);

(ii) a consent given under section 61 (prior consent for work on a construction site) of that Act; or

(iii) the applicable controls and measures relating to smoke, dust, accumulations, deposits, light, noise, vibration, lighting or ponds, pools, ditches, gutters or watercourses described in the relevant construction environmental management plan, construction traffic management plan, drainage strategy, lighting strategy, noise management scheme or decommissioning environmental management plan approved by—

(aa) the relevant planning authority pursuant to the relevant provision of Schedule 2 (requirements); or

(bb) the MMO pursuant to the relevant term of the deemed marine licence or of any marine licence granted or varied pursuant to the 2009 Act (including any variation of the deemed marine licence),

or in the Long Strip construction environmental management plan or in accordance with noise and lighting levels set out in an environmental permit relating to the construction, maintenance, operation or decommissioning of the relevant part of authorised project; or

(b) is a consequence of the construction, maintenance, operation or decommissioning of the authorised project and that it cannot reasonably be avoided.

Protection of interests

58. Schedule 14 (protective provisions) has effect.

Crown rights

59.—(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 on or in any manner interfere with any land or rights of any description (including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary)—

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

(b) belonging to His Majesty in right of the Crown and not forming part of the Crown Estate, without the consent in writing of the government department having the management of that land; or

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

(2) A consent under paragraph (1)—

(a) may be given unconditionally or subject to terms and conditions; and

(b) is deemed to have been given in writing where it is sent electronically.

Application of sections 91(3A) and (3B) of the 1990 Act

60. For the purposes of this Order, sections 91(3A) and (3B) (general condition limiting duration of planning permission) of the 1990 Act apply in the circumstances set out in those provisions to extend the time limit specified in paragraph (1) of article 23 (time limit for exercise of powers to acquire land compulsorily or to possess land temporarily) and paragraph 2 (time limit for beginning of the authorised project) of Schedule 2 (requirements) as if this Order were a planning permission to develop land in England pursuant to the 1990 Act.

Arbitration

61.—(1) Subject to article 62 (procedure regarding certain approvals, etc.) and except where otherwise expressly provided for in this Order or unless otherwise agreed between the parties, any difference under any provision of this Order must be referred to and settled in arbitration in accordance with the rules set out in Schedule 16 (arbitration rules) of this Order, by a single arbitrator to be agreed between the parties, within 14 days of receipt of the notice of arbitration, or if the parties fail to agree within the time period stipulated, 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) This article does not apply to—

(a) the provisions of the 1847 Act incorporated in this Order by article 4 (incorporation of the 1847 Act);

(b) Trinity House in the exercise of its statutory functions;

(c) any matter for which the consent or approval of the Secretary of State, the Statutory Conservancy and Navigation Authority or the MMO is required under any provision of this Order.

Procedure regarding certain approvals, etc.

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

(2) When any consent, agreement or approval is required of, or with, the relevant planning authority pursuant to a requirement set out in Schedule 2 (requirements) such consent agreement or approval must not be given if it would—

(a) permit development (so far as the development falls within a Work No.)—

(i) outside of the extent of the area shown on the works plans for the Work No. in which that development is comprised; or

(ii) exceeding the maximum built element height set out in column (2) of the table at paragraph 4(5) of Schedule 2 (requirements) for development comprised in the corresponding Work No. set out in column (1) of that table; or

(iii) below the minimum built element height set out in column (5) of the table at paragraph 4(5) of Schedule 2 (requirements) for the corresponding built element set out in column (4) of that table; or

(b) give rise to any materially new or materially different significant effects on the environment that have not been assessed in the environmental statement or in any environmental information supplied under the 2017 Regulations.

(3) When any details, plans or other matters have been consented, agreed or approved by the relevant planning authority pursuant to a requirement set out in Schedule 2 (requirements), then they may subsequently be amended by agreement with the relevant planning authority provided

that no amendments to those details, plans or other matters may be approved where such amendments would—

(a) permit development (so far as the development falls within a Work No.)—

(i) outside of the extent of the area shown on the works plans for the Work No. in which that development is comprised; or

(ii) exceeding the maximum built element height set out in column (2) of the table at paragraph 4(5) of Schedule 2 (requirements) for development comprised in the corresponding Work No. set out in column (1) of that table; or

(iii) below the minimum built element height set out in column (5) of the table at paragraph 4(5) of Schedule 2 (requirements) for the corresponding built element set out in column (4) of that table; or

(b) give rise to any materially new or materially different significant effects on the environment that have not been assessed in the environmental statement or in any environmental information supplied under the 2017 Regulations.

(4) Subject to paragraph (5), Schedule 17 (procedure regarding certain approvals, etc.) has effect in relation to all consents, agreements or approvals required or contemplated by any of the provisions of this Order.

(5) Schedule 17 (procedure regarding certain approvals, etc.) does not apply—

(a) in respect of any consents, agreements or approvals contemplated by the provisions of Schedule 14 (protective provisions) or any difference or dispute under article 20(6) (protective works) to which, in each case, article 61 (arbitration) instead applies; or

(b) in respect of the Statutory Conservancy and Navigation Authority.

(6) 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 Schedule 2 (requirements), 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.

Certification of documents, public register, etc.

63.—(1) As soon as practicable after the making of this Order, the undertaker must submit copies of each of the plans and documents set out in Schedule 15 (documents and plans to be certified) to the Secretary of State for certification as true copies of those plans and documents.

(2) Where any plan or document set out in Schedule 15 (documents and plans to be certified) is required to be amended to accord with the terms of the Secretary of State's decision to make the Order, that plan or document in the form amended to the Secretary of State's satisfaction is the version of the plan or document required to be certified under paragraph (1).

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

(4) The undertaker must, as soon as practicable following the making of this Order, establish and, for the lifetime of the authorised project pursuant to this Order, maintain in an electronic form suitable for inspection by members of the public a copy of each of the documents listed in Schedule 15 (documents and plans to be certified) as may be amended in accordance with paragraph (2).

Service of notices

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

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

(b) in any other case, the last known address of that person at 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 seven 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 seven days after the date on which the notice is given.

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

(10) In this article "legible in all material respects", in relation to a notice or document, 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.

Signed by authority of the Secretary of State for Transport

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

Gareth Leigh
Head of Transport and Works Act Orders Unit
6th February 2025 Department for Transport

SCHEDULE 1

Articles 2 and 6

AUTHORISED PROJECT

PART 1

AUTHORISED DEVELOPMENT

In the Borough of North East Lincolnshire, a nationally significant infrastructure project as defined in sections 14(1)(j)(**a**) (nationally significant infrastructure projects: general) and sections 24(2) and 24(3)(c)(**b**) (harbour facilities) of the 2008 Act and associated development within the meaning of section 115(2)(**c**) (development for which development consent may be granted), comprising—

Nationally significant infrastructure project

Work No. 1

1. Within the area shown on sheets 1, 2 and 3 of the works plans as Work No. 1, a multi-user marine terminal for the import and export of bulk liquids including—

(a) Work No. 1a, within the area shown as such, being—

(i) an open piled approach jetty leading to a jetty head with a single berth with loading and unloading platforms and associated dolphins, fenders and walkways; and

(ii) supporting jetty topside infrastructure including marine loading arms, pipes, valves, pipe racks and other process equipment, roadways, footways, maintenance and access platforms, lighting infrastructure, utilities (including electrical systems, firewater systems, communication systems, security systems and potable water supply), ship access equipment, electrical rooms, control rooms, shelters, toxic refuge rooms and other berth furniture;

(b) a dredged pocket to create a berthing pocket;

(c) piling works and other construction works (including cathodic protection, scour prevention and remediation works); and

(d) related landside infrastructure including a jetty access ramp, flood defence access ramp, other access infrastructure, local flood defence works, pipelines, pipes, lighting infrastructure, utilities (including electrical systems, communication systems, security systems and potable water supply), drainage, culverts, traffic control systems, gates and fencing.

Associated development

Work No. 2

2. Within the area shown on sheets 3 and 4 of the works plans as Work No. 2, a jetty access road, pipe-racks, pipelines, pipes and associated buildings, plant and infrastructure including—

(**a**) There are amendments to section 14 which are not relevant to this Order.
(**b**) 2008 c. 29. Section 24(2)(a) was amended by section 33(3) of the Wales Act 2017 (c. 4).
(**c**) 2008 c. 29. Section 115(2) was amended by section 160(3) of the Housing and Planning Act 2016 (c. 22). There are other amendments to section 115 which are not relevant to this Order.

(a) a private road for access to Work No 1. from Laporte Road including formation of a new access from Laporte Road;

(b) a gated access control point with security access gates, parking area, a security building and a power distribution building;

(c) above ground pipe-racks, pipelines, pipes, cables and other conducting media between works within this Work No. 2 and those comprised in Work Nos. 1 and 3; and

(d) lighting infrastructure, utilities (including electrical systems, communication systems, security systems and potable water supply), drainage, culverts, traffic control systems, gates and fencing.

Work No. 3

3. Within the area shown on sheets 4 and 5 of the works plans as Work No. 3, an ammonia storage tank and associated buildings, plant and infrastructure including—

(a) Work No. 3a, within the area shown as such, being an ammonia storage tank including boil-off gas processing unit, ammonia tank flare stack, pumps and associated plant and infrastructure;

(b) piling and foundations;

(c) welfare building, power distribution building and process instrumentation building;

(d) process and utility equipment some of which may be within enclosed shelters including instrument air compressor equipment, instrument air drier equipment, instrument air drier receiver equipment, emergency generator and fuel storage, fire water tank and firewater pump equipment, chemical dosing equipment and associated equipment;

(e) pipe-racks and cable-racks and above and below ground pipelines, pipes, cables, ducts and other conducting media between works within this Work No.3 and those comprised in Work Nos. 4 and 6;

(f) road access from the highway at two locations from Laporte Road and one location from an unnamed private road off Queens Road;

(g) internal site roads, hard standing and parking areas;

(h) drainage system, associated sumps and pumps and a water retention pond;

(i) utilities, transformers and lighting infrastructure; and

(j) fencing and gates.

Work No. 4

4. Within the area of land shown on sheet 4 of the works plans as Work No. 4, an underground culvert, containing pipelines, pipes, cables and other conducting media, with any required cathodic protection, under Laporte Road, to link Work Nos. 3 and 5 and including related surface works, fencing, excavations, back-filling and making good to the highway.

Work No. 5

5. Within the area shown on sheets 3, 4 and 5 of the works plans as Work No. 5, a hydrogen production facility and associated buildings, plant and infrastructure including—

(a) Work No. 5a, within the area of land shown as such, being up to three hydrogen production units each including fired heater, fired heater flue gas stack, flare stack, heat exchangers, compressor buildings, associated structures, process equipment, pipe-racks, pipelines, pipes, cable-racks, cables and other conducting media;

(b) piling and foundations;

(c) process control building, power distribution buildings, process instrumentation buildings and analyser shelters;

(d) process and utility equipment some of which may be within enclosed shelters including, instrument air compressor equipment, instrument air drier equipment, instrument air drier receiver equipment, emergency generator and fuel storage, fire water tank, fire water pump equipment, chemical dosing equipment and associated equipment;

(e) pipe-racks and cable-racks and above and below ground pipelines, pipes, cables, ducts and other conducting media between works within this Work No. 5 and those comprised in Work Nos. 2 and 4;

(f) road access from the highway at two locations on Laporte Road;

(g) road access at one location from the unnamed private access road off Queens Road;

(h) internal site roads, hard standing and parking areas;

(i) drainage system, associated sumps and pumps and a water retention pond;

(j) utilities, transformers and lighting infrastructure; and

(k) fencing and gates.

Work No. 6

6. Within the area shown on sheets 4, 5 and 6 of the works plans as Work No. 6, underground pipelines, pipes, cables and other conducting media, with any required cathodic protection, linking Work Nos. 3 and 7.

Work No. 7

7. Within the area shown on sheets 5, 6 and 7 of the works plans as Work No. 7, a hydrogen production, storage and distribution facility and associated buildings, plant and infrastructure, including—

(a) Work No. 7a, within the area shown as such, comprising—

(i) up to two hydrogen production units each including fired heater, fired heater flue gas stack, heat exchangers, compressor buildings, flare stack, associated structures, process equipment, pipe-racks, pipelines, pipes, cable-racks, cables and other conducting media; and

(ii) one hydrogen liquefier unit including a cold box with heat exchangers and expanders, compressor buildings, flare stack, associated structures, process equipment, pipe-racks, pipelines, pipes, cable-racks, cables and other conducting media;

(b) Work No. 7b, within the area shown as such, comprising—

(i) one hydrogen production unit, including fired heater, fired heater flue gas stack, heat exchangers, compressor buildings, flare stack, associated structures, process equipment, pipe-racks, pipelines, pipes, cable-racks, cables and other conducting media; and

(ii) up to three hydrogen liquefier units, each including a cold box with heat exchangers and expanders, compressor buildings, flare stack, associated structures, process equipment, pipe-racks, pipelines, pipes, cable-racks, cables and other conducting media;

(c) Work No. 7c, within the area shown as such, comprising hydrogen storage tanks, hydrogen trailer filling stations, pipe-racks, pipelines, pipes, cable-racks, cables and other conducting media, a hydrogen vent stack and associated process equipment;

(d) Work No. 7d, within the area of land shown as such, comprising hydrogen vehicle refuelling and trailer filling stations, hydrogen compressors, pipe-racks, pipelines, pipes, cable-racks, cables and other conducting media and associated process equipment;

(e) piling and foundations;

(f) control room and workshop building, security and visitor building, contractor building, warehouse, driver administration building, safe haven building, electrical substation and

metering station, power distribution buildings, process instrumentation buildings, analyser buildings, temporary vehicle and contractor maintenance buildings;

(g) other associated buildings not exceeding 6 metres in height (and, for the purposes of this sub-paragraph (g), the expression "buildings" does not include structures, erections or equipment or any part of structures, erections or equipment);

(h) process and utility equipment some of which may be within enclosed shelters including cooling towers and pumps, instrument air compressor equipment, instrument air drier equipment, instrument air drier receiver equipment, nitrogen generation equipment, steam generation equipment, wastewater and water treatment equipment, emergency generator and fuel storage, fire water tank and firewater pump equipment, chemical dosing equipment and associated equipment;

(i) pipe-racks and cable-racks and above and below ground pipelines, pipes, cables and other conducting media between works within this Work No. 7 and those within Work No. 6;

(j) road access from the highway to the site at two locations from Kings Road and two locations from the A1173;

(k) internal site roads, hard standing and parking areas;

(l) drainage system, associated sumps and pumps and a water retention pond;

(m) utilities, transformers and lighting infrastructure; and

(n) fencing and gates.

Work No. 8

8. Within the area shown on sheets 5 and 6 of the works plans as Work No. 8, a temporary construction and laydown area including a road access from Queens Road, hard standing, open storage areas, storage buildings, contractor compound and staff welfare facilities, vehicle parking, roadways, fencing and gates and lighting infrastructure.

Work No. 9

9. Within the area shown on sheets 3 and 4 of the works plans as Work No. 9, a temporary construction and laydown area including a road access from Laporte Road, works to divert Bridleway Number 36, surface protections, open storage areas, storage buildings, vehicle parking, roadways, fencing and gates and lighting infrastructure.

Work No. 10

10. Within the area shown on sheets 6 and 7 of the works plans as Work No. 10, the temporary modification of overhead cables and lines and the temporary removal of highway signage, lamp posts and other street furniture.

Further associated development

11. In connection with such Work Nos. 1 to 10 and to the extent that they do not otherwise form part of any such work, further associated development within the Order limits comprising such other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised project which do not give rise to any materially new or materially different significant effects from those assessed in the environmental statement or in any environmental information supplied under the 2017 Regulations including—

(a) site preparation works including site clearance and set up (including fencing) and earthworks (including soil stripping and storage, ground preparation and site levelling, lowering and raising);

(b) temporary site construction compounds including (in each case temporary) fencing, storage areas (including for waste and spoil), welfare facilities, buildings, lighting infrastructure, access, parking and drainage infrastructure;

(c) the installation, removal or alteration of the position of services and apparatus including overhead cables and lines and above ground or below ground pipes, pipelines, sewers, watercourses, drains and cables and other conducting media and any pipe sleeves, ducts and culverts in which any apparatus is lodged;

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

(e) works for the benefit or protection of land affected by the authorised project;

(f) works required for the strengthening, improvement, maintenance or reconstruction of any streets;

(g) works required for the protection, strengthening, improvement or maintenance of any buildings;

(h) street works, works to alter the layout of streets, the installation, alteration or removal of street furniture and the marking and lining of any street;

(i) the provision, strengthening, improvement, alteration, diversion and creation of ramps, means of access, footpaths, bridleways and cycleways;

(j) closed circuit television; and

(k) such other works, including works of demolition, as may be necessary for the purposes of or in connection with the construction, operation, maintenance and decommissioning of the authorised project.

PART 2

ANCILLARY WORKS

12. Generally, works within the Order limits comprised in—

(a) surveying and setting-out;

(b) vegetation removal;

(c) planting;

(d) installation of demarcation fencing, stockproof fencing and heras fencing or similar to enable the establishment of construction areas;

(e) survey trenches and pits; and

(f) demobilisation of construction works.

SCHEDULE 2

Articles 2, 5 and 18

REQUIREMENTS

Interpretation

1. In this Schedule—

"commence" means beginning to carry out any material operation (as defined in section 155 (when development begins) of the 2008 Act) forming part of the authorised project or the relevant part of it (in each case as specified where the term "commence" is used in this Schedule) other than operations consisting of—

(a) site clearance (excluding the clearance of trees or other vegetation from Long Strip);

(b) demolition work;

(c) environmental surveys and monitoring;

(d) investigations for the purposes of assessing ground and geological conditions;

(e) the receipt and erection of construction plant and equipment (excluding in relation to Work No. 9);

(f) the erection of temporary contractor and site welfare facilities (excluding in relation to Work No. 9);

(g) the diversion, laying and connection of services;

(h) the erection of any temporary means of enclosure, the temporary display of site notices or advertisements and "commencement",

and "commenced" are to be construed accordingly;

"decommissioning" means the decommissioning of the relevant part of the authorised project when it is no longer required for operational use or, as the case may be, upon the permanent cessation of operational use (such that it is the undertaker's understanding and expectation that the relevant part will not be returned to operational use at some point in the future);

"hydrogen production facility building design code" means the document of that name identified in the table at Schedule 15 (documents and plans to be certified) and which has been certified by the Secretary of State as the hydrogen production facility building design code for the purposes of this Order;

"outline construction environmental management plan" means the document of that name identified in the table at Schedule 15 (documents and plans to be certified) and which has been certified by the Secretary of State as the outline construction environmental management plan for the purposes of this Order;

"outline construction traffic management plan" means the document of that name identified in the table at Schedule 15 (documents and plans to be certified) and which has been certified by the Secretary of State as the outline construction traffic management plan for the purposes of this Order;

"outline decommissioning environmental management plan" means the document of that name identified in the table at Schedule 15 (documents and plans to be certified) and which has been certified by the Secretary of State as the outline decommissioning environmental management plan for the purposes of this Order;

"outline landscape and ecology management plan" means the document of that name identified in the table at Schedule 15 (documents and plans to be certified) and which has been certified by the Secretary of State as the outline landscape and ecology management plan for the purposes of this Order;

"outline operational travel plan" means the document of that name identified in the table at Schedule 15 (documents and plans to be certified) and which has been certified by the Secretary of State as the outline operational travel plan for the purposes of this Order;

"woodland compensation plan" means the document of that name identified in the table at Schedule 15 (documents and plans to be certified) and which has been certified by the Secretary of State as the woodland compensation plan for the purposes of this Order.

Time limit for beginning of the authorised project

2. The authorised project must not begin (which has the meaning given in section 155 (when development begins) of the 2008 Act) later than the expiration of five years beginning with the date on which this Order comes into force.

Parts of the authorised project

3. Any application to the relevant planning authority pursuant to a paragraph of this Schedule in respect of a part of the authorised project must include a plan showing the part to which the application relates, the parts (if any) in respect of which an application pursuant to that paragraph has previously been approved by the relevant planning authority and the parts (if any) in respect of which the requirement for approval by the relevant planning authority pursuant to the paragraph remains to be satisfied.

Detailed approval

4.—(1) No part of—

(a) any control building within the area of Work No. 5; or

(b) any control room and workshop building, security and visitor building, contractor building and warehouse within the area of Work No. 7,

may be constructed above its ground floor slab until details of the external materials to be used in the construction of that building have been submitted to and approved by the relevant planning authority.

(2) Any details submitted and approved under sub-paragraph (1) must be substantially in accordance with the principles contained in the hydrogen production facility building design code.

(3) The ammonia storage tank within Work No. 3a must not be brought into operational use until details of the external paint finish for the tank have been submitted to and approved by the relevant planning authority.

(4) The construction of the relevant buildings and ammonia storage tank must not be carried out other than in accordance with the details approved by the relevant planning authority under sub-paragraphs (1) and (3).

(5) In respect of the table below—

(a) no permanent built element of the authorised project within (as applicable) a Work No. or part of a Work No. set out in column (1) may exceed the maximum height set out in column (2) or the maximum finished ground level set out for that permanent built element in column (3); and

(b) the height of any permanent built element of the authorised project set out in column (4) within (as applicable) a Work No. or part of a Work No. set out in column (1) must exceed the minimum height set out in column (5) for that built element.

Table 1

(1) *Work No.*	*(2)* *Maximum built*	*(3)* *Maximum finished ground*	*(4)* *Built element*	*(5)* *Minimum built element height*

	element height	*level*		
Work No.2	15m above finished ground level	5 metres above ordinance datum	-	-
Work No.3 (except Work No.3a)	20 metres above finished ground level	3.5 metres above ordinance datum	-	-
Work No.3a	65 metres above finished ground level	3.5 metres above ordinance datum	-	-
Work No.5 (except Work No.5a)	20 metres above finished ground level	3.8 metres above ordinance datum	-	-
Work No.5a	45 metres above finished ground level	3.8 metres above ordinance datum	Hydrogen production unit flare stack	37 metres above finished ground level
Work No.7 (except Work Nos. 7a, 7b, 7c and 7d)	20 metres above finished ground level	2.5 metres above ordinance datum	-	-
Work Nos.7a, 7b and 7c	45 metres above finished ground level	2.5 metres above ordinance datum	Hydrogen production unit flare stack	37 metres above finished ground level
Work No. 7d	15 metres above finished ground level	2.5 metres above ordinance datum	-	-

Phasing

5.—(1) The ammonia storage tank within Work No. 3a and the hydrogen production units within Work Nos. 5 and 7 must not be brought into operational use until the jetty forming part of Work No. 1 is available for use.

(2) The construction of no more than two hydrogen production units and no more than one hydrogen liquefier unit may begin until a plan setting out the phase of works relating to any additional hydrogen production unit or hydrogen liquefier unit has been submitted to and approved by the relevant planning authority.

Construction environmental management plan

6.—(1) No works forming part of Work No. 1 outside of the UK marine area (except the clearance of trees or other vegetation from Long Strip) may be commenced until a construction environmental management plan for that part of the works has been submitted to and approved by the relevant planning authority, following consultation with the Environment Agency on matters related to its function; and any such construction environmental management plan and the

construction environmental management plan submitted pursuant to paragraph 8 of Part 2 (conditions applying to all licensable activities) of Schedule 3 (deemed marine licence) may be comprised in the same document.

(2) No works forming part of Work No. 2 (except the clearance of trees or other vegetation from Long Strip), Work No. 3, Work No. 4, Work No. 5, Work No. 6, Work No. 7, Work No. 8 or Work No. 9 may be commenced until a construction environmental management plan for those works has been submitted to and approved by the relevant planning authority, following consultation with the Environment Agency and Natural England on matters related to their functions.

(3) Any construction environmental management plan submitted and approved under sub-paragraph (1) and (2) must be substantially in accordance with the outline construction environmental management plan.

(4) Any works forming part of Work No. 1 outside of the UK marine area, Work No. 2, Work No. 3, Work No. 4, Work No. 5, Work No. 6, Work No. 7, Work No. 8 and Work No. 9 must be carried out in accordance with the approved construction environmental management plan for those works, unless otherwise approved by the relevant planning authority.

(5) The clearance of trees or other vegetation from Long Strip must be carried out in accordance with the Long Strip construction environmental management plan, unless otherwise approved by the relevant planning authority.

Construction traffic management plan

7.—(1) No part of the authorised project outside of the UK marine area (except the clearance of trees or other vegetation from Long Strip) may be commenced until the construction traffic management plan for that part has been submitted to and approved by the relevant planning authority.

(2) Any construction traffic management plan submitted and approved under sub-paragraph (1) must be substantially in accordance with the outline construction traffic management plan.

(3) Each part of the authorised project outside of the UK marine area must be carried out in accordance with any approved construction traffic management plan for that part, unless otherwise approved by the relevant planning authority.

Highway works

8.—(1) Before the construction of any works to a highway maintainable at the public expense begins, written details of those works, including a plan of any land which is not such highway but which it is proposed for the purposes of article 10 (construction and maintenance of new, altered or diverted streets) is to become such highway on completion of those works, must be submitted to and approved by the relevant planning authority following consultation with the highway authority on matters related to its functions.

(2) Before the construction of the underground culvert forming part of Work No. 4 begins, written details of the design of such underground culvert, back-filling and making good to the highway and the construction methodology for its installation must be submitted to and approved by the relevant planning authority following consultation with the highway authority on matters related to its functions.

(3) The works referred to in sub-paragraph (1) and the underground culvert, back-filling and making good referred to in sub-paragraph (2) must be constructed in accordance with the approved details, unless otherwise approved by the relevant planning authority following consultation with the highway authority on matters related to its function.

Construction hours

9.—(1) Subject to sub-paragraph (2), no works of construction comprised in Work Nos. 2 to 7 are to take place on a bank holiday or outside the hours of 07:00 to 19:00 on Mondays to Saturdays, unless otherwise agreed with the relevant planning authority.

(2) The following works comprised in Work Nos. 2 to 7 are permitted outside the days and hours stated in sub-paragraph (1) provided such works do not give rise to any materially new or materially different effects than those assessed in the environmental statement or in any environmental information supplied under the 2017 Regulations —

(a) works that cannot be interrupted, including concrete pours, or that need to be conducted outside of normal work hours for safety reasons, including radiographic testing;

(b) emergency works;

(c) works that are carried out with the prior approval of the relevant planning authority;

(d) works that 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 with the relevant planning authority for specific construction activities;

(e) works necessary to support the construction of Work No. 1.

(3) Any emergency works referred to in sub-paragraph (2)(b) must be notified to the relevant planning authority within 24 hours of being begun.

(4) In this article, "bank holiday" means—

(a) a bank holiday under section 1 (bank holidays) of the Banking and Financial Dealings Act 1971;

(b) Christmas Day; or

(c) Good Friday.

Landscape and ecology management plan

10.—(1) No part of Work Nos. 3, 5 or 7 may be brought into operational use until details of the landscape and ecology measures associated with that part, the timing of provision of those measures and a plan for securing their establishment and maintenance have been submitted to and approved by the relevant planning authority.

(2) The details submitted and approved under sub-paragraph (1) must be substantially in accordance with the principles contained in the outline landscape and ecology management plan.

(3) The landscape and ecology measures approved under sub-paragraph (1) must be carried out, established and maintained in accordance with the details approved under sub-paragraph (1).

(4) Where any tree or shrub planted pursuant to this paragraph that, within a period of five years after planting, is removed, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased, that tree or shrub must be replaced by the undertaker in the first available planting season with a specimen of the same species and size as that originally planted, unless otherwise approved by the relevant planning authority.

Woodland compensation plan

11. The woodland compensation plan must be complied with, unless otherwise approved by the relevant planning authority.

Surface water drainage

12.—(1) No part of Work No. 1 outside of the UK marine area, Work Nos. 2, 3, 5 or 7 (except the clearance of trees or other vegetation from Long Strip) may be commenced until the drainage strategy for that part has been submitted to and approved by the relevant planning authority, following consultation with the Environment Agency and the Board on matters related to their respective functions.

(2) Any drainage strategy submitted and approved under sub-paragraph (1) must be substantially in accordance with the outline drainage strategy contained in appendix 18.B of the environmental statement.

(3) Each part of Work No. 1 outside of the UK marine area, Work Nos. 2, 3, 5 and 7 must be carried out in accordance with the drainage strategy approved under sub-paragraph (1) for that part, unless otherwise approved by the relevant planning authority.

Flood risk assessment

13. The authorised project outside of the UK marine area must be carried out and operated in accordance with the approved flood risk assessment contained in appendix 18A of the environment statement, unless otherwise approved by the relevant planning authority.

Queens Road residential properties

14.—(1) No part of Work No. 7 may be brought into operational use until, in respect of the Queens Road residential properties—

(a) the undertaker has entered on and taken possession of all of the Queens Road residential properties following either compulsory acquisition pursuant to article 22 (compulsory acquisition of land) of this Order or acquisition of it by agreement by the Company or Air Products (whether before or after the date of this Order);

(b) the use of all of the Queens Road residential properties for residential purposes has ceased; and

(c) notice confirming such possession and cessation of use has been served on the relevant planning authority.

(2) From the date of the notice served on the relevant planning authority pursuant to sub-paragraph (1), no part of the Queens Road residential properties may be used for residential purposes for so long as any part of Work No. 7 is in operational use.

(3) In this article—

(a) "Queens Road residential properties" means the land comprised in plots 5/3, 5/4, 7/15, 7/16, 7/17, 7/18, 7/20, 7/21, 7/22 or 7/23 shown on the land plans and described in the book of reference; and

(b) "residential purposes" means any use falling within a class set out in Part C of Schedule 1 to the Town and Country Planning (Use Classes) Order 1987 (as in force at the date of this Order) or any other use for residential purposes.

Contaminated land

15.—(1) No part of Work No. 1 outside of the UK marine area, Work Nos. 2 to 7 (except the clearance of trees or other vegetation from Long Strip) may be commenced until a written remediation strategy applicable to that part to deal with any contamination of that applicable land which is likely to cause significant harm to persons or pollution of controlled waters or the environment has been submitted to and approved by the relevant planning authority, following consultation with the Environment Agency on matters related to its function.

(2) In the event that any unexpected contamination is discovered during the construction of any part of Work No. 1 outside of the UK marine area, Work Nos. 2 to 7, the part of the works to which the contamination relates must cease until a site investigation and assessment report applicable to that part and, if necessary, a remediation strategy to deal with any contamination which is likely to cause significant harm to persons or pollution of controlled waters or the environment has been submitted to and approved by the relevant planning authority, following consultation with the Environment Agency on matters related to its function.

(3) Any remediation strategy submitted under sub-paragraphs (1) or (2) must be substantially in accordance with the outline remediation strategy contained in appendix 21.C of the environmental statement.

(4) Any remediation required pursuant to sub-paragraphs (1) or (2) must be carried out in accordance with the remediation strategy approved pursuant to sub-paragraphs (1) or (2) (as the case may be) unless otherwise approved by the relevant planning authority.

(5) Any verification report required by a remediation strategy approved pursuant to sub-paragraphs (1) or (2) must be submitted to the relevant planning authority in accordance with that remediation strategy.

External lighting

16.—(1) No part of the authorised project within Work No. 1 outside of the UK marine area, pr Work Nos. 2, 3, 5 and 7 may be brought into operational use until a written scheme of the proposed operational external lighting relating to that part has been submitted to and approved by the relevant planning authority.

(2) Any scheme submitted and approved under sub-paragraph (1) must be substantially in accordance with the lighting assessment report contained in appendix 2.B of the environmental statement.

(3) Each part of Work No. 1 outside of the UK marine area, Work Nos. 2, 3, 5 and 7 must be operated in accordance with the scheme approved under sub-paragraph (1) for that part, unless otherwise approved by the relevant planning authority.

Control of noise during operational use

17.—(1) No part of the authorised project comprised in Work Nos. 3, 5 or 7 may be brought into operational use until a scheme for noise management (addressing any parts of Work Nos. 3, 5 and 7 to which the application relates together with any parts in respect of which a scheme has previously been approved) has been submitted to and approved by the relevant planning authority.

(2) Any scheme submitted and approved under sub-paragraph (1) must demonstrate that the effects of noise on the noise sensitive receptors identified in chapter 7 of the environmental statement are no worse than the residual effects identified in that chapter.

(3) Each part of Work Nos. 3, 5 and 7 must be operated in accordance with the scheme approved under sub-paragraph (1) for that part, unless otherwise approved by the relevant planning authority.

Decommissioning environmental management plan

18.—(1) Prior to the decommissioning of (in each case) the entirety of Work Nos. 2 (except the jetty access road), 3, 4, 5, 6 or 7, a decommissioning environmental management plan for that part of the authorised project must be submitted to and approved by the relevant planning authority, following consultation with the Environment Agency on matters related to its function.

(2) Any decommissioning environmental management plan submitted and approved under sub-paragraph (1) must be substantially in accordance with the outline decommissioning environmental management plan.

(3) The decommissioning of (in each case) the entirety of Work Nos. 2 (except the jetty access road), 3, 4, 5, 6 or 7 must be carried out in accordance with the approved decommissioning environmental management plan for that part of the authorised project unless otherwise approved by the relevant planning authority.

Operational travel plan

19.—(1) No part of the authorised project comprised in Work Nos. 3, 5 or 7 may be brought into operational use until an operational travel plan relating to that part of the authorised project has been submitted to and approved by the relevant planning authority.

(2) Any operational travel plan submitted and approved under sub-paragraph (1) must be substantially in accordance with the outline operational travel plan.

(3) Each part of Work Nos. 3, 5 and 7 must be operated in accordance with the approved operational travel plan for that part, unless otherwise approved by the relevant planning authority.

Operational phase flood emergency response plans

20.—(1) No part of Work No. 1 outside of the UK marine area, Work Nos. 2, 3, 5 or 7 may be brought into operational use until a flood emergency response plan to apply during operation of that part has been submitted to and approved by the relevant planning authority, following consultation with North East Lincolnshire Council in its capacity as lead local flood authority (within the meaning of section 6 (other definitions) of the Flood and Water Management Act 2010(**a**)) and the Environment Agency on matters related to their respective functions.

(2) Any flood emergency response plan submitted and approved under sub paragraph (1) must be substantially in accordance with the flood risk assessment contained in appendix 18.A of the environmental statement.

(3) Each part of Work No. 1 outside of the UK marine area, Work Nos. 2, 3, 5 and 7 must be operated in accordance with the plan approved under sub-paragraph (1) for that part, unless otherwise approved by the relevant planning authority.

Flood Defence Agreement

21. No part of the authorised project shall be commenced until a Flood Defence Agreement between the Applicant and the Environment Agency regarding the reconstruction, future ownership, operation and maintenance of the flood defence that will be impacted by the authorised project, has been submitted to and approved by the Local Planning Authority. The authorised project must be carried out in accordance with the approved agreement.

(**a**) 2010 c. 29.

SCHEDULE 3

Article 47

DEEMED MARINE LICENCE

PART 1

GENERAL

Interpretation

1. In this Schedule—

"the 2008 Act" means the Planning Act 2008;

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

"the 2017 Regulations" means the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017;

"2023 sediment sampling plan" means—

(a) the document of that name identified in the table at Schedule 15 (documents and plans to be certified) of the Order and which has been certified by the Secretary of State as the 2023 sediment sampling plan for the purposes of the Order, which sets out—

(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 sediment sampling analyses submitted to the MMO related to the plan to which sub-paragraph (a) refers prior to its expiry;

"the authorised development" 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 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" is to 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 paragraph 11 of this Schedule;

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

(**a**) 2009 c. 23.

"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;

"consolidated dredged materials" mean materials including glacial clay with a diameter of less than 31.25 micrometres and gravel with a diameter of at least 2 and less than 64 millimetres;

"environmental statement" means the document of that name identified in the table at Schedule 15 (documents and plans to be certified) of the Order and which has been certified by the Secretary of State as the environmental statement for the purposes of the Order;

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

"flood risk assessment" means the flood risk assessment contained in appendix 18A of the environmental statement;

"further sediment sampling plan" means—

(a) any further sediment sampling plan approved by the MMO in accordance with paragraph 9(2) of this Schedule which sets out—

(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 sediment sampling analyses submitted by the MMO related to the plan to which sub-paragraph (a) refers prior to its expiry;

"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°39.3000'N, 00°10.4898'W) (53°38.7499'N, 00°10.4536W); (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) and (53°38.7439'N, 00°10.4434'W);

"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;

"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 and "maintenance dredging" is to be construed accordingly;

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

"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;

"outline marine written scheme of investigation" means the outline marine archaeological written scheme of investigation contained in appendix 15B to the environmental statement;

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

"the Order" means the Associated British Ports (Immingham Green Energy Terminal) Order 2025;

"outline construction environmental management plan" means the document of that name identified in the table at Schedule 15 (documents and plans to be certified) of the Order and which has been certified by the Secretary of State as the outline construction environmental management plan for the purposes of the Order;

"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-driving of piles and a "marine pile" means a pile which will, during construction, be in a free-water state;

"the Port of Immingham" has the meaning given in the Order;

"relevant planning authority" has the meaning given in the Order;

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

"subtidal" means areas of the bed of the estuary permanently submerged throughout the tidal cycle;

"unconsolidated dredged materials" mean materials including alluvial sand with a diameter of at least 62.5 micrometres and less than two millimetres, alluvial silt with a diameter of at least 31.25 and less than 62.5 micrometres and gravel with a diameter of at least 2 and less than 64 millimetres;

"undertaker" has the meaning given to "undertaker" in article 2 (interpretation) of the Order;

"vessels" means every description of vessel, however propelled or moved, and includes a displacement and 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 in water and which is at the time in, on, or over water; and

"the works plans" means the plans of that name identified in the table at Schedule 15 (documents and plans to be certified) and which is certified by the Secretary of State as the works plans for the purposes of the Order.

(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.

(4) References to sunset and sunrise are, unless otherwise agreed with the MMO, to be in accordance with the relevant daily set and rise times for the British Isles provided by HM Nautical Almanac Office.

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 liquid bulk facility on the River Humber comprising—

(a) within the area shown as Work No.1a on the works plans—

(i) an open piled approach jetty carrying on its surface a roadway, a footway, pipes, pipework and utilities and lighting, rising from ground level to cross over existing flood defence infrastructure and then extending from the shore in a north easterly direction connecting to a jetty head;

(ii) a jetty head comprising structures including loading and unloading platforms with mechanical loading arms, two breasting dolphins with fenders, each with a gangway tower and eight mooring dolphins linked by walkways;

(iii) four monopiles located in front of the jetty head or loading platform to provide fendering for smaller vessels;

(iv) a jetty head building, a separate refuge building with attached office, water closet and external safety shower, an electrical building, shelters, pump housing and pump canister;

(v) a jetty operations building located near the landside end of the jetty to house control room functions including switch room, operations room and welfare facilities;

(vi) topside infrastructure installed on the jetty to load and unload vessels including marine loading arms, gangways, pipes, piping, valves and other process equipment, maintenance access roadways and access ramps;

(vii) lighting infrastructure, utilities and electrical systems including firewater systems, communication systems and security systems;

(viii) piling works and construction operations within the River Humber;

(b) within the area shown as Work No.1 on sheets 1, 2, 3 and 4 of the works plans, capital dredging works within the River Humber related to the works to which paragraph 3(2)(a) refers and the disposal of any arisings from such dredging;

(c) activities including works to—

(i) alter, clean, modify, dismantle, refurbish, reconstruct, carry out excavations and clearance (excluding clearance or detonation of ordnance), deepen, scour and cleanse;

(ii) temporarily remove, alter, strengthen, interfere with, occupy and use the banks, bed, foreshore and waters of the River Humber;

(iii) remove, relocate or replace any work or structure;

(iv) construct, place and maintain works and structures including piled fenders; and

(v) alter the course or otherwise interfere with navigable or non-navigable watercourses;

(d) such other 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, fenders and pontoons) and lighting.

Licence to dredge and deposit

4.—(1) Subject to paragraph 5, the undertaker is permitted to undertake a capital dredge to a depth of 14.5 metres below 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 dredged may not exceed the approximate quantities and must be deposited at the locations set out in the following table—

Material	*Volume (m3)*	*Specific gravity*	*Maximum tonnage (wet tonnes)*	*Disposal site*
Unconsolidated	3,900	1.35	5,265	HU060
Consolidated	100	2.26	226	HU056

(3) It is acknowledged that pursuant to section 75 of the 2009 Act the undertaker does not need a marine licence to carry out maintenance dredging within the statutory harbour authority area of the Port of Immingham and that the disposal of dredged arisings for such maintenance dredging is permitted in accordance with the existing marine licence.

(4) Arisings of consolidated and unconsolidated materials from the capital dredge must be deposited at HU056 or HU060.

(5) It is noted that arisings of unconsolidated materials from maintenance dredging must be deposited at 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 of any arisings from such dredge to which paragraph 3(2)(b) refers) are specified below—

Point reference	*Latitude*	*Longitude*
1	53.622880	-0.169136
2	53.623860	-0.167200
3	53.627714	-0.157052
4	53.630360	-0.155051

5	53.628116	-0.145503
6	53.624711	-0.147881
7	53.624489	-0.153444
8	53.621258	-0.164738

(2) No capital dredging may be carried out by the undertaker other than within the area of the River Humber bounded by the grid coordinates specified below and identified as Work No. 1 on sheets 1, 2, 3 and 4 of the works plans—

Point reference	*Latitude*	*Longitude*
1	53.627888	-0.155204
2	53.628925	-0.154488
3	53.627495	-0.148612
4	53.626455	-0.149329

PART 2

CONDITIONS APPLYING TO ALL LICENSABLE ACTIVITIES

General

6.—(1) With respect to any provision of this Schedule which requires the licensed activities to be carried out in accordance with documents, strategies, information, plans, protocols or statements approved by the MMO prior to or under this licence, the documents, strategies, information, plans, protocols or statements so approved are taken to include amendments approved in writing by the MMO subsequent to the first approval of those documents, strategies, information, plans, protocols or statements provided it has been demonstrated to the satisfaction of the MMO that the subject matter of the relevant amendments does not give rise to any materially new or materially different environmental effects to those assessed in the environmental statement or in any environmental information supplied under the 2017 Regulations.

(2) When any approval or agreement is required of, or with, the MMO pursuant to this Schedule such approval or agreement must not be given if it would give rise to any materially new or materially different significant effects on the environment that have not been assessed in the environmental statement or in any environmental information supplied under the 2017 Regulations.

Before licensed activities

Notifications regarding licensed activities

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

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

(b) within five 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 or 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 license 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 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 vessels that will be carrying out any licensed activity on behalf of the undertaker as notified to the MMO under sub-paragraph (6) make a copy of this licence available for inspection on board such vessels during the carrying out of any licensed activity.

Construction environmental management plan

8.—(1) No licensed activities may be commenced until a construction environmental management plan for them has been submitted to and approved by the MMO following consultation with the relevant planning authority, the Environment Agency and Natural England on matters related to their function; and the submitted construction environmental management plan must be in accordance with the outline construction environmental management plan, unless otherwise approved in writing by the MMO.

(2) Any construction environmental management plan submitted pursuant to sub-paragraph (1) and any construction environmental management plan submitted pursuant to paragraph 6(1) of Schedule 2 (requirements) of the Order may be comprised in the same document or separate documents.

Sediment sampling

9.—(1) Any sediment sampling analyses undertaken by a laboratory validated by the MMO and approved by the MMO as part of either the 2023 sediment sampling plan or any further sediment sampling plan are valid for a period of 3 years from the date when those analyses were undertaken.

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

Agents, contractors and sub-contractors

10.—(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

11.—(1) 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 must 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) within 200 metres of exposed mudflat and at least 200 metres seaward of mean low water springs may take place following seven 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;

(c) A provision that if the construction restriction 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 five clear days of above-freezing temperatures, the restrictions will be lifted entirely.

(2) All licensed activities must be carried out in accordance with the cold weather construction restriction strategy approved pursuant to sub-paragraph (1), unless otherwise approved by the MMO.

Marine Noise Registry

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

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

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

(2) The undertaker must notify the MMO of the successful provision to the Marine Noise Registry of Forward Look and Close-out requirements within 7 days of the submission.

Marine written scheme of archaeological investigation

13. Archaeological method statements, together with a written report on any consultation carried out with Historic England and the relevant planning authority on matters related to their respective functions in their preparation, must be submitted to and approved by the MMO in writing in accordance with the provisions of the outline marine written scheme of investigation and a subsequent update must be provided to the MMO six weeks before commencement of any licensed activity to which the method statement relates.

Flood risk assessment

14.—(1) All licensed activities must be carried out in accordance with the flood risk assessment, unless otherwise approved by the MMO.

(2) No part of the licensed activities may be brought into operational use until a flood emergency response plan to apply during operation of that part has been submitted to and approved by the MMO, following consultation with the Environment Agency on matters related to its functions.

(3) Any a flood emergency response plan submitted and approved under sub-paragraph (2) must (so far as applicable) be substantially in accordance with the flood risk assessment.

(4) Each part of the licensed activities must be operated in accordance with the plan approved under sub-paragraph (2) for that part, unless otherwise approved by the MMO.

Construction environmental management plan

15. All licensed activities must be carried out in accordance with the construction environmental management plan for those activities approved pursuant to paragraph 8 of this Schedule where applicable, unless otherwise approved by the MMO.

Piling and marine construction works

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

(a) there must be at least a 20 minutes "soft start" period at the commencement of any piling; and

(b) The form of soft start must be agreed with the MMO following 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, must be created, and 30 minutes prior to the commencement of percussive piling a search should 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 should 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, must 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 will cease until the mammals have cleared the zone and there is no further detection after 20 minutes.

(4) Where during operations percussive piling is paused for any reason other than the detection of marine mammals, then recommencing of the percussive piling must be subject to the provisions of sub-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) Subject to sub-paragraph (7) below, the undertaker must ensure that no construction activity for the approach jetty or decommissioning of topsides located within 200 metres of mean low water springs takes place between 1 October and 31 March inclusive in any year.

(7) During the restricted period between 1 October and 31 March inclusive in any year, marine construction activity or decommissioning of topsides may be undertaken at distances less than 200 metres of mean low water springs provided that—

(a) an acoustic barrier or visual screening is installed on both sides of any semi-completed structure;

(b) construction activity is then undertaken on the approach jetty itself, behind the screening; and

(c) noise levels are less than 70 dB(A) on exposed intertidal foreshore.

(8) No piling of marine piles within the waterbody may take place between 1 April and 31 May (inclusive) in any one calendar year, except for any percussive piling of marine piles undertaken on exposed mudflat outside the water column at periods of low water.

(9) Subject to sub-paragraph (10), no piling of marine piles within the waterbody is to take place between the hours of 7pm and 7am from 1 March to 31 March (inclusive) and from 1 September to 31 October (inclusive) or between the hours of sunset and sunrise from 1 June to 30 June (inclusive) and from 1 August to 31 August (inclusive) in any one calendar year.

(10) Sub-paragraph (9) does not apply in relation to any—

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

(b) emergency works; and

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

(11) Percussive piling of marine piles is to be restricted at other times—

(a) subject to sub-paragraph (18), from 1 June to 30 June (inclusive) in any one calendar year the maximum amount of percussive piling permitted within any 24 hour period must not exceed 270 minutes;

(b) subject to sub-paragraph (18), from 1 August to 31 October (inclusive) in any one calendar year, the maximum amount of percussive piling permitted within any 24 hour period must not exceed 270 minutes,

except (in each case) 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.

(12) The measurement of time during each work-block described in sub-paragraph (11) of this Schedule 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.

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

(14) A noise suppression system consisting of a piling sleeve with noise insulating properties must be employed for percussive piling on the approach jetty comprised in the authorised development.

(15) 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.

(16) The reports submitted to the MMO pursuant to sub-paragraph (15) 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.

(17) The undertaker must hold fortnightly meetings with the MMO to discuss the weekly reports submitted pursuant to sub-paragraph (15) and agree any corrective action if required, unless otherwise agreed in writing with the MMO.

(18) Where percussive piling is paused the recommencement of such percussive piling may take place for a contingency period of up to a total of 60 minutes within any 24 hour period in addition to the otherwise maximum amount of percussive piling permitted within any 24 hour period specified in sub–paragraph (11).

Marine written scheme of archaeological investigation

17. All licensed activities must be carried out in accordance with the marine written scheme of investigation.

Concrete and cement

18. 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

19. The undertaker must ensure that any coatings and any treatments are suitable for use in the marine environment and are used in accordance with relevant guidelines approved by the Health and Safety Executive and the Environment Agency.

Pollution and spills

20.—(1) Bunding and 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

21.—(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 must be deposited in the disposal sites—

(a) HU060 (unconsolidated); and

(b) HU056 (consolidated),

or any other site approved in writing by the MMO.

(3) The material to be disposed of within the disposal sites referred to in sub-paragraph (2) must be placed evenly within the relevant site's boundaries.

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

Dropped objects

22.—(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 the specific obstructions form the seabed in accordance with the MMO's reasonable requirements and its own expense.

Notice to Mariners

23.—(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 Maritime and 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 of the work;

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

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

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

(4) 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

Approvals and appeals

24. Schedule 17 (procedure regarding certain approvals, etc.) of the Order has effect in relation to any submission by the undertaker for approval by or agreement of the MMO in respect of any document, strategy, information, plan, protocol or statement under this Schedule.

SCHEDULE 4

Article 7

STREETS SUBJECT TO STREET WORKS

(1) *Area*	*(2)* *Street*	*(3)* *Description of the street works*
North East Lincolnshire	Unnamed access road	Works set out in article 7(1) for the placing and connecting of apparatus and associated works in the area between the point marked B on sheet 4 of the street works and accesses plan and the point marked C on sheets 4 and 5 of that plan.
North East Lincolnshire	Laporte Road	Works set out in article 7(1) for the placing and connecting of apparatus and associated works in the area between the point marked E on inset 1 of the street works and accesses plan and the point marked D on sheets 4 and 5 of that plan.
North East Lincolnshire	Unnamed private road to water treatment works	Works set out in article 7(1) for the placing and connecting of apparatus and associated works in the area between the point marked F on sheets 4 and 5 of the street works and accesses plan and the point marked G on sheet 4 of that plan.
North East Lincolnshire	Queens Road	Works set out in article 7(1) for the placing and connecting of apparatus and associated works in the area marked C on sheets 4 and 5 of the street works and accesses plan and the point marked I on sheets 5 and 6 of that plan.
North East Lincolnshire	Kings Road	Works set out in article 7(1) for the placing and connecting of apparatus and associated works in each of the area between the point marked V on sheets 6 and 7 of the street works and accesses plan and the point marked W on sheet 7 of that plan, the area between the point marked AI on sheets 6 and 7 of the street works and accesses plan and the points marked AH and AJ on sheet 7 of that plan, the area between the points marked AK and AL

		on sheet 7 of the street works and accesses plan, the area between the points marked AM and AN on sheet 7 of the street works and accesses plan and the area between the points marked AO, AP and AQ on sheet 7 of the street works and accesses plan.

SCHEDULE 5

Article 9

ALTERATION OF STREETS

PART 1

PERMANENT ALTERATION OF LAYOUT

(1) *Area*	*(2)* *Street*	*(3)* *Description of alteration, etc.*
North East Lincolnshire	Unnamed access road	Works for the provision of a permanent means of access, altered layout and revised signage and markings within the area edged purple and marked A on sheets 4 and 5 of the street works and accesses plan.
North East Lincolnshire	Laporte Road	Works for the provision of a permanent means of access, altered layout and revised signage and markings within each of the areas edged purple and marked respectively J, K and L on sheet 4 of the street works and accesses plan.
North East Lincolnshire	Unnamed private road to water treatment works	Works for the provision of a permanent means of access, altered layout and revised signage and markings within the area edged purple and marked M on sheets 4 and 5 of the street works and accesses plan.
North East Lincolnshire	Laporte Road	Works for the provision of an altered layout and revised signage and markings in relation to the provision of the permanent speed limit change to which Part 1 (permanent speed limits) of Schedule 10 (traffic regulation measures) refers within the area shaded blue between the points marked D on sheets 4 and 5 and BC on sheet 4 of the street works and accesses plan and the area shaded yellow between the points marked BC on sheet 4 of the street works and accesses plan and point E on inset 1 of that plan.
North East Lincolnshire	A1173	Works for the provision of a

		permanent means of access, altered layout and revised signage and markings within the area edged purple and marked AB on sheet 6 of the street works and accesses plan.
North East Lincolnshire	Kings Road	Works for the provision of a permanent means of access, altered layout and revised signage and markings within each of the areas edged purple and marked respectively Z and AA on sheets 6 and 7 of the street works and accesses plan.

PART 2

TEMPORARY ALTERATION OF LAYOUT

(1) *Area*	*(2)* *Street subject to alteration of layout*	*(3)* *Description of alteration*
North East Lincolnshire	Laporte Road	Works for the provision of a temporary means of access, altered layout and revised signage and markings within each of the areas shaded orange and marked respectively N and P on sheet 4 of the street works and accesses plan and the area shaded orange and marked O on sheet 4 of that plan.
North East Lincolnshire	Unnamed private road to water treatment works	Works for the provision of a temporary means of access, altered layout and revised signage and markings within the area shaded orange and marked M on sheets 4 and 5 of the street works and accesses plan.
North East Lincolnshire	Queens Road	Works for the provision of a temporary means of access, altered layout and revised signage and markings within the area shaded orange and marked U on sheets 5 and 6 of the street works and accesses plan.
North East Lincolnshire	A1173	Works for the provision of a temporary means of access, altered layout and revised signage and markings within the areas shaded orange and

		marked AB and AC on sheet 6 of the street works and accesses plan.
North East Lincolnshire	Kings Road	Works to enable the passage of abnormal indivisible loads including the removal of signage and street furniture within the area shaded red and marked AI, AD, AH and AJ on sheet 7 of the street works and accesses plan and within the area shaded red and marked AE, AQ, AO and AP on sheet 7 of that plan.
North East Lincolnshire	Kings Road	Works to enable the temporary modification of existing overhead cables and lines within the area shaded purple and marked AG, AM and AN on sheet 7 of the street works and accesses plan and within the area shaded purple and marked AF, AL and AK on that plan.
North East Lincolnshire	Kings Road	Works for the provision of a temporary means of access, altered layout and revised signage and markings within the area shaded orange and marked AA on sheets 6 and 7 of the street works and accesses plan.

SCHEDULE 6

Article 11

PERMANENT STOPPING UP OF HIGHWAYS

(1) *Area*	*(2)* *Street to be stopped up* *Public right of way*	*(3)* *Extent of stopping up*
North East Lincolnshire	Unnamed highway adjacent to Laporte Road	All of each of the areas hatched pink (including any areas shaded green which underlie the areas hatched pink) marked respectively AT and AW on sheets 4 and 5 of the stopping up and restriction of use of streets and public rights of way plan.
North East Lincolnshire	Kings Road	All of the area hatched pink (including any area shaded green which underlies the area hatched pink) marked AX on

		sheets 6 and 7 of the stopping up and restriction of use of streets and public rights of way plan.

SCHEDULE 7

Article 12

PUBLIC RIGHTS OF WAY TO BE PERMANENTLY STOPPED UP

(1) *Area*	*(2)* *Public right of way*	*(3)* *Extent of stopping up*
North East Lincolnshire	The area including the sea wall north west along the coast from but excluding Bridleway Number 36 hatched pink and marked AR on sheets 3 and 4 of the stopping up and restriction of use of streets and public rights of way plan	All of the area hatched pink and marked AR on sheets 3 and 4 of the stopping up and restriction of use of streets and public rights of way plan.

SCHEDULE 8

Article 13

TEMPORARY RESTRICTION OR ALTERATION, ETC. OF THE USE OF STREETS OR PUBLIC RIGHTS OF WAY

PART 1

TEMPORARY PROHIBITION OR RESTRICTION OF THE USE OR DIVERSION OF STREETS OR PUBLIC RIGHTS OF WAY

(1) *Area*	*(2)* *Street or public right of way*	*(3)* *Measure*
North East Lincolnshire	Bridleway Number 36	Temporary closure of that part of Bridleway Number 36 to the extent shown by the dashed green line between the points marked BA and BB on sheet 4 of the stopping up and restriction of use of streets and public rights of way plan (with a length of that part of Bridleway Number 36 being shown dashed green on sheet 3 of that plan) and the temporary diversion of Bridleway Number 36 along any alignment within Work No. 9 between those marked points.
North East Lincolnshire	Unnamed area shaded green and marked AY on sheets 4 and 5 of the stopping up and restriction of use of streets and public rights of way plan	Temporary closure of the area shaded green and marked AY on sheets 4 and 5 of the stopping up and restriction of use of streets and public rights of way plan.
North East Lincolnshire	Unnamed access road	Temporary closure of the area

		shaded green and marked A on sheets 4 and 5 of the stopping up and restriction of use of streets and public rights of way plan.
North East Lincolnshire	Laporte Road	Temporary closure of each of the areas within Laporte Road shaded green and marked respectively J, K, L, N, O and P on sheet 4 of the stopping up and restriction of use of streets and public rights of way plan.
North East Lincolnshire	Unnamed private road to water treatment works	Temporary closure of the area shaded green and marked M on sheets 4 and 5 of the stopping up and restriction of use of streets and public rights of way plan.
North East Lincolnshire	Laporte Road	Temporary closure to all traffic save for traffic under the direction of the undertaker of the area shaded green between the point marked S on sheets 4 and 5 of the stopping up and restriction of use of streets and public rights of way plan and the point marked T on sheet 4 of that plan.
North East Lincolnshire	Queens Road	Temporary closure of the area shaded green and marked U on sheets 5 and 6 of the stopping up and restriction of use of streets and public rights of way plan.
North East Lincolnshire	A1173	Temporary closure of the areas within the A1173 shaded green and marked AB and AC on sheet 6 of the stopping up and restriction of use of streets and public rights of way plan.
North East Lincolnshire	Kings Road	Temporary closure of the area shaded green and marked Z on sheets 6 and 7 of the stopping up and restriction of use of streets and public rights of way plan.

PART 2

TEMPORARY USE OF MOTOR VEHICLES ON PUBLIC RIGHTS OF WAY

(1) *Area*	*(2)* *Public right of way*	*(3)* *Measure*
North East Lincolnshire	Bridleway Number 36	Motor vehicles under the

		direction of the undertaker may temporarily use and cross that part of Bridleway Number 36 shown dashed green between the points marked BA and BB on sheet 4 of the stopping up and restriction of use of streets and public rights of way plan (with a length of that part of Bridleway Number 36 being shown dashed green on sheet 3 of that plan).

SCHEDULE 9

Article 15

ACCESS TO WORKS

PART 1

PERMANENT MEANS OF ACCESS TO WORKS

(1) *Area*	*(2)* *Street*	*(3)* *Means of access*
North East Lincolnshire	Laporte Road	Permanent means of access within each of the areas edged purple and marked respectively J, K and L on sheet 4 of the street works and accesses plan.
North East Lincolnshire	Unnamed private road to water treatment works	Permanent means of access within the area edged purple and marked M on sheets 4 and 5 of the street works and accesses plan.
North East Lincolnshire	Unnamed private access road	Permanent means of access within the area edged purple and marked A on sheets 4 and 5 of the street works and accesses plan.
North East Lincolnshire	A1173	Permanent means of access within the area edged purple and marked AB on sheet 6 of the street works and accesses plan.
North East Lincolnshire	Kings Road	Permanent means of access within each of the areas edged purple and marked respectively Z and AA on sheets 6 and 7 of the street works and accesses plan.

PART 2

TEMPORARY MEANS OF ACCESS TO WORKS

(1) *Area*	*(2)* *Street*	*(3)* *Means of access*
North East Lincolnshire	Laporte Road	Temporary means of access within each of the areas shaded orange and marked respectively N and P on sheet 4 of the street works and accesses plan and shaded orange and marked O on sheets 4 and 5 of that plan.
North East Lincolnshire	Unnamed private road to water treatment works	Temporary means of access within the area shaded orange and marked M on sheets 4 and 5 of the street works and accesses plan.
North East Lincolnshire	Queens Road	Temporary means of access within the area shaded orange and marked U on sheets 5 and 6 of the street works and accesses plan.
North East Lincolnshire	A1173	Temporary means of access within each of the areas shaded orange and marked respectively AB and AC on sheet 6 of the street works and accesses plan.
North East Lincolnshire	Kings Road	The provision of a temporary means of access within the area shaded orange and marked AA on sheets 6 and 7 of the street works and accesses plan.

SCHEDULE 10

Article 56

TRAFFIC REGULATION MEASURES

PART 1

PERMANENT SPEED LIMITS

(1) *Area*	*(2)* *Road name and length*	*(3)* *Permanent speed limit*
North East Lincolnshire	That part of Laporte Road shaded blue and between the point marked D on sheets 4 and 5 of the traffic regulation measures plan and the point marked BC on sheet 4 of that plan, a distance of	30 miles per hour

	approximately 365 metres.	
North East Lincolnshire	That part of Laporte Road shaded yellow and between the point marked BC on sheet 4 of the traffic regulation measures plan and the point marked E on inset 1 of that plan, a distance of approximately 545 metres	40 miles per hour

PART 2

TEMPORARY PROHIBITION OF PARKING

(1) *Area*	*(2)* *Road name and length*	*(3)* *Measure*
North East Lincolnshire	That part of Laporte Road, Queens Road and Kings Road hatched dark blue between the point marked BC on sheet 4 of the traffic regulation measures plan and the point marked BD on sheet 8 of that plan (with the remainder of that part of those roads shown on sheets 5, 6 and 7 of that plan), a distance of approximately 2,890 metres.	Temporary parking suspension

PART 3

TEMPORARY ROAD CLOSURES

(1) *Area*	*(2)* *Road name and length*	*(3)* *Measure*
North East Lincolnshire	That part of Laporte Road, Queens Road and Kings Road hatched dark blue between the point marked BC on sheet 4 of the traffic regulation measures plan and the point marked BD on sheet 8 of that plan (with the remainder of that part of those roads shown on sheets 5, 6 and 7 of that plan), a distance of approximately 2,890 metres.	Temporary road closure between the hours of 11pm and 6am to all traffic save for traffic under the direction of the undertaker.

PART 4

PRIORITY OF VEHICULAR TRAFFIC

(1) *Area*	*(2)* *Road name and length*	*(3)* *Measure*
North East Lincolnshire	That part of Laporte Road edged green between the point marked BE on sheets 4 and 5 of the traffic regulation measures plan and the point marked BF on sheet 4 of that plan.	Priority of vehicular traffic to be regulated by temporary traffic lights at the direction of the undertaker.

SCHEDULE 11

Article 24

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

Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right, by the creation of a new right or imposition of a restrictive covenant 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 Land Compensation Act 1973(**a**) has effect subject to the modifications set out in sub-paragraph (2).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 of the 1965 Act as substituted by paragraph 4(5))—

(a) for "land is acquired or taken from" substitute "a right or restrictive covenant over land is purchased from or imposed on"; and

(b) for "acquired or taken from him" substitute "over which the right is exercisable or the restrictive covenant enforceable".

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

(2) For Section 5A(5A) (relevant valuation date) of the 1961 Act, omit the words after "If" and substitute—

"(a) the acquiring authority enters on land for the purpose of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act (as modified by paragraph 4(7) of Schedule 11 to the Associated British Ports (Immingham Green Energy Terminal) Order 2025);

(b) the acquiring authority is subsequently required by a determination under paragraph 13 of Schedule 2A to the 1965 Act (as substituted by paragraph 4(10) of Schedule 11 to the Associated British Ports (Immingham Green Energy Terminal) Order 2025 to acquire an interest in the land; and

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(**a**) 1973 c. 26.

(c) the acquiring authority enters on and takes possession of that land,

the authority is deemed for the purposes of subsection (3)(a) to have entered on that land when it entered on that land for the purpose of exercising that right.".

Application of the 1965 Act

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

(a) the right acquired or to be acquired, or the restrictive covenant imposed or to be imposed; or

(b) the land over which the right is or is to be exercisable, or the restrictive covenant is or is to be enforceable.

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

(3) Section 4 (time limit for giving notice to treat) is omitted.

(4) In section 4A(1) (extension of time limit during challenge)—

(a) for "section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order)" substitute "section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent)"; and

(b) for "the three year period mentioned in section 4" substitute "the five year period mentioned in article 23 of the Associated British Ports (Immingham Green Energy Terminal) Order 2025;

(5) For section 7 of the 1965 Act (measure of compensation) substitute—

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

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

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

(b) paragraph 10(3) of Schedule 1 (owners under incapacity);

(c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and

(d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

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

(7) Section 11(**a**) of the 1965 Act (powers of entry) is modified to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right or restrictive covenant, it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant (which is deemed for this purpose to have been created on the date of service of the notice); and sections 11A (powers of entry: further notices of entry)(**b**), 11B (counter-notice requiring possession to be taken on specified date)(**c**), 12(**d**) (penalty for unauthorised entry) and 13(**e**) (entry on warrant in the event of obstruction) of the 1965 Act are modified correspondingly.

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

(9) Section 22 of the 1965 Act (interests omitted from purchase), as modified by article 30(4) (modification of Part 1 of the 1965 Act), is modified as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired or to enforce the restrictive covenant imposed, subject to compliance with that section as respects compensation.

(10) For Schedule 2A of the 1965 Act substitute—

"SCHEDULE 2A

COUNTER-NOTICE REQUIRING PURCHASE OF LAND

Introduction

1. This Schedule applies where an acquiring authority serves a notice to treat in respect of a right over, or restrictive covenant affecting, the whole or part of a house, building or factory and have not executed a general vesting declaration under section 4 of the 1981 Act as applied by article 29 (application of the 1981 Act) of the Associated British Ports (Immingham Green Energy Terminal) Order 2025 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 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**) 1965 c. 56. Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1) and S.I. 2009/1307.

(**b**) 1965 c. 56. Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016.

(**c**) 1965 c. 56. Section 11B was inserted by section 187(3) of the Housing and Planning Act 2016.

(**d**) 1965 c. 56. Section 12 was amended by section 56(2) of, and Part 1 of Schedule 9 to, the Courts Act 1971 (c. 23).

(**e**) 1965 c. 56. 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 Upper Tribunals, Courts and Enforcement Act 2007 (c. 15).

(**f**) 1965 c. 56. Section 20 was amended by paragraph 4 of Schedule 15 to the Planning and Compensation Act 1991 (c. 34) and S.I. 2009/1307.

(a) withdraw the notice to treat,

(b) accept the counter-notice, or

(c) refer the counter-notice to the Upper Tribunal.

6. The authority must serve notice of its decision on the owner within the period of 3 months beginning with the day on which the counter-notice is served ("the decision period").

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

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

9. If the 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 referral under paragraph 7, the Upper Tribunal must determine whether the acquisition of the right or the imposition of the restrictive covenant would—

(a) in the case of a house, building or factory, cause material detriment to the house, building or factory, or

(b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

11. In making its determination, the Upper Tribunal must take into account—

(a) the effect of the acquisition of the right or the imposition of the covenant,

(b) the use to be made of the right or covenant proposed to be acquired or imposed, and

(c) if the right or covenant is proposed to be acquired or imposed for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.

12. If the Upper Tribunal determines that the acquisition of the right or the imposition of the covenant would have either of the consequences described in paragraph 10, it must determine how much of the house, building or factory the authority ought to be required to take.

13. If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in that land.

14.—(1) If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the authority may at any time within the period of six weeks beginning with the day on which the Upper Tribunal make 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.".

(11) In this Schedule, references to entering on and taking possession of land do not include doing so under articles 20 (protective works), 0 (temporary use of land for constructing the authorised project) or 32 (temporary use of land for maintaining the authorised development) of this Order.

SCHEDULE 12

Article 24

LAND IN WHICH ONLY NEW RIGHTS AND RESTRICTIVE COVENANTS, ETC. MAY BE ACQUIRED

(1) *Land Plans - Sheet*	*(2)* *Plot reference number shown on land plans*	*(3)* *Purpose for which rights over land may be acquired or restrictive covenants imposed*	*(4)* *Relevant part of the authorised project*
4	4/17	The right to enter and remain upon the land for the purposes of the installation, operation, use, maintenance and decommissioning of the authorised project and to— (a) pass re-pass with or without vehicles machinery plant and equipment to construct lay maintain retain and use apparatus; (b) break up or open the surface construct, lay maintain retain and use apparatus together with ancillary equipment including cathodic protection to include installation by way of directional drilling; (c) construct maintain retain and use matting, trackways and hard standings for the purposes of access to construct lay and maintain apparatus and associated works, plant and equipment, and to restore and re-instate the land to its prior condition following the use of the new rights; (d) remove, store and stockpile topsoil and subsoil, employ water barriers and pumping equipment, remove materials and to restore and re-instate the land to its prior condition; (e) erect, maintain and remove temporary fencing for site safety and to create, retain and remove temporary secure works compounds within that part of the land over which the new rights are acquired; (f) erect permanent fencing as is reasonably necessary for the purposes of security and protection of the authorised project; (g) benefit from continuous vertical and lateral support for the apparatus installed as part of the authorised project; (h) erect temporary signage and provide measures for benefit of public and personnel safety.	Work No. 4 and the further associated development to which paragraph 11 of Part 1 (authorised development) of Schedule 1 (authorised project) refers and the ancillary works to which Part 2 (ancillary works) of Schedule 1 (authorised project) refers

		A restrictive covenant over the land for the benefit of the remainder of the Order land— (a) not to undermine or damage the apparatus installed as part of the authorised project nor to do anything which may interfere with apparatus or support for the apparatus within that part of the land over which the new rights are acquired; (b) not to alter or permit or allow to be altered the then existing level of the land nor to cover or permit or allow to be covered the surface of the land over which the new rights are acquired in such manner as to render the access to apparatus impracticable or more difficult or which may damage it within that part of the land over which the new rights are acquired; (c) not to erect construct or place or suffer to be erected constructed or placed any building or structure or carry out or suffer to be carried out any excavation or plant or suffer to be planted any trees on or within that part of the land without the previous consent in writing of the undertaker such consent not to be unreasonably withheld or delayed.	
5	5/23, 5/24, 5/25	The right to enter and remain upon the land for the purposes of the installation, operation, use, maintenance and decommissioning of the authorised project and to— (a) pass re-pass with or without vehicles machinery plant and equipment to construct lay maintain retain and use apparatus; (b) break up or open the surface construct, lay maintain retain and use apparatus together with ancillary equipment including cathodic protection to include installation by way of directional drilling; (c) construct maintain retain and use matting, trackways, hard standings for the purposes of access to construct lay and maintain apparatus and associated works, plant and equipment, and to restore and re-instate the land to its prior condition following the use of the new rights; (d) remove, store and stockpile topsoil and subsoil, employ water barriers and pumping equipment, remove materials and to restore and re-instate the land to	Work No. 6 and the further associated development to which paragraph 11 of Part 1 (authorised development) of Schedule 1 (authorised project) refers and the ancillary works to which Part 2 (ancillary works) of Schedule 1 (authorised project) refers

		its prior condition; (e) erect, maintain and remove temporary fencing for site safety and to create, retain and remove temporary secure works compounds within that part of the land over which the new rights are acquired; (f) erect permanent fencing as is reasonably necessary for the purposes of security and protection of the authorised project; (g) benefit from continuous vertical and lateral support for the apparatus installed as part of the authorised project; (h) erect temporary signage and provide measures for benefit of public and personnel safety. A restrictive covenant over the land for the benefit of the remainder of the Order land— (a) not to undermine or damage the apparatus installed as part of the authorised project nor to do anything which may interfere with apparatus or support for the apparatus within that part of the land over which the new rights are acquired; (b) not to alter or permit or allow to be altered the then existing level of the land nor to cover or permit or allow to be covered the surface of the land over which the new rights are acquired in such manner as to render the access to apparatus impracticable or more difficult or which may damage it within that part of the land over which the new rights are acquired; (c) not to erect construct or place or suffer to be erected constructed or placed any building or structure or carry out or suffer to be carried out any excavation or plant or suffer to be planted any trees on or within that part of the land without the previous consent in writing of the undertaker such consent not to be unreasonably withheld or delayed.	
5, 6	5/7, 5/8, 5/10, 5/11, 5/12, 5/13, 5/14, 5/15, 5/20, 5/22, 5/23, 5/24, 5/25, 5/27, 5/28, 5/29, 5/30, 5/32, 5/33, 5/34, 5/38, 6/14, 6/15	The right to enter and remain upon the land for the purposes of the installation, operation, use, maintenance and decommissioning of the authorised project and to— (a) pass re-pass with or without machinery plant and equipment to construct at a depth no less than 3 metres maintain retain and use apparatus;	Work No. 6 and the further associated development to which paragraph 11 of Part 1 (authorised

		(b) construct and lay at a depth no less than 3 metres maintain retain and use apparatus together with ancillary equipment including cathodic protection to include installation by way of directional drilling; (c) benefit from continuous vertical and lateral support for the apparatus installed as part of the authorised project; (d) erect temporary signage and provide measures for benefit of public and personnel safety. A restrictive covenant over the land for the benefit of the remainder of the Order land— (a) not to undermine or damage apparatus nor to do anything which may interfere with the apparatus or support for the apparatus within that part of the land over which the new rights are acquired; (b) not to alter or permit or allow to be altered the then existing level of the land nor to cover or permit or allow to be covered the surface of the land over which the new rights are acquired in such manner as to render the access to the apparatus impracticable or more difficult or which may damage it within that part of the land over which the new rights are acquired; (c) not to erect construct or place or suffer to be erected constructed or placed any building or structure or carry out or suffer to be carried out any excavation or plant or suffer to be planted any trees on or within that part of the land without the previous consent in writing of the undertaker such consent not to be unreasonably withheld or delayed.	development) of Schedule 1 (authorised project) refers and the ancillary works to which Part 2 (ancillary works) of Schedule 1 (authorised project) refers
5, 6	5/18, 6/6, 6/16, 6/18	The right to— (a) pass re-pass with or without vehicles machinery plant and equipment for the purpose of connection inspection repair and maintenance of the watercourse; (b) connect into, use, drain into, inspect, repair, clear and maintain the watercourse; (c) fell or lop any trees and remove any vegetation (including hedgerows) within or overhanging the watercourse.	The further associated development to which paragraph 11 of Part 1 (authorised development) of Schedule 1 (authorised project) refers and the ancillary works to which Part 2

			(ancillary works) of Schedule 1 (authorised project) refers
4, 6, 7	4/8, 4/17, 4/22, 4/23, 5/37, 7/12	The right to enter and remain within the land for the purposes of the installation, operation, use, maintenance and decommissioning of the authorised project and to— (a) pass re-pass with or without machinery plant and equipment to construct lay maintain retain and use apparatus; (b) construct, lay maintain, retain and use apparatus together with ancillary equipment including cathodic protection to include installation by way of directional drilling; (c) benefit from continuous vertical and lateral support for the apparatus installed as part of the authorised project; (d) provide measures for benefit of public and personnel safety.	The further associated development to which paragraph 11 of Part 1 (authorised development) of Schedule 1 (authorised project) refers and the ancillary works to which Part 2 (ancillary works) of Schedule 1 (authorised project) refers

SCHEDULE 13

Article 31

LAND OF WHICH ONLY TEMPORARY POSSESSION MAY BE TAKEN

(1) *Land plans sheet*	*(2)* *Plot reference number shown on land plans*	*(3)* *Purpose for which temporary possession may be taken*
3, 4	3/2, 4/26, 4/28, 4/29, 4/30, 4/32	Work No. 9 and the further associated development to which paragraph 11 of Part 1 (authorised development) of Schedule 1 (authorised project) refers and the ancillary works to which Part 2 (ancillary works) of Schedule 1 (authorised project) refers
5, 6	5/45, 6/19	The further associated development to which paragraph 11 of Part 1 (authorised development) of Schedule 1 (authorised project) refers and the ancillary works to which Part 2 (ancillary works) of Schedule 1 (authorised project) refers
7	7/1, 7/2, 7,3, 7/4, 7/5, 7/6, 7/7,	Work No. 10 and the further

	7/8, 7/9, 7/10, 7/11	associated development to which paragraph 11 of Part 1 (authorised development) of Schedule 1 (authorised project) refers and the ancillary works to which Part 2 (ancillary works) of Schedule 1 (authorised project) refers

SCHEDULE 14

Articles 17 and 58

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—

"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 Statutory Conservancy and Navigation Authority or Trinity House in connection with any direction under article 49 (provision against danger to navigation), article 50 (lights on tidal works during construction) or article 51 (permanent light on tidal works); and

"the river" means the River Humber.

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.

Approval of detailed design of tidal works

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

(including method statements) 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 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) and 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) 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 18 (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 18 (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, resiting, 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 set out in articles 50 (lights on tidal works during construction) and 51 (permanent light on tidal works) 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) (approval of detailed design of tidal works) 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 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

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

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 harbour master 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. and 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) 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 Statutory Conservancy and Navigation 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 (navigational lights, buoys, etc.); 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 the modification of any enactments in this Order 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 or the harbour master under any enactment;

(c) any other exercise by the Statutory Conservancy and Navigation Authority or the harbour master 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 Act of 1847), 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 or the harbour master (as appropriate) must consult the undertaker before giving any general direction which directly affects the construction, operation or maintenance of the authorised development.

Operating procedures

16. Before commencing marine commercial operations, the undertaker must submit to the harbour master for approval a written statement of proposed safe operating procedures for access to and egress from the authorised development and must operate the authorised development only in accordance with such procedure as is approved, including any approved alteration made from time to time.

Removal of wrecks and obstructions, etc.

17.—(1) Before exercising any power under section 252 of the Merchant Shipping Act 1995 or under section 56 of the 1847 Act, the dock master must notify the harbour master.

(2) The dock master must comply with any reasonable instructions that the harbour master may give in relation to the exercise of the powers referred to in sub-paragraph (1).

Oil spillage plan

18. The undertaker must consult the harbour master 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

19. The following provisions apply for the protection of the Agency unless otherwise agreed in writing between the undertaker and the Agency.

Definitions

20. In this Part of this Schedule—

"Agency" means the Environment Agency;

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

"drainage work" means—

(a) any main river;

(b) any land which provides or is expected to provide flood storage capacity for any main river;

(c) any bank, wall, embankment or other structure or any appliance (in each aforementioned case) constructed or used for land drainage, flood defence or tidal monitoring in connection with a main river;

"emergency" means an occurrence which presents a risk of—

(a) serious flooding

(b) serious detrimental impact on drainage

(c) serious harm to the environment

"fishery" means any waters containing fish and fish in, or mitigating to or from, such waters and the spawn, spawning ground, habitat or food or such fish;

"Habrough Marsh Drain outfall channel" means the naturally scoured channel over the intertidal area fronting the outfall structure marked 'Structure A', being the Habrough Marsh Drain, on the plan of Habrough Marsh Drain and Stallingborough North Beck which provides passive gravity drainage during favourable tidal conditions;

"licences" means—

(a) the licence with reference 35/Licence/10300 granted by the British Transport Docks Board to Anglian Water Authority on 18 January 1980;

(b) the licence with reference 35/Licence/10406 granted by the Company to the Agency on 26 November 1999; and

(c) the licence with reference 35/Licence/10408 granted by the Company to the Agency on 26 November 1999;

"main river" has the same meaning given in section 113 of the Water Resources Act 1991;

"non-tidal main river" has the meaning given in paragraph 2(1) of Part 1 of Schedule 25 to the Environmental Permitting (England and Wales) Regulations 2016;

"the plan of Habrough Marsh Drain and Stallingborough North Beck" means the plan of that name identified in the table at Schedule 15 (documents and plans to be certified) and which is certified by the Secretary of State as the plan of Habrough Marsh Drain and Stallingborough North Beck for the purposes of the Order;

"plans" includes plans, sections, elevations, drawings, specifications, programmes, proposals, calculations, method statements and descriptions;

"protected site" means a site of special scientific interest, a special area of conservation, a special protection area, a Ramsar wetland or a marine conservation zone or legal equivalent;

"remote defence" means any berm, wall or embankment that is constructed for the purposes of preventing or alleviating flooding from, or in connection with, any main river;

"sea defence" means any bank, wall, embankment (any berm, counterwall or cross-wall connected to any such bank, wall or embankment), barrier, tidal sluice and other defence, whether natural or artificial, against the inundation of land by sea water or tidal water, including natural or artificial high ground which forms part of or makes a contribution to the efficiency of the defences of the Agency's area against flooding, but excludes any sea defence works which are for the time being maintained by a coast protection authority under the provisions of the Coast Protection Act 1949 or by any local authority or any navigation, harbour or conservancy authority;

"specified work" means so much of any work or operation authorised by this Order as is in, on, under, over or within—

(a) 16 metres of the base of a sea defence which is likely to—

  (i) endanger the stability of, cause damage or reduce the effectiveness of that sea defence; or

  (ii) interfere with the Agency's access to or along that sea defence;

(b) 8 metres of the base of a remote defence which is likely to—

  (i) endanger the stability of, cause damage or reduce the effectiveness of that remote defence; or

  (ii) interfere with the Agency's access to or along that remote defence;

(c) 16 metres of a drainage work involving a tidal main river;

(d) 8 metres of a drainage work involving a non-tidal main river;

(e) any distance of a drainage work and is otherwise likely to—

(i) affect any drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work;

(ii) cause obstruction to the free passage of fish or damage to the fishery;

(iii) affect the conservation, distribution or use of water resources; or

(iv) affect the conservation value of the main river and habitats in its immediate vicinity;

or which involves—

(a) an activity that includes dredging, raising or taking of any sand, silt, ballast, clay, gravel or other materials from or off the bed or banks of a drainage work (or causing such materials to be dredged, raised or taken), including hydrodynamic dredging or desilting; and

(b) any quarrying or excavation within 16 metres of a drainage work which is likely to cause damage to or endanger the stability of the banks or structure of that drainage work;

"tidal main river" has the meaning given in paragraph 2(1) of Part 1 of Schedule 25 to the Environmental Permitting (England and Wales) Regulations 2016;

"Stallingborough North Beck outfall channel" means the naturally scoured channel over the intertidal area fronting the outfall structure marked 'Structure B', being the Stallingborough North Beck, on the plan of Habrough Marsh Drain and Stallingborough North Beck which provides passive gravity drainage during favourable tidal conditions; and

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

Crossing flood management infrastructure

21. The Agency agrees that development comprised in Work No. 1 may go up and over the sea defences (and may be part of the same structure as any sea defences) within the area shown on the works plans for Work No. 1 subject always to the terms of this Part of this Schedule.

Submission and approval of plans

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

(2) Any submission made by the undertaker under sub-paragraph (1) and any approval given by the Agency under this paragraph, may be in respect of all or part of a specified work.

(3) Any specified work must not be constructed except in accordance with such plans as may be approved in writing by the Agency under this paragraph or determined under paragraph 32 (disputes).

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

(a) must not be unreasonably withheld or delayed;

(b) subject to sub-paragraph (6), 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 reasonably 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 drainage work or the fishery or for the protection of water resources or for the prevention of flooding or pollution or for nature conservation in the discharge of its environmental duties.

(5) The Agency must use its reasonable endeavours to approve or refuse approval pursuant to the submission of any plans under this paragraph before the expiration of the period mentioned in sub-paragraph (4)(b).

(6) Where the plans or any further particulars submitted to the Agency for approval under sub-paragraph (1) relate to activities which are situated within or might otherwise affect a protected site the period of time specified in sub-paragraph (4)(b) is extended to 3 months to allow the Agency to consult Natural England before responding to the request for approval and the Agency's response to that request for approval must take into account any comments received from Natural England.

(7) In the case of a refusal, the Agency must provide a written statement of the reasons for the grounds of refusal.

(8) In the event that the Agency gives an approval under this paragraph in respect of a specified work, or part of it, that specified work, or the relevant part of it, may be constructed, maintained, used, operated or decommissioned by the undertaker in accordance with the plans and particulars approved by the Agency or determined under paragraph 32 (disputes) notwithstanding anything in the licences.

Construction of protective works

23. Without limiting paragraph 22, the requirements which the Agency may have under that paragraph include conditions requiring the undertaker, at its own expense, to construct such protective works, whether temporary or permanent, before or during the construction of the specified works (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

(a) to safeguard any drainage work against damage; or

(b) to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased,

(in each case) by reason of any specified work.

Timing of works and service of notices

24.—(1) Subject to sub-paragraphs (2) and (3), once the construction of any specified work, and any protective work required by the Agency under paragraph 23 (construction of protective works), has begun it must be constructed—

(a) without unreasonable delay in accordance with the plans and particulars approved under this Part of this Schedule by the Agency or determined under paragraph 32 (disputes); and

(b) to the reasonable satisfaction of the Agency,

and the Agency is entitled by its officer to watch and inspect the construction of such works.

(2) The undertaker must give to the Agency not less than 14 days' notice in writing of its intention to begin construction of any specified work and notice in writing of its completion not later than 7 days after the date on which it has been completed.

(3) If the Agency reasonably requires, the undertaker must construct all or part of the protective works so that they are in place prior to the construction of any specified work to which the protective works relate.

Works not in accordance with this Part of this Schedule

25.—(1) If there is any failure by the undertaker to obtain consent or comply with conditions imposed by the Agency in accordance with this Part of this Schedule and where the Agency acting reasonably considers it necessary to avoid any of the risks specified in sub-paragraph (2) arising from the absence of such consent or from such non-compliance, the Agency may serve written notice requiring the undertaker to immediately cease all or part of the specified works to which the consent or conditions relate, as the same may be specified within the notice served, and the undertaker must immediately cease constructing such specified works or part of them until such time as it has obtained the consent or complied with the condition specified within the notice

served unless the undertaker concludes, acting reasonably, that immediate cessation of the specified works or part of them would cause greater environmental damage than proceeding with the work in question and in those circumstances the undertaker must immediately serve a counter-notice on the Agency specifying its reasoning for reaching that conclusion.

(2) The risks specified in sub-paragraph (1) are—

(a) risk of flooding;

(b) risk of harm to the environment; and

(c) risk of detrimental impact on drainage.

(3) If any part of a specified work, or any protective work required by the Agency pursuant to this Part of this Schedule, is constructed otherwise than in accordance with the requirements of this Part of this Schedule, the Agency may by notice in writing require the undertaker, at the undertaker's own expense, to comply with the requirements of this Part of this Schedule or (if the undertaker so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as the Agency reasonably requires.

(4) Subject to sub-paragraph (5) if, within a reasonable period, being not less than 28 days beginning with the date when a notice under sub-paragraph (3) is served upon the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may execute the works specified in the notice and any reasonable expenditure incurred by the Agency in so doing is recoverable from the undertaker.

(5) In the event of any dispute as to whether sub-paragraph (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 Agency must not except in the case of an emergency exercise the powers conferred by sub-paragraph (4) until the dispute has been finally determined in accordance with paragraph 32 (disputes).

Maintenance of works during construction

26.—(1) Notwithstanding anything in the licences, the undertaker must during the construction of any specified works maintain in good repair and condition and free from obstruction any drainage work to which all of the following paragraphs apply, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence—

(a) The drainage work is within the Order limits;

(b) The drainage work is one to which the specified works in question relate or which they affect (in each case) in the manner set out in the meaning given to "specified works" in paragraph 19; and

(c) The drainage work in question falls within a temporary construction compound under the control of the undertaker.

(2) If a drainage work to which sub-paragraph (1) refers is not maintained to the reasonable satisfaction of the Agency on the terms of that sub-paragraph, the Agency may by notice in writing require the undertaker to repair and restore it, or any part of it, or (if the undertaker so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed) to remove the drainage work and restore the site to its former condition, to such extent and within such limits as the Agency reasonably requires.

(3) Subject to sub-paragraph (4) if, within a reasonable period, being not less than 28 days beginning with the date on which a notice in respect of a drainage work to which sub-paragraph (1) refers is served under sub-paragraph (2) on the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may do what is necessary for such compliance and any reasonable expenditure incurred by the Agency in so doing is recoverable from the undertaker.

(4) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (3) the Agency must not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined in accordance with paragraph 32 (disputes).

(5) This paragraph does not apply to any obstruction of a drainage work expressly authorised in plans or particulars approved in writing by the Agency or determined under paragraph 32 (disputes) and carried out in accordance with the provisions of this Part of this Schedule provided that any obstruction is removed as soon as reasonably practicable.

Remediating impaired drainage work

27. If by reason of the construction of any specified work or of the failure of any such work, the efficiency for flood defence purposes of any drainage work within the Order limits is impaired, or that drainage work is otherwise damaged, such impairment or damage must be made good by the undertaker to the reasonable satisfaction of the Agency and if the undertaker fails to do so, the Agency may make good the impairment or damage and recover any expenditure incurred by the Agency in so doing from the undertaker.

Agency access

28.—(1) If by reason of construction of any specified work or the failure of such work, the Agency's access within the Order limits to any flood defences or equipment maintained for flood defence purposes is materially obstructed, the undertaker must notify the Agency immediately and provide suitable alternative means of access within the Order limits that will allow the Agency to maintain the flood defence or use the equipment no less effectively than was possible before the obstruction occurred and such alternative access must be made available as soon as reasonably practicable after the undertaker becoming aware of such obstruction, except in the case of an emergency in which case the undertaker must provide such alternative means of access on demand.

(2) Sub-paragraph (1) does not apply to the extent that an alternative access arrangement has been agreed in writing between the undertaker and the Agency or determined in accordance with paragraph 32 (disputes).

Free passage of fish

29.—(1) The undertaker must during the construction of any specified work take all such measures as may be reasonably practicable to prevent any interruption of the free passage of fish in the fishery by reason of the construction of the specified work in question.

(2) If by reason of—

(a) the construction of any specified work; or

(b) the failure of such work;

damage to the fishery is caused, or the Agency has reason to expect that such damage may be caused, the Agency may serve notice on the undertaker requiring it to take such steps as may be reasonably practicable to make good the damage or, as the case may be, to protect the fishery against such damage.

(3) If within such time as may be reasonably practicable for that purpose after the receipt of written notice from the Agency of any damage or expected damage to a fishery, the undertaker fails to take such steps as are described in sub-paragraph (2), the Agency may take those steps and any expenditure properly and reasonably incurred by the Agency in so doing is recoverable from the undertaker.

(4) In any case where immediate action by the Agency is reasonably required in order to secure that the risk of damage to the fishery is avoided or reduced, the Agency may take such steps as are reasonable for the purpose, and may recover from the undertaker any expenditure properly and reasonably incurred in so doing provided that notice specifying those steps is served on the

undertaker as soon as reasonably practicable after the Agency has taken, or commenced taking, the steps specified in the notice.

Outfall channels

30.—(1) The undertaker must, unless otherwise agreed in writing by the Agency, for a period of 10 years beginning with the date on which any part of the authorised project within the UK marine area is begun (within the meaning given in section 155 (when development begins) of the 2008 Act monitor the paths of each of the Habrough Marsh Drain outfall channel and the Stallingborough North Beck outfall channel and report to the Agency annually whether any substantial changes to the flow or path of either such outfall channel have occurred as a result of the authorised project, such monitoring to be based on appropriate methods.

(2) In the event that, during the period of 10 years to which subparagraph (1) refers, as a direct result of the construction or operation of the authorised project either of the Habrough Marsh Drain outfall channel or the Stallingborough North Beck outfall channel have been obstructed or impaired and either—

(a) the obstruction or impairment has the potential to impede or affect the flow of water from the outfall channel 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,

the undertaker must as soon as reasonably practicable (and in any event within 28 days, unless otherwise agreed with the Agency in writing) set out in writing for approval by the Agency the steps it proposes for making good such obstruction or impairment to the outfall channel and the timescales for it doing so.

(3) The undertaker must carry out the steps approved by the Agency within the timescales it has approved (in each case) pursuant to sub-paragraph (2) to the reasonable satisfaction of the Agency and, if the undertaker fails to do so, the Agency may carry them out and recover from the undertaker the expense reasonably incurred by it in so doing.

Costs and indemnity

31.—(1) The undertaker must repay the Agency all proper and reasonable costs, charges and expenses which the Agency reasonably incurs—

(a) in the examination or approval of plans under this Part of this Schedule;

(b) in the inspection of the construction of the specified works or any protective works required by the Agency under this Part of this Schedule; and

(c) in the carrying out of any surveys or tests by the Agency which are reasonably required in connection with the construction of the specified works or any protective works,

and, for the avoidance of doubt, sub-paragraph (2) does not apply to the costs, charges and expenses to which this sub-paragraph refers.

(2) Subject to sub-paragraphs (3) to (7), the undertaker is responsible for and indemnifies the Agency against all costs and losses, liabilities, claims and demands not otherwise provided for in this Schedule which may be reasonably incurred or suffered by the Agency by reason of, or arising out of—

(a) the construction, operation or maintenance of any specified works comprised within the authorised development or the failure of any such works comprised within them; or

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

(3) For the avoidance of doubt, but subject to sub-paragraphs (4) to (7), in sub-paragraph (2)—

(a) "costs" includes—

(i) expenses and charges;

(ii) staff costs and overheads;

(iii) legal costs;

(b) "losses" includes physical damage.

(c) "claims" and "demands" include as applicable—

(i) costs (within the meaning of paragraph 31(3)(a) incurred in connection with any claim or demand;

(ii) any interest element of sums claimed or demanded;

(d) "liabilities" includes—

(i) contractual liabilities;

(ii) tortious liabilities (including liabilities for negligence or nuisance);

(iii) liabilities to pay statutory compensation or for breach of statutory duty; and

(iv) liabilities to pay statutory penalties imposed on the basis of strict liability (but does not include liabilities to pay other statutory penalties).

(4) The Agency must give to the undertaker reasonable notice of any such costs or losses, liabilities, claims or demands and must not settle or compromise any of them without the agreement of the undertaker and that agreement must not be unreasonably withheld or delayed.

(5) The Agency must at all times take all reasonable steps to prevent and mitigate any such claims, demands, proceedings, liabilities, costs, damages, expenses or losses.

(6) The fact that any work or thing has been executed or done by the undertaker in accordance with a plan approved by the Agency, or to its satisfaction, or in accordance with any directions or award of an arbitrator, does not relieve the undertaker from any liability under the provisions of this Part of this Schedule.

(7) Nothing in this Part of this Schedule imposes any liability on the undertaker with respect to any costs or losses, liabilities, claims or demands to the extent that they are attributable to the neglect, default or wilful misconduct of the Agency, its officers, servants, contractors or agents.

Disputes

32. Any dispute arising between the undertaker and the Agency under this Part of this Schedule must, if the parties agree, be determined by arbitration under article 61 (arbitration), but failing agreement be determined by the Secretary of State for Environment, Food and Rural Affairs or its successor and the Secretary of State for 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 NORTHERN POWERGRID

Application

33. For the protection of Northern Powergrid, unless otherwise agreed in writing between the undertaker and Northern Powergrid, the following provisions have effect for the duration of the construction of the authorised works, including—

(a) where a diversion or replacement of Northern Powergrid's apparatus directly related to the authorised project is required during the construction phase of this Order and is undertaken pursuant to this Order (or any related correction or non-material amendment order); and

(b) where decommissioning works of Northern Powergrid's apparatus directly related to the authorised project are required and are undertaken pursuant to this Order (or any related correction or non-material amendment order),

the following provisions have effect for as long as it takes for the diversion, replacement or decommissioning to be completed.

Interpretation

34. 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), 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;

"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; and

"plan" includes all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed and must 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.

Acquisition of land

35. 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

36.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that 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 which must include rights to retain and subsequently maintain the apparatus being replaced or diverted and any access rights to it for the lifetime of that alternative apparatus 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 Northern Powergrid reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to Northern Powergrid the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed 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. For the avoidance of doubt this sub-paragraph only applies in relation to the voluntary acquisition of the other land or rights and does not include or require the use of Northern Powergrid's compulsory purchase powers.

(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 61 (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 61, 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

37.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to Northern Powergrid facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights 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 61 (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

38.—(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 (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 36 (removal of apparatus), 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 42 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, paragraph 36 (removal of apparatus) and 37 (facilities and rights for alternative apparatus) apply as if the removal of the apparatus had been required by the undertaker under paragraph 36.

(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

39.—(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 36(3) 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 36(4) 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 36(2) having first decommissioned such apparatus.

(2) Where any payment falls due pursuant to sub-paragraph (1) Northern Powergrid—

(a) must provide an itemised invoice or reasonable expenses claim to the undertaker; and

(b) must 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—

(i) 15 days ('reminder letter 1');

(ii) 29 days ('reminder letter 2');

(iii) 43 days ('reminder letter 3'); and

(c) may commence debt proceedings to recover any unpaid itemised invoice or reasonable expenses claim on the fifty first day of receipt of the same where payment has not been made.

(3) Nothing in sub-paragraph (1) requires the undertaker to repay any expense cost or charge for which Northern Powergrid is liable to the undertaker or a third party as a consequence of any default, negligence or omission by Northern Powergrid, its officers, employees, servants, contractors or agents.

(4) 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 61 (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 must be borne by the undertaker.

(5) For the purposes of sub-paragraph (4)—

(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 36(2) (removal of apparatus); 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.

(6) The undertaker will not be liable for any claim by Northern Powergrid for charges, costs or expenses under this paragraph 39 unless prior to Northern Powergrid undertaking the relevant works 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 (such approval not to be unreasonably withheld or delayed),

and Northern Powergrid must not commence any work in relation to which an estimate is submitted until it has been agreed in writing by the undertaker.

(7) The undertaker will use reasonable endeavours to agree the amount of any estimates submitted to it under sub-paragraph (6) 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.

(8) Subject to Northern Powergrid updating the undertaker by way of submission of an updated estimate for approval under sub-paragraph (6) where any charges, costs or expenses are

anticipated to exceed an approved estimate, the undertaker's approval of an estimate must in no way limits National Powergrid's recovery under this paragraph 39, and the undertaker must 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 is 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 (8)(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 of it which is not rejected, as applicable (such confirmation or payment not to be unreasonably withheld or delayed).

(9) Either party may refer any difference or dispute arising out of sub-paragraph (8)(b) to arbitration in accordance with article 61 (arbitration) of the Order.

Damage to property and other losses

40.—(1) Subject to sub-paragraphs (2) to (5), if by reason or in consequence of the construction of any of the works referred to in paragraph 36(3) (removal of apparatus) 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 40 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 is only liable under this paragraph 40 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 must 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; and

(b) an award of damages by a court or a settlements 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).

Enactments and agreements

41. 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; except that in the event of an inconsistency between a term of this Part of this Schedule and a term of—

(a) the wayleave between (1) Lord Worsley and (2) Yorkshire Electricity Board entered into on or around 1966;

(b) the wayleave between (1) The Right Honourable Kenneth Peter Lyle Fourth Earl of Inchape and (2) Northern Powergrid dated 26 May 2016;

(c) the licence between (1) British Transport Docks Board and (2) Yorkshire Electricity Board dated 27 November 1973;

(d) the licence between (1) British Transport Commission and (2) Yorkshire Electricity Board dated 16 October 1962;

(e) the licence between (1) Lord Worsley and (2) Yorkshire Electricity Board dated 19 July 1962;

(f) the licence between (1) Lord Worsley and (2) Yorkshire Electricity Board dated 25 October 1957; and

(g) the licence between (1) British Transport Docks Board and (2) Yorkshire Electricity Board dated 14 May 1965,

the term of this Part of this Schedule applies.

Cooperation

42. 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 36 (removal of apparatus) or otherwise or Northern Powergrid makes requirements for the protection or alteration of apparatus under paragraph 38 (retained apparatus), 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 must use all reasonable endeavours to co-operate with the undertaker for those purposes.

Miscellaneous

43. 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.

44. 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 must be carried out where any works are—

(a) within 15 m of any above ground apparatus; or

(b) are to a depth of between 0-4 m below ground level.

PART 4

FOR THE PROTECTION OF ANGLIAN WATER

Application

45. 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

46. 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 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 are 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

47. The undertaker, in the case of the powers conferred by article 20 (protective works), must (unless otherwise agreed with Anglian Water in writing) exercise those powers so as not to obstruct or render less convenient the access to any apparatus.

(**a**) 1991 c. 56.

Acquisition of land

48. 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

49.—(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 50 (facilities and rights for alternative apparatus).

(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 61 (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 61 (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 must 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 must, before taking or requiring any further step in such substitution works, use best endeavours to comply with Anglian Water's reasonable requests for a reasonable period of time to enable Anglian Water to—

(a) make network contingency arrangements;

(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

50.—(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 61 (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

51.—(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 49, the undertaker must submit to Anglian Water a plan of the works to be executed.

(2) Those works must be executed only in accordance with the plan submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by Anglian Water for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and Anglian Water is entitled to watch and inspect the execution of those works.

(3) Any requirements made by Anglian Water under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan under sub-paragraph (1)is submitted to it.

(4) If Anglian Water in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, sub-paragraphs (1) to (3), (6) and (7), apply as if the removal of the apparatus had been required by the undertaker under paragraph 49(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.

(**a**) S.1. 2016/1154.

(6) The undertaker is not required to comply with sub-paragraph 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 (2) 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) 2.25 metres where the diameter of the pipe is less than 250 millimetres;

(b) 3 metres where the diameter of the pipe is between 250 and 400 millimetres; and

(c) where works fall within 7 metres of pipes with a diameter exceeding 400 millimetres a distance not exceeding 7 metres to be agreed on a case by case basis (both parties acting reasonably) and before the submission of the plan under sub-paragraph (1).

Expenses and costs

52.—(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 61 (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.

53.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in articles 47 (protective works to buildings) or 49(2) (removal of apparatus), 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

54. 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 49(2) (removal of apparatus) or Anglian Water makes requirements for the protection or alteration of apparatus under paragraph 49(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.

55. 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 must inform Anglian Water of the existence and location of the apparatus as soon as reasonably practicable.

Enactments and agreements

56. 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; except that in the event of an inconsistency between a term of this Part of this Schedule and a term of—

(a) the licence between (1) Humber Conservancy Board and (2) Grimsby Rural District Council dated 1 July 1920;

(b) the licence between (1) British Transport Docks Board and (2) Grimsby Rural District Council dated 28 March 1969; and

(c) the licence between (1) British Transport Docks Board and (2) North East Lincolnshire Water Board dated 18 May 1970,

the term of this Part of this Schedule applies.

Substitution of agreed periods of time

57. 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 5

FOR THE PROTECTION OF NETWORK RAIL

Application

58. 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 60, any other person on whom rights or obligations are conferred by that paragraph.

Interpretation

59. 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 with company number 02904587 and whose registered office is at Waterloo General Office, London SE1 8SW, and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition "associated company" means any company which is (within the meaning of section 1159 of the Companies Act 2006) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited, and any successor to Network Rail Infrastructure Limited's railway undertaking;

"plans" includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

"protective works" means any works specified by the engineer under paragraph 62(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; 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 (extent of certain works) in respect of such works.

60.—(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.

61.—(1) The undertaker must not exercise the powers conferred by article 33(1)(b) (extinguishment of rights of statutory undertakers) in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) The undertaker must not under the powers of this Order do anything—

(a) which would result in railway property being incapable of being used or maintained except where the incapability of such use and maintenance is temporary and is with the consent of Network Rail; or

(b) which would affect the safe running of trains on the railway but, for the avoidance of doubt, this does not apply where Network Rail upon prior written request by the undertaker has consented not to run trains on the railway temporarily.

(3) The undertaker must enter into an asset protection agreement prior to the carrying out of any specified work.

(4) 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 will never be unreasonable to withhold consent on reasonable operational or railway safety grounds.

62.—(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 61 (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.

63.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 62 must, when commenced, be constructed—

(a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under article 61 (arbitration);

(b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;

(c) in such manner as to cause as little damage as is possible to railway property; and

(d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic 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.

64. 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.

65. 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.

66.—(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 62, 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 67 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.

67.—(1) 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 63(1) or in constructing any protective works under the provisions of paragraph 63(1) 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.

68.—(1) In this paragraph—

"EMI" means, subject to sub-paragraph (2), electromagnetic interference with Network Rail apparatus generated by the operation of the authorised development where such interference is of a level which adversely affects the safe operation of Network Rail's apparatus; and

"Network Rail's apparatus" means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised development) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail's apparatus carried out after approval of plans under paragraph 62(1) for the relevant part of the authorised development giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the undertaker must in the design and construction of the authorised development take all measures reasonably necessary to prevent EMI and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) In order to facilitate the undertaker's compliance with sub-paragraph (3)—

(a) the undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail's apparatus which may be at risk of EMI, and thereafter must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 62(1)) in order to identify all potential causes of EMI and the measures reasonably required to eliminate them;

(b) Network Rail must make available to the undertaker all information in the possession of Network Rail requested by the undertaker in respect of Network Rail's apparatus identified pursuant to sub-paragraph (a); and

(c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail's apparatus identified pursuant to sub-paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail's apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail's apparatus, but the means of prevention and the method of their execution must be approved by Network Rail, acting reasonably, and in relation to such modifications paragraph 62(1) has effect subject to this sub-paragraph.

(6) Prior to the commencement of operation of the authorised development the undertaker must test the use of the authorised development in a manner that must first have been agreed with Network Rail and if, notwithstanding any measures adopted pursuant to sub-paragraph (3), the testing of the authorised development causes EMI then the undertaker must immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) the undertaker's apparatus causing such EMI until all measures reasonably necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail's apparatus.

(7) In the event of EMI having occurred—

(a) the undertaker must afford reasonable facilities to Network Rail for access to the undertaker's apparatus in the investigation of such EMI;

(b) Network Rail must afford reasonable facilities to the undertaker for access to Network Rail's apparatus in the investigation of such EMI;

(c) Network Rail must make available to the undertaker any additional material information in its possession requested by the undertaker in respect of Network Rail's apparatus or such EMI; and

(d) the undertaker must not allow the use or operation of the authorised development in a manner that has caused or will cause EMI until measures have been taken in accordance with this paragraph to prevent EMI occurring.

(8) Where Network Rail approves modifications to Network Rail's apparatus pursuant to sub-paragraphs (5) or (6)—

(a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus; and

(b) any modifications to Network Rail's apparatus approved pursuant to those sub-paragraphs must be carried out and completed by the undertaker in accordance with paragraph (6).

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 72(1) applies to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.

(10) For the purpose of paragraph 67(1)(a), any modifications to Network Rail's apparatus under this paragraph shall be deemed to be protective works referred to in that paragraph.

69. 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.

70. 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.

71. 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.

72.—(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 employment or of its contractors or others whilst accessing to or egressing from the authorised development;

(d) in respect of any damage caused to or additional maintenance required to, railway property or any such interference or obstruction or delay to the operation of the railway as a result of access to or egress from the authorised development by the undertaker or any person in its employ or of its contractors or others;

(e) in respect of costs incurred by Network Rail in complying with any railway operational procedures or obtaining any regulatory consents which procedures are required to be followed or consents obtained to facilitate the carrying out or operation of the authorised development,

and the undertaker indemnifies and must 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 does not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(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) 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 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.

73. 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 72(5) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate made or to be made pursuant to this Part of this Schedule (including any claim relating to those relevant costs).

74. 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.

75. The undertaker and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the undertaker of—

(a) any railway property shown on the works and land plans and described in the book of reference;

(b) any lands, works or other property held in connection with any such railway property; and

(c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

76. 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.

77. 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 46 (benefit of Order), except in respect of the deemed marine licence, 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.

78. The undertaker must no later than 28 days from the date that the plans and documents referred to in article 63 (certification of documents, public register, etc.) are certified by the Secretary of State provide a set of those plans and documents to Network Rail.

PART 6

FOR THE PROTECTION OF NORTH EAST LINCOLNSHIRE COUNCIL (AS LEAD LOCAL FLOOD AUTHORITY)

Application

79. The provisions of this Part of this Schedule apply whilst any part of the authorised project is being constructed for the protection of the authority unless otherwise agreed between the undertaker and the authority.

Interpretation

80. In this Part of this Schedule—

"authority" means North East Lincolnshire Council (as lead local flood authority within the meaning of the Flood and Water Management Act 2010);

"authorised officer" means an officer authorised by the authority;

"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, drain or culvert.

81.—(1) Before beginning to construct any specified work, the undertaker must submit to the authority plans of the specified work and such further particulars available to it as the authority 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 the authority, or determined under sub-paragraph (3).

(3) Any approval of the authority 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, 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) the authority must use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (b).

82.—(1) Without limitation on the scope of paragraph 81, the requirements which the authority 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.

83.—(1) Subject to sub-paragraph (3), any specified work, and all protective works required by the authority under paragraph 82 must be constructed—

(a) without unreasonable delay in accordance with the plans approved or settled under this Part of this Schedule; and

(b) to the reasonable satisfaction of the authority,

and an authorised officer of the authority is entitled to watch and inspect the construction of such works.

(2) The undertaker must give to the authority 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 the authority over or under any ordinary watercourse is constructed otherwise than in accordance with the requirements of this Part of Schedule, the authority may by notice in writing require the undertaker at the undertaker's own expense to comply with the requirements of this Part of this Schedule or (if the undertaker so elects and the authority in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as the authority reasonably requires.

(4) Subject to sub-paragraph (5) and paragraph 81, 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, the authority 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 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 authority must not except in an emergency exercise the powers conferred by sub-paragraph (4) until the dispute has been finally determined.

84.—(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 on land held by the undertaker for the purposes of or in connection with the specified works within the Order limits, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

(2) If any such drainage work which the undertaker is liable to maintain is not maintained to the reasonable satisfaction of the authority 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 the authority in writing consents, such consent not to be unreasonably withheld or delayed), to remove the work and restore the site to its former condition, to such extent and within such limits as the authority reasonably requires.

(3) Subject to sub-paragraph (4) and paragraph 81, if, within a reasonable period being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2) on the undertaker, the undertaker has failed to begin taking steps to comply with the reasonable requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the authority 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), the authority 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 the authority, or which the authority 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.

85. Subject to paragraph 84, 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 the authority and if the undertaker fails to do so, the authority may make good the same and recover from the undertaker the proper and reasonable expense reasonably incurred by it in so doing.

86.—(1) The undertaker must repay the authority all proper and reasonable costs, charges and expenses which the authority 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 the authority under this Part of this Schedule.

(2) The maximum amount payable to the authority under sub-paragraph (1)(a) or (1)(b) is to be the same as would have been payable to the authority in accordance with the scale of charges for pre-application advice and land drainage consent applications published by the authority from time to time.

87.—(1) Without affecting the other provisions of this Part of this Schedule, the undertaker must indemnify the authority from all claims, demands, proceedings, costs, charges, penalties, damages, expenses and losses, which may be made or taken against, recovered from, or incurred by, the authority 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; or

(c) any flooding, increased flooding or impaired drainage of any such lands as are mentioned in paragraph 85,

(d) any claim in respect of pollution under the Control of Pollution Act 1974;

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

(3) The authority must at all times take reasonable steps to prevent and mitigate any such claims demands proceedings costs charges penalties damages expenses and losses.

88. The fact that any work or thing has been executed or done by the undertaker in accordance with plans approved by the authority, 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 the authority, its

officers, contractors or agents) relieve the undertaker from any liability under the provisions of this Part of this Schedule.

89. Any dispute arising between the undertaker and the authority under this Part of this Schedule is to be determined by arbitration in accordance with article 61 (arbitration).

PART 7

FOR THE PROTECTION OF CADENT GAS LIMITED AS GAS UNDERTAKER

Application

90. For the protection of Cadent the following provisions will, unless otherwise agreed in writing between the undertaker and Cadent, have effect during the construction of the authorised works (as defined in this Part of this Schedule) and for a further period of 18 months from completion of the authorised works (as defined in this Part of this Schedule).

Interpretation

91. 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 (including transformed rectifiers and any associated groundbeds or cables) 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 or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

"authorised works" has the same meaning as is given to the term "authorised development" in article 2 (interpretation) of this Order and includes any associated development authorised by this Order;

"Cadent" means Cadent Gas Limited and includes its successors in title 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 Schedule 2 (requirements) of this Order and "commencement" is to be construed to have the same meaning save that for the purposes of this Part of this Schedule the terms "commence" and "commencement" include any below ground surveys, monitoring, work operations, remedial work in respect of any contamination or other adverse ground condition, the receipt and erection of construction plant and equipment, and non-intrusive investigations for the purpose of assessing ground operations for the purposes of archaeological or ecological investigations and investigations of the existing condition of the ground or of structures and the diversion, laying and construction of services;

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

"functions" includes powers and duties;

"ground mitigation scheme" means a scheme approved by Cadent (such approval not to be unreasonably withheld or delayed and setting out the necessary measures (if any) for a ground subsidence event);

"ground monitoring scheme" means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring

activities and the extent of ground subsidence which, if exceeded, will require the undertaker to submit for 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;

"maintain" and "maintenance" includes the ability and right to do any of the following in relation to any apparatus or alternative apparatus of Cadent including retain, lay, construct, inspect, maintain, protect, use, access, enlarge, replace, renew, remove, decommission or render unusable or remove the apparatus;

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

"rights" includes rights and restrictive covenants, and in relation to decommissioned apparatus the surrender of rights, release of liabilities and transfer of decommissioned apparatus; and

"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 96(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 96(2) or otherwise; 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).

On street apparatus

92.—(1) Except for paragraphs 93 (apparatus of Cadent in stopped up streets), 96 (removal of apparatus) in so far as sub-paragraph 96(2) applies, 97 (facilities and rights for alternative apparatus) in so far as its sub-paragraph 97(1) applies, 98 (retained apparatus: protection of Cadent), 99 (expenses) and 100 (indemnity) which will apply in respect of the exercise of all or any powers under this Order affecting the rights and apparatus of Cadent, the other provisions of this Part of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and Cadent are regulated by the provisions of Part 3 of the 1991 Act.

(2) Paragraphs 96 and 97 of this Agreement will apply to diversions even where carried out under the 1991 Act, in circumstances where any apparatus is diverted from an alignment within the existing adopted public highway but not wholly replaced within existing adopted public highway.

(3) Notwithstanding article 8 (application of the 1991 Act) or any other powers in the Order generally, section 85 of the 1991 Act in relation to cost sharing and the regulations made under it will not apply in relation to any diversion of apparatus of Cadent under the 1991 Act.

Apparatus of Cadent in stopped up streets

93.—(1) Without prejudice to the generality of any other protection afforded to Cadent elsewhere in this Order, where any street is stopped up under article 11 (permanent stopping up of streets), if Cadent has any apparatus in the street or accessed via that street Cadent will be entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the undertaker will grant to Cadent, or will procure the granting to Cadent of, legal easements reasonably satisfactory to Cadent in respect of such apparatus and access to it prior to the stopping up of any such street or highway but nothing in this paragraph affects any right of the undertaker or of Cadent to require the removal of that apparatus under paragraph 96.

(2) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 13 (temporary stopping up and prohibition or restriction of use of streets and public rights of way), Cadent will be at liberty at all times to take all necessary access across any such stopped up highway or to execute and do all such works and things in, upon or under any such highway as it would have been entitled to do immediately before such temporary stopping up or diversion in respect of any apparatus which at the time of the stopping up or diversion was in that highway.

Protective works to buildings

94.—(1) The undertaker, in the case of the powers conferred by article 20 (protective works), 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), must—

(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 must give to the undertaker reasonable notice of any claim or demand as aforesaid and no settlement or compromise of it must 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

95.—(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 or apparatus of Cadent otherwise than by agreement (such agreement not to be unreasonably withheld or delayed).

(2) As a condition of agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between 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 or other legal or land interest of Cadent 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 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 or removal of apparatus, including but not limited to the payment of costs and expenses relating to such relocation or removal of apparatus, and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by Cadent or other enactments relied upon by Cadent as of right or other use in relation to the apparatus, then the provisions in this Schedule prevail.

(4) Any agreement or consent granted by Cadent under paragraph 98 (retained apparatus: protection of Cadent) or any other paragraph of this Part of this Schedule, must not be taken to constitute agreement under sub-paragraph (1).

(5) As a condition of an agreement between the parties in sub-paragraph (1) that involves decommissioned apparatus being left in situ the undertaker must accept a surrender of any existing easement and any other interest of Cadent in such decommissioned apparatus 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.

(6) Where an undertaker acquires land which is subject to any Cadent right or interest (including, without limitation, easements and agreements relating to rights or other interests) and the provisions of paragraph 96 (removal of apparatus) do not apply, the undertaker must—

(a) retain any notice of Cadent's easement, right or other interest on the title to the relevant land when registering the undertaker's title to such acquired land; and

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

Removal of apparatus

96.—(1) If, in the exercise of the agreement reached in accordance with paragraph 95 (acquisition of land) or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be decommissioned or removed under this Part of this Schedule and any right of Cadent to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, is in operation, and the rights and facilities referred to in sub-paragraph (2) have been provided, to the satisfaction of Cadent and in accordance with sub-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to Cadent 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 97(1) (facilities and rights for alternative apparatus)) 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).

(3) If the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, Cadent 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 does 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.

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

(5) 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-paragraphs (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.

Facilities and rights for alternative apparatus

97.—(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 of 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 paragraph 96(2) 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 reasonable 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 105 (arbitration) of this Part of this Schedule and the arbitrator must 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

98.—(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) 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-paragraphs (1) and (2) or as relevant sub-paragraph (5), 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 reasonable satisfaction prior to the commencement of any specified works (or any relevant part of them) 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 96 (removal of apparatus), 97 (facilities and rights for alternative apparatus), 99 (expenses), 100 (indemnity) and 102 (co-operation) apply as if the removal of the apparatus had been required by the undertaker under sub-paragraph 96(2) (removal of apparatus).

(9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of the specified works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(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 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 Cadent′s policies for safe working in proximity to gas apparatus ″CD/SP/SSW/22 (Cadent′s policies for safe working in the vicinity of Cadent′s Assets″ 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 must 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 accordance with paragraph 99. (expenses).

Expenses

99.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to Cadent on demand all charges, costs and expenses reasonably 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 compensation properly paid by Cadent in connection with the negotiation or acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs (including professional fees) incurred by Cadent as a consequence of Cadent—

(i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 96(3) (removal of apparatus) if it elects to do so; or

(ii) exercising any compulsory purchase powers in the Order transferred to or benefitting Cadent;

(b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;

(c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;

(d) the approval of plans;

(e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;

(f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule; and

(g) any watching brief pursuant to paragraph 98(6) (retained apparatus).

(2) Nothing in sub-paragraph (1) requires the undertaker to repay any charge, cost or expense for which Cadent is liable to a third party or the undertaker as a consequence of any default, negligence or omission by Cadent, its officers, employees, servants, contractors or agents except insofar as such default or omission is caused by a breach of this Part of this Schedule by the undertaker or is in consequence of the construction, use, maintenance or failure of any of the authorised works by or on behalf of the undertaker.

(3) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(4) If in accordance with the provisions of this Part of this Schedule—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

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 61 (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 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.

(5) For the purposes of sub-paragraph (4)—

(a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

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

100.—(1) Subject to sub-paragraphs (2) to (4) if by reason or in consequence of the construction of any such works authorised by this Part of this Schedule (including without limitation relocation, diversion, decommissioning, construction and maintenance of apparatus or alternative apparatus) or in consequence of the construction, use, maintenance or failure of any of the authorised 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) imposes any liability on the undertaker in respect of—

(a) any damage or interruption to the extent that it is attributable to the neglect or default of Cadent, its officers, servants, contractors or agents;

(b) any authorised works or any other works authorised by this Part of this Schedule carried out by Cadent with the benefit of this Order pursuant to section 156 of the Planning Act 2008 or article 52 (benefit of Order) subject to the proviso that once such works become apparatus ("new apparatus"), any authorised works yet to be executed and not falling within this paragraph (b) will be subject to the full terms of this Part of this Schedule including this paragraph 100; and

(c) any indirect or consequential loss of any third party (including but not limited to loss of use revenue profit contract production increased cost of working or business interruption arising from any such damage or interruption, which is not reasonably foreseeable at the commencement of the relevant works referred to in sub-paragraph (1)).

(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

101. 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 affects 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; except that in the event of an inconsistency between a term of this Part of this Schedule and a term of—

(a) the deed of easement between (1) Mr G.M.V. Winn and others (2) and The British Gas Corporation dated 25 April 1975; and

(b) the deed of easement between (1) Mr G.M.V. Winn and others (2) and The British Gas Corporation dated 6 May 1980,

the term of this Part of this Schedule applies.

Co-operation

102. Where in consequence of the proposed construction of any of the authorised works, the undertaker or Cadent requires the removal of apparatus under paragraph 96(2) (removal of apparatus) or Cadent makes requirements for the protection or alteration of apparatus under paragraph 98 (retained apparatus), the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of Cadent's undertaking and Cadent must use its best endeavours to co-operate with the undertaker for that purpose.

103. 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

104. If in consequence of the agreement reached in accordance with paragraph 95(1) (acquisition of land) 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

105. 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 61 (arbitration) and in settling any difference or dispute, the arbitrator must have regard to the reasonable requirements of Cadent for ensuring the safety and economic and efficient operation of Cadent's apparatus and of the authorised development.

Notices

106. The plans submitted to Cadent by the undertaker pursuant to sub-paragraph 98(1) (retained apparatus) 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 8

FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

Application

107. For the protection of any operator, referred to in this Part of this Schedule, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the operator.

Interpretation

108. In this Part of this Schedule—

"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;

"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.

109. The exercise of the powers of article 33 (statutory undertakers) is subject to Part 10 (undertaker's works affecting electronic communications apparatus) of the electronic communications code.

110.—(1) Subject to paragraphs 111 and 112, if as the result of the authorised development or its construction, or of any subsidence resulting from any of the authorise 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 this Part of this Schedule 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 61 (arbitration).

111. 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.

112. 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; except that in the event of an inconsistency between a term of this Part of this Schedule and a term of the wayleave between (1) The London and North Eastern Railway Company and (2) Her Majesty's Postmaster General dated 24 May 1933, the term of this Part of this Schedule applies.

PART 9

FOR THE PROTECTION OF THE NORTH EAST LINDSEY DRAINAGE BOARD

Application

113. 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

114. 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 in connection with an ordinary watercourse;

"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 works" means—

(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 such drainage work;

(ii) affect the total volume or volumetric rate of flow of water in or flowing to or from any such drainage work;

(iii) affect the flow of water in any such drainage work; or

(iv) affect the conservation, distribution or use of water resources.

115.—(1) 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 or determined under paragraph 122; 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 18 (discharge of water) shall be made until details of the location and maximum rate of discharge have been submitted to and approved in writing by the Board (unless such location or maximum rate of discharge is in accordance with a drainage strategy approved under paragraph 12(1) of Schedule 2 (requirements)).

(2) Before beginning to construct any specified work, the undertaker must submit to the Board plans of the specified work, and any such further particulars available to it as the Board may within 28 days of the submission of the plans reasonably require.

(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 122.

(4) Any approval of the Board required under this paragraph—

(**a**) 1991 c. 59. There are amendments to section 72 but none are relevant.

(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)(b).

(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.

116. Without limiting paragraph 115, 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.

117.—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the Board under paragraph 116 , 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 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 to which the protective works relate.

(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 an emergency exercise the powers conferred by sub-paragraph (5) until the dispute has been finally resolved by agreement or determined under paragraph 122.

118. If by reason of the construction of any specified work or of the failure of any such work the efficiency of any drainage work for flood defence purposes is impaired, or the drainage work is otherwise damaged, the impairment or damage must be made good by the undertaker to the reasonable satisfaction of the 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.

119. The undertaker must pay to the Board 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 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 any surveys or tests by the Board that are reasonably required in connection with the construction of the specified work.

120.—(1) 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 are made or taken against, reasonably recovered from or reasonably incurred by the Board by reason of—

(a) any damage to any drainage work arising out of construction of the specified work or any act or omission of the undertaker, its contractors, agents or employees whilst engaged upon the 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 construction of the specified work or any act or omission of the undertaker, its contractors, agents or employees whilst engaged upon the work.

(2) The Board must give to the undertaker reasonable notice of any such claims, demands, proceedings, costs, damages, expenses or loss and no settlement or compromise may be made without the agreement of the undertaker, which agreement must not be unreasonably withheld or delayed.

(3) The Board must at all times take reasonable steps to prevent and mitigate any such claims, demands, proceedings, costs, damages, expenses and losses. For the avoidance of doubt, any costs, expenses, losses or liabilities reasonably incurred by the Board arising out of or relating to its taking of such reasonable steps will be recoverable from the undertaker on the terms of sub-paragraph (1) (and, where any such reasonable step is considered by the Board (acting reasonably) to have the potential to cause significant cost, liability, expense or loss recoverable from the undertaker on the terms of sub-paragraph (1), the Board may require prepayment by the undertaker of its reasonable estimate of such prior to taking the relevant step but this does not relieve the Board of its obligation under this sub-paragraph at all times to take reasonable steps to prevent and mitigate the claims, demands, proceedings, costs, damages, expenses and losses to which this paragraph refers).

(4) In no circumstances will the undertaker be liable to the Board under or in connection with this Part of this Schedule for loss of profit.

121. 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.

122. Any dispute between the undertaker and the Board under this Part of this Schedule, unless otherwise agreed, must be determined by arbitration under article 61 (arbitration).

PART 10

FOR THE PROTECTION OF CLDN PORTS KILLINGHOLME LIMITED

Application

123. 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 during the construction and operation of the authorised development.

Interpretation

124.—(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;

"operation" means the commencement of the import or export of liquid bulk products through Work No.1 for commercial purposes (as opposed to commissioning or testing of Work No.1) as notified to CLdN by the undertaker in writing not later than 10 business days after this definition is satisfied;

"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; and

"specified work" means Work No. 1 or any activity or operation authorised by this Order related to the construction of Work No. 1 and any related vessel movements which may interfere with:

(a) the Port or access (including over water) to and from the Port; or

(b) the functions of CLdN as the statutory harbour authority for the Port.

Co-operation

125. 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 and undue interference

126. The undertaker must inform CLdN in writing of the intended start date and the likely duration of the carrying out of the specified work at least 20 business days prior to the commencement of the specified work.

127. Any operations for the construction of the specified work must be carried out by the undertaker so that CLdN does not suffer undue interference with its own operations to and from the Port and, in so doing the undertaker—

(a) must have reasonable regard, amongst other things, to scheduled vessel services to and from the Port notified to the undertaker; and

(b) is not required to carry out any such operations otherwise than in a safe, efficient and economic manner.

Indemnity

128.—(1) During the construction of the specified work, 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, restricts 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 powers of this Order in respect of the specified work, save for where such an obstruction is as a result of the lawful actions of the Statutory Conservancy and Navigation Authority; or

(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 in respect of the specified work.

(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 financial losses, costs, charges, damages, expenses, claims and demands to which that sub-paragraph refers until the commencement of the operation of the specified work and the undertaker must use its reasonable endeavours to give at least 20 business days' notice of the date on which operation of the specified work is anticipated to commence.

Statutory powers

129. Save to the extent expressly provided for, nothing in this Order affects prejudicially any statutory or other rights, powers or privileges vested in or enjoyed by CLdN at the date of this Order coming into force.

130. With the exception of any duty owed by CLdN to the undertaker which is expressly provided for in this Part of this Schedule, nothing in this Order is to be construed as imposing upon CLdN either directly or indirectly, any duty or liability to which CLdN would not otherwise be subject and which is enforceable by proceedings before any court.

Arbitration

131. 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 61 (arbitration) of this Order.

SCHEDULE 15

Article 63

DOCUMENTS AND PLANS TO BE CERTIFIED

(1) *Document*	*(2)* *Document reference*	*(3)* *Revision number*	*(4)* *Date*
book of reference	TR030008/APP/3.1	4	15 August 2024
environmental statement (including environmental statement non-technical summary, environmental statement main report, environmental statement figures and environmental statement appendices)	TR030008/APP/6.1, TR030008/APP/6.2, TR030008/APP/6.3 TR030008/APP/6.4	0	21 September 2023
environmental statement (non-technical summary)	TR030008/APP/6.1	1	21 September 2023
environmental statement (chapter 1)	TR030008/APP/6.2	1	21 September 2023
environmental statement (figure 1.1)	TR030008/APP/6.3	3	26 June 2024
environmental statement (appendices 1A – 1E)	TR030008/APP/6.4	1	21 September 2023
environmental statement (chapter 2)	TR030008/APP/6.2	3	26 June 2024
environmental statement (figures 2.1 – 2.5)	TR030008/APP/6.3	3	26 June 2024
environmental statement (figure 2.6)	TR030008/APP/6.3	2	26 June 2024
environmental statement (figure 2.7)	TR030008/APP/6.3	1	21 September 2023
environmental statement (appendices 2A – 2C	TR030008/APP/6.4	1	21 September 2023
environmental statement (chapter 3)	TR030008/APP/6.2	1	21 September 2023
environmental statement (figure 3.1)	TR030008/APP/6.3	1	21 September 2023
environmental statement (chapter 4)	TR030008/APP/6.2	1	21 September 2023
environmental statement (chapter 5)	TR030008/APP/6.2	1	21 September 2023
environmental statement (chapter 6)	TR030008/APP/6.2	1	21 September 2023
environmental	TR030008/APP/6.3	2	26 June 2024

statement (figures 6.1 – 6.2)			
environmental statement (figure 6.3 A1– B2)	TR030008/APP/6.3	2	26 June 2024
environmental statement (appendices 6A – 6B)	TR030008/APP/6.4	1	21 September 2023
environmental statement (chapter 7)	TR030008/APP/6.2	1	21 September 2023
environmental statement (figure 7.1)	TR030008/APP/6.3	1	21 September 2023
environmental statement (appendices 7A – 7C)	TR030008/APP/6.4	1	21 September 2023
environmental statement (chapter 8)	TR030008/APP/6.2	1	21 September 2023
environmental statement (appendices 8A – 8F)	TR030008/APP/6.4	1	21 September 2023
environmental statement (chapter 9)	TR030008/APP/6.2	1	21 September 2023
environmental statement (figure 9.1)	TR030008/APP/6.3	1	21 September 2023
environmental statement (figures 9.2 – 9.4)	TR030008/APP/6.3	2	26 June 2024
environmental statement (figures 9.5 – 9.7)	TR030008/APP/6.3	1	21 September 2023
environmental statement (appendices 9A – 9B)	TR030008/APP/6.4	1	21 September 2023
environmental statement (chapter 10)	TR030008/APP/6.2	1	21 September 2023
environmental statement (figures 10.1 – 10.5)	TR030008/APP/6.3	2	26 June 2024
environmental statement (figure 10.6)	TR030008/APP/6.3	1	21 September 2023
environmental statement (appendix 10A)	TR030008/APP/6.4	1	21 September 2023
environmental statement (chapter 11)	TR030008/APP/6.2	1	21 September 2023
environmental statement (figures 11.1 – 11.5)	TR030008/APP/6.3	2	26 June 2024
environmental statement (appendices 11A – 11B)	TR030008/APP/6.4	1	21 September 2023
environmental statement (chapter 12)	TR030008/APP/6.2	1	21 September 2023
environmental	TR030008/APP/6.3	1	21 September 2023

statement (figures 12.1 – 12.5)			
environmental statement (appendices 12A – 12B)	TR030008/APP/6.4	1	21 September 2023
environmental statement (chapter 13)	TR030008/APP/6.2	1	21 September 2023
environmental statement (figures 13.1 – 13.7	TR030008/APP/6.3	3	26 June 2024
environmental statement (figure 13.8.1 - 13.8.13)	TR030008/APP/6.3	1	21 September 2023
environmental statement (figure 13.9.1 – 13.9.13)	TR030008/APP/6.3	1	21 September 2023
environmental statement (figure 13.10.1 – 13.10.6)	TR030008/APP/6.3	1	21 September 2023
environmental statement (appendix 13A – 13B)	TR030008/APP/6.4	1	21 September 2023
environmental statement (chapter 14)	TR030008/APP/6.2	1	21 September 2023
environmental statement (figure 14.1 – 14.3)	TR030008/APP/6.3	2	26 June 2024
environmental statement (appendix 14A – 14H)	TR030008/APP/6.4	1	21 September 2023
environmental statement (chapter 15)	TR030008/APP/6.2	1	21 September 2023
environmental statement (figures 15.1 – 15.4)	TR030008/APP/6.3	2	26 June 2024
environmental statement (figure 15.5)	TR030008/APP/6.3	1	21 September 2023
environmental statement (appendix 15A – 5B)	TR030008/APP/6.4	1	21 September 2023
environmental statement (chapter 16)	TR030008/APP/6.2	1	21 September 2023
environmental statement (figures 16.1 – 16.17)	TR030008/APP/6.3	1	21 September 2023
environmental statement (appendix 16A – 16C)	TR030008/APP/6.4	1	21 September 2023
environmental statement (chapter 17)	TR030008/APP/6.2	1	21 September 2023
environmental statement (figures 17.1 – 17.3)	TR030008/APP/6.3	2	26 June 2024
environmental	TR030008/APP/6.4	1	21 September 2023

statement (appendix 17A)			
environmental statement (chapter 18)	TR030008/APP/6.2	1	21 September 2023
environmental statement (figures 18.1 – 18.5)	TR030008/APP/6.3	2	26 June 2024
environmental statement (appendix 18A)	TR030008/APP/6.4	3	26 June 2024
environmental statement (appendix 18B – 18C)	TR030008/APP/6.4	1	21 September 2023
environmental statement (chapter 19)	TR030008/APP/6.2	1	21 September 2023
environmental statement (appendix 19A – 19C)	TR030008/APP/6.4	1	21 September 2023
environmental statement (chapter 20)	TR030008/APP/6.2	1	21 September 2023
environmental statement (chapter 21)	TR030008/APP/6.2	1	21 September 2023
environmental statement (figures 21.1 – 21.3)	TR030008/APP/6.3	3	26 June 2024
environmental statement (figure 21.4)	TR030008/APP/6.3	1	21 September 2023
environmental statement (figure 21.5)	TR030008/APP/6.3	2	26 June 2024
environmental statement (figures 21.6 – 21.7)	TR030008/APP/6.3	3	26 June 2024
environmental statement (figure 21.8)	TR030008/APP/6.3	1	21 September 2023
environmental statement (appendix 21A – 21C)	TR030008/APP/6.4	1	21 September 2023
environmental statement (chapter 22)	TR030008/APP/6.2	1	21 September 2023
environmental statement (chapter 23)	TR030008/APP/6.2	1	21 September 2023
environmental statement (figures 23.1 – 23.4)	TR030008/APP/6.3	3	26 June 2024
environmental statement (figure 23.5)	TR030008/APP/6.3	2	26 June 2024
environmental statement (figure 23.6)	TR030008/APP/6.3	1	21 September 2023
environmental statement (chapter 24)	TR030008/APP/6.2	1	21 September 2023

environmental statement (chapter 25)	TR030008/APP/6.2	2	11 July 2024
environmental statement (figures 25.1 – 25.2)	TR030008/APP/6.3	2	26 June 2024
environmental statement (appendices 25A – 25C)	TR030008/APP/6.4	2	11 July 2024
environmental statement (chapter 26)	TR030008/APP/6.2	2	26 June 2024
hydrogen production facility building design code	TR030008/EXAM/9.76	1	4 June 2024
land plans	TR030008/APP/4.5	4	2 August 2024
Long Strip construction environmental management plan	TR030008/EXAM/90	1	2 August 2024
outline construction environmental management plan	TR030008/APP/6.5	8	15 August 2024
outline construction traffic management plan	TR030008/APP/6.7	4	4 June 2024
outline decommissioning environmental management plan	TR030008/APP/6.6	2	11 July 2024
outline landscape and ecology management plan	TR030008/APP/6.9	2	4 June 2024
outline operational travel plan	TR030008/EXAM/9.3	2	4 June 2024
the plan of Habrough Marsh Drain and Stallingborough North Beck	TR030008/EXAM/9.99	1	15 August 2024
plan of potentially affected hedgerows and trees subject to preservation orders	TR030008/APP/4.9	4	26 June 2024
sediment sampling plan	TR030008/APP/7.10	1	21 September 2023
stopping up and restriction of use of streets and public rights of way plan	TR030008/APP/4.7	3	26 June 2024
street works and accesses plan	TR030008/APP/4.6	3	26 June 2024
traffic regulation measures plans	TR030008/APP/4.8	4	26 June 2024
works plans	TR030008/APP/4.1	4	26 June 2024
woodland compensation plan	TR030008/EXAM/9.34	4	15 August 2024

SCHEDULE 16

Article 61

ARBITRATION RULES

Commencing an arbitration

1. The arbitration is deemed to have commenced when a party ("the claimant") serves a written notice of arbitration on the other party ("the respondent").

Time periods

2.—(1) All time periods in these arbitration rules are measured in days and include weekends, but not bank or public holidays.

(2) Time periods are calculated from the day after the arbitrator is appointed which is either—

(a) the date the arbitrator notifies the parties in writing of his/her acceptance of an appointment by agreement of the parties; or

(b) the date the arbitrator is appointed by the President of the Institution of Civil Engineers.

Timetable

3.—(1) The timetable for the arbitration is that which is set out in sub-paragraphs 3(2) to 3(4) below unless amended in accordance with paragraph 5(3).

(2) Within 14 days of the arbitrator being appointed, the claimant must provide both the respondent and the arbitrator with—

(a) a written statement of claim which describes the nature of the difference between the parties, the legal and factual issues, the claimant's contentions as to those issues, the amount of its claim or the remedy it is seeking; and

(b) all statements of evidence and copies of all documents on which it relies, including contractual documentation, correspondence (including electronic documents), legal precedents and expert witness reports.

(3) Within 14 days of receipt of the claimant's statements under sub-paragraph (2) by the arbitrator and respondent, the respondent must provide the claimant and the arbitrator with

(a) a written statement of defence consisting of a response to the claimant's statement of claim, its statement in respect of the nature of the difference, the legal and factual issues in the claimant's claim, its acceptance of any elements of the claimant's claim and its contentions as to those elements of the claimant's claim it does not accept;

(b) all statements of evidence and copies of all documents on which it relies, including contractual documentation, correspondence (including electronic documents), legal precedents and expert witness reports; and

(c) any objections it wishes to make to the claimant's statements, comments on the claimant's expert reports (if submitted by the claimant) and explanations of the objections.

(4) Within seven days of the respondent serving its statements under sub-paragraph 3(3), the claimant may make a statement of reply by providing both the respondent and the arbitrator with—

(a) a written statement responding to the respondent's submissions, including its reply in respect of the nature of the difference, the issues (both factual and legal) and its contentions in relation to the issues;

(b) all statements of evidence and copies of documents in response to the respondent's submissions;

(c) any expert report in response to the respondent's submissions;

(d) any objections to the statements of evidence, expert reports or other documents submitted by the respondent; and

(e) its written submissions in response to the legal and factual issues involved.

Procedure

4.—(1) The parties' pleadings, witness statements and expert reports (if any) must be concise. A single pleading must not exceed 30 single-sided A4 pages using 10pt Arial font.

(2) The arbitrator will make an award on the substantive differences based solely on the written material submitted by the parties unless the arbitrator decides that a hearing is necessary to explain or resolve any matters.

(3) Either party may, within two days of delivery of the last submission, request a hearing giving specific reasons why it considers a hearing is required.

(4) Within seven days of receiving the last submission, the arbitrator must notify the parties whether a hearing is to be held and the length of that hearing.

(5) Within 10 days of the arbitrator advising the parties that a hearing is to be held, the date and venue for the hearing are to be fixed by agreement with the parties, save that if there is no agreement the arbitrator must direct a date and venue which the arbitrator considers is fair and reasonable in all the circumstances. The date for the hearing must not be less than 35 days from the date of the arbitrator's direction confirming the date and venue of the hearing.

(6) A decision must be made by the arbitrator on whether there is any need for expert evidence to be submitted orally at the hearing. If oral expert evidence is required by the arbitrator, then any experts attending the hearing may be asked questions by the arbitrator.

(7) There is to be no examination or cross-examination of experts, but the arbitrator must invite the parties to ask questions of the experts by way of clarification of any answers given by the experts in response to the arbitrator's questions. Prior to the hearing in relation to the experts—

(a) at least 28 days before a hearing, the arbitrator must provide a list of issues to be addressed by the experts;

(b) if more than one expert is called, they will jointly confer and produce a joint report or reports within 14 days of the issues being provided; and

(c) the form and content of a joint report must be as directed by the arbitrator and must be provided at least seven days before the hearing.

(8) Within 14 days of a hearing or a decision by the arbitrator that no hearing is to be held the parties may by way of exchange provide the arbitrator with a final submission in connection with the matters in dispute and any submissions on costs. The arbitrator must take these submissions into account in the award.

(9) The arbitrator may make other directions or rulings as considered appropriate in order to ensure that the parties comply with the timetable and procedures to achieve an award on the substantive difference within four months of the date on which the arbitrator is appointed, unless both parties otherwise agree to an extension to the date for the award.

(10) If a party fails to comply with the timetable, procedure or any other direction then the arbitrator may continue in the absence of a party or submission or document, and may make a decision on the information before the arbitrator attaching the appropriate weight to any evidence submitted beyond any timetable or in breach of any procedure or direction.

(11) The arbitrator's award must include reasons. The parties must accept that the extent to which reasons are given must be proportionate to the issues in dispute and the time available to the arbitrator to deliver the award.

Arbitrator's powers

5.—(1) The arbitrator has all the powers of the Arbitration Act 1996, save where modified in this Schedule.

(2) There must be no discovery or disclosure, except that the arbitrator is to have the power to order the parties to produce such documents as are reasonably requested by another party no later than the statement of reply, or by the arbitrator, where the documents are manifestly relevant, specifically identified and the burden of production is not excessive. Any application and orders should be made by way of a Redfern Schedule without any hearing.

(3) Any time limits fixed in accordance with this procedure or by the arbitrator may be varied by agreement between the parties, subject to any such variation being acceptable to and approved by the arbitrator. In the absence of agreement, the arbitrator may vary the timescales or procedure—

(a) if the arbitrator is satisfied that a variation of any fixed time limit is reasonably necessary to avoid a breach of the rules of natural justice; and

(b) only for such a period that is necessary to achieve fairness between the parties.

(4) On the date the award is made, the arbitrator will notify the parties that the award is completed, signed and dated, and that it will be issued to the parties on receipt of cleared funds for the arbitrator's fees and expenses.

Costs

6.—(1) The costs of the arbitration must include the fees and expenses of the arbitrator, the reasonable fees and expenses of any experts and the reasonable legal and other costs incurred by the parties for the arbitration.

(2) Where the difference involves connected or interrelated issues, the arbitrator must consider the relevant costs collectively.

(3) The final award must fix the costs of the arbitration and decide which of the parties are to bear them or in what proportion they are to be borne by the parties.

(4) The arbitrator must award recoverable costs on the general principle that each party should bear its own costs, having regard to all material circumstances, including such matters as exaggerated claims or defences, the degree of success for different elements of the claims, claims that have incurred substantial costs, the conduct of the parties and the degree of success of a party.

Confidentiality

7.—(1) Hearings in this arbitration are to take place in private.

(2) Materials, documents, awards, expert reports and any matters relating to the arbitration are confidential and must not be disclosed to any third party without prior written consent of the other party, save for any application to the courts or where disclosure is required under any legislative or regulatory requirement.

SCHEDULE 17

Article 62

PROCEDURE REGARDING CERTAIN APPROVALS, ETC.

Interpretation

1. In this Schedule—

"appeal documentation" means a written statement of appeal which describes the nature of the differences between the parties, the factual issues, the undertaker's case and evidence relied on;

"relevant authority" means, subject to article 62(5), any person, authority or body named in any of the provisions of this Order and whose consent, agreement or approval is sought; and

"consultee" means any body or authority named in a requirement or condition as a body to be consulted by the relevant authority in discharging that requirement or condition.

Applications made under provisions of this Order

2.—(1) Where an application has been made to the relevant authority for any consent, agreement or approval required or contemplated by any of the provisions of this Order (except as provided in article 62(5)) the relevant authority must give notice to the undertaker of their decision on the application within—

(a) in respect of all provisions a period of 42 days beginning with the day immediately following that on which the application is received by the relevant authority;

(b) where further information is requested under paragraph 3 of this Schedule (further information and consultation), a period of 42 days beginning with the day immediately following that on which further information has been supplied by the undertaker; or

(c) such period that is longer than the periods in sub-paragraphs (a) or (b) as may be agreed in writing by the undertaker and the relevant authority before the end of such period.

(2) In determining any application made to the relevant authority for any consent, agreement or approval required or contemplated by any of the provisions of this Order (except as provided in article 62(5)), the relevant 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 reasonable conditions the relevant authority must provide its reasons for that decision within the notice of the decision.

(3) Subject to sub-paragraph (4), in the event that the relevant authority does not determine an application within the period set out in sub-paragraph (1), the relevant authority is to be taken to have granted all parts of the application (without any condition or qualification) at the end of that period.

(4) Where an application has been made to the relevant authority for any consent, agreement or approval required by any of the provisions of this Order (except as provided in article 62(5)), and—

(a) the relevant authority does not determine the application within the period set out in sub-paragraph (1) and such application is accompanied by a report which states that the subject matter of such application is likely to give rise to any materially new or materially different environmental effects compared to those in the environmental statement or in any environmental information supplied under the 2017 Regulations; or

(b) the relevant authority determines during the period set out in sub-paragraph (1) that it considers that the subject matter of such application will give rise to any materially new

or materially different environmental effects compared to those in the environmental statement or in any environmental information supplied under the 2017 Regulations,

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

(5) The undertaker must include in any application made to the relevant authority for any consent, agreement or approval required or contemplated by any of the provisions of this Order (except as provided in article 62(5)) a statement that the provisions of sub-paragraph (3) apply and, if the application fails to do so, it is to be null and void.

Further information and consultation

3.—(1) In relation to any application submitted pursuant to a requirement in Schedule 2 (requirements) or condition in schedule 3 (deemed marine licence), the relevant authority may request such reasonable further information from the undertaker as is necessary to enable it to consider the application.

(2) In the event that the relevant authority considers further information to be necessary and the provision governing or requiring the application does not specify that consultation with a consultee is required the relevant authority must, within 10 business days of receipt of the application, notify the undertaker in writing specifying the further information required.

(3) If the provision governing or requiring the application specifies that consultation with a consultee is required, the relevant authority must issue the consultation to the consultee within five business days of receipt of the application, and must notify the undertaker in writing specifying any further information requested by the consultee within 20 business days of receipt of the application.

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

Appeals

4.—(1) The undertaker may (except as provided in article 62(5)) appeal in the event that—

(a) the relevant authority refuses (including a deemed refusal pursuant to paragraph 2(4)) an application for any consent, agreement or approval required by an article, requirement or condition included in this Order or grants it subject to conditions;

(b) on receipt of a request for further information pursuant to paragraph 3 the undertaker considers that either the whole or part of the specified information requested by the relevant authority is not necessary for consideration of the application; or

(c) on receipt of any further information requested, the relevant 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 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 relevant authority and any consultee required to be consulted pursuant to the provision of this Order which is the subject of the appeal (together with the undertaker, these are the "appeal parties");

(c) as soon as is practicable after receiving the appeal documentation, the Secretary of State must appoint a person to determine the appeal and must forthwith notify the appeal parties of the identity of the appointed person and the address to which all

correspondence for his attention should be sent, the date of such notification being the "start date" for the purposes of this sub-paragraph (2);

(d) the relevant authority and any consultee required to be consulted pursuant to the provision of this Order which is the subject of the appeal must submit written representations to the appointed person in respect of the appeal within 20 business days of the start date and must ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;

(e) the undertaker must make any counter-submissions to the appointed person within 20 business days of receipt of written representations pursuant to sub-paragraph (d) above; and

(f) the appointed person must make his decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable and in any event within 30 business days of the deadline for the receipt of counter-submissions pursuant to sub-paragraph (e).

(3) The appointment of the person 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) In the event that the appointed person considers that further information is necessary to enable him to consider the appeal he must, notify the appeal parties in writing specifying the further information required and the date by which the information is to be submitted and the appointed person must set the date for the receipt of such further information having regard to the timescales in sub-paragraph (2).

(5) Any further information required pursuant to sub-paragraph (4) must be provided by the appeal parties to the appointed person on the date specified by the appointed person (the "specified date"), and the appointed person must notify the appeal parties of the revised timetable for the appeal on or before that day. The revised timetable for the appeal must require submission of any written representations on the submitted further information to the appointed person within 10 business days of the specified date but otherwise is to be in accordance with the process and time limits set out in sub-paragraphs (2)(d) to (2)(f).

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

(a) allow or dismiss the appeal; or

(b) reverse or vary any part of the decision or determination of the relevant authority (whether the appeal relates to that part of it or not),

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

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

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

(9) The decision of the appointed person on an appeal is to be 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 judicial review.

(10) If an approval is given by the appointed person pursuant to this Schedule, it is deemed to be an approval given by the relevant authority. The relevant authority may confirm any determination given by the appointed person in identical form in writing but a failure to give such confirmation (or a failure to give it in identical form) is not to be taken to affect or invalidate the effect of the appointed person's determination.

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

(12) On application by the relevant authority or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it is to

be made, the appointed person must have regard to Planning Practice Guidance: Appeals (March 2014) or any circular or guidance which may from time to time replace it.

Fees

5.—(1) Where an application is made to the relevant planning authority for the discharge of a requirement in Schedule 2 (requirements), a fee is to apply and must be paid to the relevant planning authority in accordance with sub-paragraph (2).

(2) The fee payable for each application under sub-paragraph (1) is as follows—

(a) a fee of £2,535 for the first application for the discharge by the relevant planning authority of each of the requirements in paragraphs 4 (detailed approval), 5(1) (phasing), 6 (construction environmental management plan), 7 (construction traffic management plan), 8 (highway works), 10 (landscape and ecology management plan), 12 (surface water drainage), 15 (contaminated land), 16 (external lighting), 17 (control of noise during operational use), 18 (decommissioning environmental management plan), 19 (operational travel plan), and 20 (operational phase flood emergency response plans);

(b) a fee of £578 for each subsequent application for the discharge by the relevant planning authority of each of the requirements listed in paragraph (a) (whether that subsequent application is in respect of the same part of the authorised project or a different part of it); and

(c) a fee of £145 for any application for the agreement of the relevant planning authority pursuant to any "unless otherwise agreed" provision of any requirement in Schedule 2 (requirements).

(3) Any fee paid under this Schedule must be refunded by the relevant planning authority to the undertaker who paid it within four weeks of—

(a) the application being rejected as invalidly made; or

(b) the relevant planning authority failing to determine the application within the relevant period in paragraph 2(1) of this Schedule unless within that period the undertaker agrees, in writing, that the fee is to be retained by the relevant planning authority and credited in respect of a future application.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order grants development consent for and authorises the construction, operation and maintenance of a new liquid bulk import terminal and associated development within the Port of Immingham and to carry out all associated works.

The Order also makes provision in connection with the maintenance, operation and decommissioning of the authorised project.

The Order allows Associated British Ports to acquire compulsorily or by agreement, land and rights in land and for it and Air Products to use land for this purpose.

A copy of the plans and book of reference referred to in this Order and certified in accordance with article 63 of this Order may be inspected in an electronic form in accordance with article 63(4) of this Order.

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