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

2026 No. 1025

INFRASTRUCTURE PLANNING

The Beacon Fen Energy Park Order 2026

Made - - - - *21st August 2026*

Coming into force *14th September 2026*

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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 the Examining Authority (appointed by the Secretary of State) pursuant to Chapter 3 of Part 6 of the 2008 Act and carried out in accordance with Chapter 4 of Part 6 of the 2008 Act and the Infrastructure Planning (Examination Procedure) Rules 2010(**c**).

The Examining Authority, having considered the application together with the documents that accompanied it and the representations made and not withdrawn, in accordance with section 74(2)(**d**) of the 2008 Act has submitted a report to the Secretary of State setting out its findings, conclusions and recommendation in respect of the application.

The Secretary of State, having considered the report and recommendation of the Examining Authority, having taken into account the environmental information in accordance with regulation 4 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017(**e**) and having had regard to the documents and matters referred to in section 104(2)(**f**) of the 2008 Act, has decided to make an order granting development consent for the development described in the application on terms that in the opinion of the Secretary of State are not materially different from those proposed in the application.

The Secretary of State, in exercise of the powers conferred by sections 114(**g**), 115(**h**), 120(**i**), 122(**j**), 123(**k**) and 140 of the 2008 Act, makes the following Order.

(**a**) 2008 c. 29. Parts 1 to 7 were amended by Chapter 6 of Part 6 of and Schedule 13 to the Localism Act 2011 (c. 20).
(**b**) S.I. 2009/2264.
(**c**) S.I. 2010/103, amended by S.I. 2012/635.
(**d**) As amended by paragraph 29(1) and (3) of Part 1 of Schedule 13 to the Localism Act 2011 (c. 20).
(**e**) S.I. 2017/572.
(**f**) Section 104(2) was amended by paragraph 49 of Schedule 13 to the Localism Act 2011 (c. 20) and section 58(5) of the Marine and Coastal Access Act 2009 (c. 23).
(**g**) As amended by paragraph 55 of Part 1 of Schedule 13 to the Localism Act 2011 (c. 20).
(**h**) As amended by section 160 of the Housing and Planning Act 2016 (c. 22) and section 43 of the Wales Act 2017 (c. 4).
(**i**) As amended by section 140 of, and paragraph 60 of Part 1 of Schedule 13 to, the Localism Act 2011 (c. 20).
(**j**) As amended by paragraph 62 of Part 1 of Schedule 13 to the Localism Act 2011 (c. 20).
(**k**) Ibid.

PART 1

Preliminary

Citation and commencement

1. This Order may be cited as the Beacon Fen Energy Park Order 2026 and comes into force on 14th September 2026.

Interpretation

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

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

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

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

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

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

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

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

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

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

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

"the 2015 Order" means the Town and Country Planning (General Permitted Development) (England) Order 2015(**k**);

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

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

"archaeological mitigation strategy" means the document of that name identified in the table at Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the archaeological mitigation strategy for the purposes of this Order;

"authorised development" means the development and associated development described in Schedule 1 (authorised development) which is development within the meaning of section 32 (meaning of "development") of the 2008 Act

"book of reference" means the document of that name identified in the table at Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the book of reference for the purposes of this Order;

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

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

(**a**) 1961 c. 33.
(**b**) 1965 c. 56.
(**c**) 1980 c. 66.
(**d**) 1981 c. 66.
(**e**) 1984 c. 27.
(**f**) 1989 c. 29.
(**g**) 1990 c. 8.
(**h**) 1991 c. 22.
(**i**) 2003 c. 21.
(**j**) 2008 c. 29.
(**k**) S.I. 2015/596.

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

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

"crown land plan" means the plan of that name identified in the table at Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the crown land plan for the purposes of this Order;

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

"cycleway" means a way constituting or comprised in a highway, being a way over which the public have a right of way on pedal cycles (other than pedal cycles which are motor vehicles within the meaning of the Road Traffic Act 1988(**b**)) with a right of way on foot and a right of way on horseback or leading a horse, but no other rights of way;

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

"electronic transmission" means a communication transmitted—

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

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

"environmental statement" means the document of that name identified in the table at Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the environmental statement for the purposes of this Order;

"environmental statement addendum" means the document of that name identified in the table at Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the environmental statement for the purposes of this Order;

"existing substation" means the existing substation at Bicker Fen, Bicker, Lincolnshire, PE20 3BQ, owned and operated by NGET;

"flood risk assessment conclusions" means the document of that name identified in the table at Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the flood risk assessment conclusions for the purposes of this Order;

"flood risk operational mitigation" means the document of that name identified in the table at Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the flood risk operational mitigation for the purposes of this Order;

"footway" and "footpath" have the same meanings as in section 329 (further provision as to interpretation) of the 1980 Act;

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

"land plans" means the plans of that name identified in the table at Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the land plans for the purposes of this Order;

"maintain" includes inspect, upkeep, repair, refurbish, adjust, alter, remove, reconstruct and replace in relation to the authorised development, but not remove, reconstruct or replace the whole of, the authorised development, provided such works do not give rise to any materially new or materially different environmental effects to those identified in the environmental statement and "maintenance" and "maintaining" must be construed accordingly;

(**a**) 1971 c. 80.
(**b**) 1988 c. 52.
(**c**) "highway" is defined in section 328(1). For "highway authority" see section 1.

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

"National Grid 2005 permission" means planning permission B/05/0046 granted by Boston Borough Council on 20 April 2005 (and any variation thereof);

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

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

"outline battery safety management plan" means the document of that name identified in the table at Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the outline battery safety management plan for the purposes of this Order;

"outline construction environmental management plan" means the document of that name identified in the table at Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the outline construction environmental management plan for the purposes of this Order;

"outline construction traffic management plan" means the document of that name identified in the table at Schedule 12 (documents and plans to be certified) and which is 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 12 (documents and plans to be certified) and which is certified by the Secretary of State as the outline decommissioning environmental management plan for the purposes of this Order;

"outline design principles" means the document of that name identified in the table at Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the outline design principles for the purposes of this Order;

"outline drainage strategy" means the document of that name identified in the table at Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the outline drainage strategy for the purposes of this Order;

"outline landscape and ecological management plan" means the document of that name identified in the table at Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the outline landscape and ecological management plan for the purposes of this Order;

"outline public rights of way management plan" means the document of that name identified in the table at Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the outline public rights of way management plan for the purposes of this Order;

"outline skills, supply chain and employment plan" means the document of that name identified in the table at Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the outline skills, supply chain and employment plan for the purposes of this Order;

"outline soil management plan" means the document of that name identified in the table at Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the outline soil management plan for the purposes of this Order;

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

"the permit scheme" means the Lincolnshire Permit Scheme for Road Works and Street Works Order 2016, which is made under Part 3 of the Traffic Management Act 2004;

"permitted preliminary works" means operations consisting of all or any of—

(a) pre-construction surveys and/or monitoring;

(b) site clearance (including vegetation removal and demolition of existing structures);

(c) advanced planting works;

(d) archaeological investigations;

(e) environmental surveys;

(f) investigations for the purpose of assessing ground conditions;

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

(h) diversion of existing services and laying of temporary services;

(i) erection of any temporary means of enclosure; or

(j) the temporary display of site notices and/or advertisements;

"relevant planning authority" means the local planning authority for the area in which the land to which the provisions of this Order apply is situated and as more particularly described for the purposes of the requirements in Part 1 of Schedule 2 (requirements);

"requirement" means a requirement set out in Part 1 of Schedule 2 (requirements), and a reference to a numbered requirement is a reference to the requirement set out in the paragraph of that Part of that Schedule with the same number;

"statutory undertaker" means any person falling within section 127(8) or section 138(4A) of the 2008 Act and includes a public communications provider as defined in section 151(1) of the 2003 Act(**a**) and an operator of an electronic communications code network as defined in paragraph 1(1) of Schedule 17 to the 2003 Act(**b**);

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

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

"street works" means the works listed in article 11 (street works);

"streets, rights of way and access plans" means the plans of that name identified in the table at Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the streets, rights of way and access plans for the purposes of this Order;

"subsidiary" has the same as in section 1159 of the Companies Act 2006(**d**);

"subsoil" means any stratum of land that is below the surface of the ground;

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

"undertaker" means Beacon Fen Energy Park Ltd (company registration number 13347752 whose registered address is Stirling Square, 5-7 Carlton Gardens, London, England, SW1Y 5AD);

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

"waste and recycling strategy" means the document of that name identified in the table at Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the waste and recycling strategy for the purposes of this Order;

"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;

"work" means a work set out in Schedule 1 (authorised development);

(**a**) 2003 c. 21.
(**b**) Ibid.
(**c**) "street authority" is defined in section 49, which was amended by paragraph 117 of Schedule 1 to the Infrastructure Act 2015 (c. 7).
(**d**) 2006 c. 46.
(**e**) Section 121A was inserted by paragraph 70 of Schedule 8 to the 1991 Act, and subsequently amended by section 271 of the Greater London Authority Act 1999 (c. 29); section 1(6) of, and paragraphs 70 and 95 of Schedule 1 to, the Infrastructure Act 2015; and S.I. 1999/1920 and S.I. 2001/1400.

"works plan" means the plan of that name identified in the table at Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the works plan for the purposes of this Order; and

"vegetation removal plan" means the plan of that name identified in the table at Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the vegetation removal plan for the purposes of this Order.

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

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

(4) References in this Order to numbered works are references to the works comprising the authorised development as numbered in Schedule 1 (authorised development) and shown on the works plan and a reference in this Order to a work designated by a number, or by a combination of letters and numbers, is a reference to the work so designated in that Schedule and a reference to "Work No. 4" or "numbered work 4" means numbered works 4A and 4B inclusive and the same principle applies to such numbered works that contain letters.

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

(6) In this Order "include" or "includes" must be construed without limitation unless the contrary intention appears.

(7) References in this Order to any statutory body include that body's successor in respect of functions which are relevant to this Order.

(8) References in this Order to any statute, order, regulation or similar instrument are to be construed as a reference to the statute, order, regulation or instrument as amended by any subsequent statute, order, regulation or instrument or as contained in any subsequent re-enactment.

PART 2

Principal powers

Development consent etc. granted by the Order

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

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

Authorisation of use

4.—(1) The undertaker is authorised to operate and use the authorised development for which development consent is granted by this Order.

(2) Paragraph (1) does not relieve the undertaker of any duty to obtain any permit, licence or other obligation under any other legislation that may be required from time to time to authorise the operation or use of any part of the authorised development.

Maintenance of the authorised development

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

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

(3) 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.

Benefit of the Order

6. Subject to article 7 (consent to transfer benefit of the Order) the provisions of this Order have effect solely for the benefit of the undertaker, save for Work No. 5 in relation to which the provisions of this Order have effect for the benefit of the undertaker and National Grid.

Consent to transfer benefit of the Order

7.—(1) Subject to paragraphs (3) and (8), the undertaker may—

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

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

(2) Where a transfer or grant has been made in accordance with paragraph (1) references in this Order to the undertaker except in paragraph (8) are to include references to the transferee or the lessee.

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

(a) the transferee or lessee is National Grid;

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

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

(i) no such claims have been made;

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

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

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

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

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

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

(a) state—

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

(ii) the reason or reasons, with reference to paragraph (3), as to why the consent of the Secretary of State is not required for the transfer of benefit;

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

(iv) the powers to be transferred or granted; and

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

(b) be accompanied by—

(i) any information to support the reasons in paragraph (5)(a)(ii);

(ii) where relevant, a plan showing the works or areas to which the transfer or grant relates; and

(iii) A copy of the document effecting the transfer or grant.

(6) The date specified under paragraph (5)(a)(iii)(iii) must not be earlier than the expiry of 14 business days from the date of the receipt of the notification.

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

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

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

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

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

Disapplication, application and modification of legislative provisions

8.—(1) The provisions of the Neighbourhood Planning Act 2017(**a**) do not apply in relation to the construction of any work or the carrying out of any operation required for the purposes of, or in connection with, the construction, operation, maintenance or decommissioning of any part of the authorised development insofar as they relate to the temporary possession of land under articles 32 (temporary use of land for carrying out the authorised development) and 34 (temporary use of land for maintaining or decommissioning the authorised development) of this Order.

(2) Regulation 6 of the Hedgerows Regulations 1997(**b**) is modified so as to read for the purposes of this Order only as if there were inserted after paragraph (1)(j) the following—

"or

(k) for carrying out or the maintenance of development which has been authorised by the Beacon Fen Energy Park Order 2026.".

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

(4) Section 141 of the 1980 Act (restriction on planting trees etc. in or near carriageway) does not apply to any tree or shrub planted with the agreement of the highway authority in the course of the authorised development before completion of construction.

(**a**) 2017 c. 20.
(**b**) S.I. 1997/1160.
(**c**) 1967 c. 10. 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.

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

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

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

Operational land for the purposes of the 1990 Act

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

Defence to proceedings in respect of statutory nuisance

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

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

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

(2) Section 61(9) (prior consent for work on construction sites) of the Control of Pollution Act 1974 does not apply where the consent relates to the use of premises by the undertaker for the purposes of, or in connection with, the authorised development.

(3) In this article "premises" has the same meaning as in section 79 of the Environmental Protection Act 1990.

PART 3

Streets

Street works

11.—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets specified in Schedule 3 (streets subject to street works) as is within the Order limits and may—

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

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

(c) place and keep apparatus in the street;

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

(**a**) S.I. 2010/948, amended by S.I. 2011/987. There are other amending instruments but none are relevant to this Order.
(**b**) 1990 c. 43.
(**c**) 1974 c. 40. Section 61(9) was amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environment Protection Act 1990 (c. 25). There are other amendments to 1974 Act which are not relevant to this Order.

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

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

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

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

Application of the permit scheme

12.—(1) The permit scheme applies with the modifications set out in this article to street works carried out under the power conferred by article 11 (street works) of this Order.

(2) For the purposes of this Order—

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

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

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

(4) Without restricting the undertaker's recourse to any alternative appeal mechanism which may be available under the permit scheme or otherwise, the undertaker may appeal any decision to refuse to grant a permit or to grant a permit subject to conditions pursuant to the permit scheme in accordance with the mechanism set out in Part 2 of Schedule 2 (procedure for discharge of requirements).

Power to alter layout, etc., of streets

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

(a) in the case of the streets specified in column 2 of the table in Part 1 (permanent alteration of layout) of Schedule 4 (alteration of streets) permanently in the manner specified in relation to that street in column 3; and

(b) in the case of the streets as specified in column 2 of the table in Part 2 (temporary alteration of layout) of Schedule 4 (alteration of streets) temporarily in the manner specified in relation to that street in column 3.

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

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

(b) make and maintain passing places.

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

(4) The powers conferred by paragraph (2) may not be exercised without the prior consent of the street authority.

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

Construction and maintenance of altered streets

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

(2) Subject to paragraph (3), the temporary alterations to each of the streets specified in Part 2 (temporary alteration of layout) of Schedule 4 (alteration of streets) 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 for the duration that the temporary alterations are used by the undertaker.

(3) Those restoration works carried out pursuant to article 13(3) (power to alter layout, etc., of streets) must be completed to the reasonable satisfaction of the street authority and must be maintained by the undertaker for a period of 12 months from their completion and from the expiry of that period by and at the expense of the street authority.

(4) 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.

(5) For the purposes of a defence under paragraph (4), a court must in particular have regard to the following matters—

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

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

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

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

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

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

(6) Paragraphs (2) to (5) do not apply where the undertaker is the sole member of the street authority for a street in which the works are being carried out.

Use of private roads

15.—(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 authorised development.

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

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

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

16.—(1) For the purposes of construction or maintenance of the authorised development, the undertaker may temporarily close, prohibit the use of, restrict the use of, authorise the use of, alter or divert any street or public right of way and may for any reasonable time—

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

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

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

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

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

(a) the public rights of way specified in column 2 of the table in Part 1 (public rights of way to be temporarily closed) of Schedule 5 (streets and public rights of way) to the extent specified in column 3 of that table;

(b) the public right of way specified in column 2 of the table in Part 2 (permanent use of motor vehicles on public rights of way) of Schedule 5 (streets and public rights of way) to the extent specified in column 3 of that table;

(c) the public rights of way specified in column 2 of the table in Part 3 (temporary use of motor vehicles on public rights of way) of Schedule 5 (streets and public rights of way) to the extent specified in column 3 of that table; and

(d) the public rights of way specified in column 2 of the table in Part 4 (temporary management of public rights of way) of Schedule 5 (streets and public rights of way) to the extent specified in column 3 of that table.

(4) For the purposes of paragraphs (1) and (3), the undertaker must not temporarily close, 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 (3) without first consulting the street authority; and

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

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

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

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

Access to works

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

(a) form and lay out the permanent means of access, or improve existing means of access, in the locations specified in Part 1 (permanent means of access to works) of Schedule 6 (access to works);

(b) form and lay out the temporary means of access in the location specified in Part 2 (temporary means of access to works) of Schedule 6 (access to works); and

(c) with the approval of the relevant planning authority after consultation with the highway authority, form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

(2) If the relevant planning authority receives an application for approval under paragraph (1)(c) and fails to notify the undertaker of its decision within 56 days of receiving the application, that authority will be deemed to have granted approval.

(3) Any application for consent or approval under paragraph (1)(c) must include a statement that the provisions of paragraph (2) apply to that application.

(4) If an application for consent under paragraph (1)(c) does not include the statement required under paragraph (3), the provisions of paragraph (2) will not apply to that application.

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

Agreements with street authorities

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

(a) the construction, strengthening, improvement, repair or reconstruction of any street including any structure carrying the street over or under the authorised development under the powers conferred by this Order;

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

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

(d) the undertaking in the street of any of the works referred to in article 11 (street works), article 13 (Power to alter layout, etc., of streets) and article 14 (construction and maintenance of altered streets);

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

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

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

(f) such works as the parties may agree.

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

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

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

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

Traffic regulation measures

19.—(1) Subject to the provisions of this article the undertaker may at any time, in the interests of safety and for the purposes of, or in connection with, the authorised development, temporarily place traffic signs and signals in the extents of the road specified in column 1 of the table in Schedule 7 (traffic regulation measures) and the placing of those traffic signs and signals is deemed to have been permitted by the traffic authority for the purposes of section 65 of the 1984 Act and the Traffic Signs Regulations and General Directions 2016(**a**).

(**a**) S.I. 2016/362.

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

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

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

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

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

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

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

(4) Before exercising the power conferred by paragraph (2) the undertaker must—

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

(b) obtain the written consent of the traffic authority such consent not to be unreasonably withheld.

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

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

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

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

(6) Any provision made under the powers conferred by paragraphs (1) or (2) of this article may be suspended, varied or revoked by the undertaker from time to time by subsequent exercise of the powers conferred by paragraph (1) or (2).

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

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

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

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

PART 4

Supplemental powers

Discharge of water

20.—(1) Subject to paragraphs (3), (4) and (7) the undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the construction or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may

(**a**) S.I. 2011/935.
(**b**) 2004 c. 18.

on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

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

(3) The undertaker must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs or the person or body otherwise having authority to give such consent; 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 carry out any works to, or make any opening into, any public sewer or drain except—

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

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

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

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

(7) This article does not authorise a groundwater activity or a water discharge activity within the meaning of the Environmental Permitting (England and Wales) Regulations 2016(**b**).

(8) In this article—

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

(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.

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

(10) Any application for consent or approval under paragraph (4) must include a statement that the provisions of paragraph (9) apply to that application.

(11) If an application for consent under paragraph (4) does not include the statement required under paragraph (10), the provisions of paragraph (9) will not apply to that application.

Protective works to buildings

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

(2) Protective works may be carried out—

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

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

(**b**) S.I. 2016/1154. "Groundwater activity" is defined in paragraph 3 of Schedule 22. "Water discharge activity" is defined in paragraph 3 of Schedule 21.

(**c**) 1991 c. 57.

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

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

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

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

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

(5) Before exercising—

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

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

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

(d) a right under paragraph (4)(b) to enter land adjacent to a building but outside its curtilage,

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

(6) Where a notice is served under paragraph (5)(a), (5)(c) or (5)(d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 43 (arbitration).

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

(8) Where—

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

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

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

(9) Nothing in this article relieves the undertaker from any liability to pay compensation under section 10(2) (compensation for injurious affection) of the 1965 Act.

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

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

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

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

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

Authority to survey and investigate the land

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

(a) survey or investigate the land;

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

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

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

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

(3) If the undertaker proposes to do any of the following, the notice must include details of what is proposed—

(a) searching, boring or excavating;

(b) leaving apparatus on the land; and

(c) taking samples.

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

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

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

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

(a) in land located within the highway boundary without the consent of the highway authority; or

(b) in a private street without the consent of the street authority but such consent must not be unreasonably withheld.

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

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

(a) under paragraph (5)(a) in the case of a highway authority; or

(b) under paragraph (5)(b) in the case of a street authority,

that authority is deemed to have granted consent.

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

(9) After completion of the activities being undertaken pursuant to this article, any apparatus must be removed as soon as practicable, and the land must be restored to its original condition.

PART 5

Powers of acquisition and possession of land

Compulsory acquisition of land

23.—(1) The undertaker may—

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

(2) This article is subject to article 26 (time limit for exercise of authority to acquire land compulsorily), article 27 (compulsory acquisition of rights and imposition of restrictive covenants), article 28 (private rights), article 30 (acquisition of subsoil only), article 32 (temporary use of land for carrying out the authorised development), article 39 (crown rights) and Schedule 11 (protective provisions).

Compulsory acquisition of land – incorporation of the mineral code

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

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

(b) for "the acquiring authority" substitute "the undertaker"; and

(c) for "undertaking" substitute "authorised development".

Statutory authority to override easements and other rights

25.—(1) The carrying out or use of development authorised by this Order and the doing of anything else authorised by this Order is authorised, including for the purpose specified in section 158(2) (nuisance: statutory authority) of the 2008 Act, 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 user of land arising by virtue of contract.

(2) The undertaker will pay compensation to any person whose land is injuriously affected by—

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

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

authorised by virtue of this Order and the operation of section 158 of the 2008 Act.

(3) The interests and rights to which this article apply are 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) Subsection (2) of section 10 of the 1965 Act applies to paragraph (2) by virtue of section 152(5) of the 2008 Act (compensation in case where no right to claim in nuisance).

Time limit for exercise of authority to acquire land compulsorily

26.—(1) The applicable period for the purposes of section 4 of the 1965 Act (time limit for giving notice to treat) and section 5A of the 1981 Act (time limit for general vesting declaration) is five years beginning on the day on which this Order is made.

(2) No notice to treat is to be served under Part 1 (compulsory purchase under Acquisition of Land Act 1981) of the 1965 Act and no declaration is to be executed under section 4 (execution of

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

declaration) of the 1981 Act as applied by article 25 (application of the 1981 Act) after the end of the applicable period, including any extension to the applicable period pursuant to those Acts.

Compulsory acquisition of rights and imposition of restrictive covenants

27.—(1) Subject to paragraph (2) and article 32 (temporary use of land for carrying out the authorised development), the undertaker may acquire compulsorily such rights over the Order land or impose such restrictive covenants over the Order land as may be required for any purpose for which that land may be acquired under article 23 (compulsory acquisition of land), by creating them as well as by acquiring rights already in existence.

(2) Subject to the provisions of this paragraph, article 28 (private rights) and article 35 (statutory undertakers), in the case of the Order land specified in column 1 of the table in Schedule 8 (land in which only new rights etc. may be acquired) the undertaker's powers of compulsory acquisition are limited to the acquisition of existing rights and the benefit of restrictive covenants over that land and the creation and acquisition of such new rights and the imposition of restrictive covenants for the purpose specified in relation to that land in column 2 of the table in that Schedule.

(3) Subject to section 8 (other provisions as to divided land) of the 1965 Act and Schedule 2A (counter notice requiring purchase of land) to the 1965 Act (as substituted by paragraph 10 of Schedule 9 to this Order), where the undertaker creates or acquires an existing right over land or the benefit of a restrictive covenant under paragraph (1) or (2), the undertaker will not be required to acquire a greater interest in that land.

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

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

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

(7) This article is subject to article 39 (crown rights).

Private rights

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

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

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

whichever is the earlier.

(2) Subject to the provisions of this article, all private rights or restrictive covenants over land subject to the compulsory acquisition of rights or the imposition of restrictive covenants under 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 imposition of the restrictive covenant by the undertaker (whether the right is acquired compulsorily, by agreement or through the grant of a lease of the land by agreement); or

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

whichever is the earliest.

(3) 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 in so far as their continuance would be inconsistent with the purpose for which temporary possession is taken and unenforceable for as long as the undertaker remains in lawful possession of the land.

(4) 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, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(5) This article does not apply in relation to any right to which section 138 (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) of the 2008 Act or where article 35 (statutory undertakers) applies.

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

(a) any notice given by the undertaker before—

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

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

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

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

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

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

(7) Where an agreement referred to in paragraph (6)(b)—

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

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

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

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

Application of the 1981 Act

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

(5) In section 5B (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 (legal challenges relating to applications for orders granting development consent)".

(6) In section 6 (notices after execution of declaration)(**b**) for subsection (1)(b) substitute "(1)(b) on every other person who has given information to the acquiring authority with respect to any of that land further to the invitation published and served under section 134 of the Planning Act 2008."

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

(8) In Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration)(**d**), for paragraph 1(2) substitute: "But see article 29(3) (acquisition of subsoil only) of the Beacon Fen Energy Park Order 2026, which excludes the acquisition of subsoil only from this Schedule.".

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

Acquisition of subsoil only

30.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in paragraph (1) of article 23 (compulsory acquisition of land) or article 27 (compulsory acquisition of rights and imposition of restrictive covenants) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

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

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

(a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act as modified by Schedule 9;

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

(c) Section 153(4A) (Reference of objection to Upper Tribunal: general.) of the 1990 Act.

(4) Paragraphs (2) and (3) do not apply where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or factory or airspace above a house, building or factory.

Modification of the 1965 Act

31.—(1) Part 1 of the 1965 Act, as applied to this Order by section 125 (Application of compulsory acquisition provisions) of the 2008 Act, is modified as follows—

(a) In section 4A(1) (Extension of time limit during challenge)(**e**) 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)"

(**a**) 1981 c. 66. Section 5B was as inserted by section 202(2) of the Housing and Planning Act 2016 (c. 22).
(**b**) 1981 c. 66. 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 (c. 22).
(**c**) 1981 c. 66. Section 7 was amended by paragraph 3 of Schedule 18 to the Housing and Planning Act 2016 (c. 22).
(**d**) As inserted by paragraph 6 of Schedule 18 to the Housing and Planning Act 2016 (c. 22).
(**e**) 1965 c. 56. Section 4A(1) was inserted by section 202(1) of the Housing and Planning Act 2016 (c. 22).

(2) In section 11A (Powers of entry: further notice of entry)(**a**)—

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

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

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

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

"(2) But see article 29(3) (acquisition of subsoil only) of the Beacon Fen Energy Park Order 2026, 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 articles 22 (authority to survey and investigate the land), 32 (temporary use of land for carrying out the authorised development), or 34 (temporary use of land for maintaining or decommissioning the authorised development) of the Beacon Fen Energy Park Order 2026.".

Temporary use of land for carrying out the authorised development

32.—(1) The undertaker may, in connection with the construction of the authorised development—

(a) enter on and take temporary possession of—

(i) so much of the land specified in column 1 of the table in Schedule 10 (land of which temporary possession may be taken) for the purpose specified in relation to the land in column 2 of that table; and

(ii) any land within the Order land in respect of which no notice of entry has been served under section 11 (powers of entry) of the 1965 Act and no declaration has been made under section 4 (execution of declaration) of the 1981 Act(**b**);

(b) remove any electric line, electrical plant, structures, apparatus, fences, debris, buildings and vegetation from that land;

(c) construct temporary works, haul roads, security fencing, bridges, structures and buildings comprised within the authorised development on that land;

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

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

(f) carry out mitigation works required under the requirements in Part 1 of Schedule 2 (requirements).

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

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

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

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

(**a**) 1965 c. 56. Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016 (c. 22).

(**b**) 1981 c. 66. 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. 22).

(4) The undertaker must not remain in possession of any land under this article for longer than reasonably necessary and in any event must not, without the agreement of the owners of the land, remain in possession of any land under this article—

(a) in the case of land specified 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 development for which temporary possession of the land was taken; or

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

(5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must either acquire the land or, unless otherwise agreed with the owners of the land, remove all works and restore the land to the reasonable satisfaction of the owners of the land, except that the undertaker is not required to—

(a) replace any electric line, electrical plant, structure, apparatus, fence, debris, building or vegetation removed under this article;

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

(c) remove any new road surface or other improvements carried out under this article to any street specified in Schedule 3 (streets subject to street works);

(d) restore the land to a condition better than the relevant land was in before temporary possession;

(e) remove any ground strengthening works which have been placed on the land to facilitate construction, operation, maintenance or decommissioning of the authorised development;

(f) remove any measures installed over or around statutory undertakers' apparatus to protect that apparatus from the authorised development; or

(g) remove or reposition any apparatus belonging to statutory undertakers or necessary mitigation works.

(6) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of any power conferred by this article and, for the avoidance of doubt, this will include compensation in respect of any loss or damage further to any ground strengthening works within paragraph (5)(e) carried out by the undertaker in or on that land.

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

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

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

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

(11) Section 13 (Refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land 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.

(**a**) 2008 c. 29. Section 152 was amended by S.I. 2009/1307.

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

Time limit for exercise of authority to temporarily use land for carrying out the authorised development

33.—(1) Subject to paragraph (2), the authority to enter onto land pursuant to article 32 (temporary use of land for carrying out the authorised development) ceases to apply to any land after the period of five years beginning on the day on which the Order is made.

(2) Paragraph (1) will not prevent the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

Temporary use of land for maintaining or decommissioning the authorised development

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(10) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land 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) In this article the "maintenance period" means the period of five years beginning with the date of completion of the part of the authorised development for which temporary possession is required under this article save that in relation to landscaping works where "the maintenance period" means such period as may be approved in a landscape and ecological management plan in accordance with requirement 7 of Schedule 2 to this Order beginning with the date on which that part of the landscape or ecological works is completed.

Statutory undertakers

35. Subject to the provisions of Schedule 11 (protective provisions), the undertaker may—

(a) (a)acquire compulsorily, or acquire new rights or impose restrictive covenants over, the land belonging to statutory undertakers shown on the land plans within the Order land and described in the book of reference; and

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

Recovery of costs of new connections

36.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 35 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 35 (statutory undertakers), any person who is—

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

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

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

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

(4) In this article—

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

"public utility undertaker" has the meaning given in section 329 (further provision as to interpretation) of the 1980 Act.

PART 6

Miscellaneous and general

No double recovery

37. 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.

Protective provisions

38. Schedule 11 (protective provisions) to this Order shall have effect.

Crown rights

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

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

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

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

(2) Paragraph (1) does not apply to the exercise of any right under this Order for the compulsory acquisition of an interest in any Crown land (as defined in section 227 ("Crown land" and "the appropriate Crown authority") of the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown.

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

Certification of plans, etc.

40.—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of all documents and plans listed in the table at Schedule 12 (documents and plans to be certified) for certification that they are true copies of the documents referred to in this Order.

(2) 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.

(3) Where a plan or document certified under paragraph (1)—

(a) refers to a provision of this Order (including any specified requirement) when it was in draft form; and

(b) identifies the provision by number or combination of numbers and letters, which is different from the number or combination of numbers and letters by which the corresponding provision of this Order is identified in the Order as made;

the reference in the plan or document concerned must be construed for the purposes of this Order as referring to the provisions (if any) corresponding to that provision in the Order as made.

Service of notices

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

(a) by post;

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

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

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

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

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

(b) in any other case, the last known address of that person at 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 an interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

(a) addressing it to that person by name or by the description of "owner", or as the case may be "occupier", of the land; 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 to be taken to be fulfilled only where—

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

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

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

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

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within seven days of receipt that the recipient requires a paper copy of all or 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 transmission 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" 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.

Felling or lopping of trees or removal of hedgerows

42.—(1) Subject to paragraphs (2) and (6), the undertaker may fell or lop any tree or shrub near any part of the authorised development, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

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

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

(b) from constituting a danger to persons using the authorised development.

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

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

(4) The undertaker may, for the purposes of the authorised development and subject to paragraph (2)—

(a) remove those parts of the important hedgerows within the Order limits and specified in column 2 of the table in Part 1 (removal of important hedgerows) of Schedule 13 (hedgerows) as shown on the vegetation removal plan for the purpose specified in relation to the relevant hedgerow in column 3 of that table; and

(b) remove those parts of the hedgerows as are within the Order limits and specified in column 2 of the table in Part 2 (removal of hedgerows) of Schedule 13 (hedgerows) as shown on the vegetation removal plan for the purpose specified in relation to the relevant hedgerow in column 3 of that table.

(5) In this article "hedgerow" and "important hedgerow" have the same meaning as in the Hedgerow Regulations 1997(**a**).

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

(7) In carrying out any activity authorised by paragraph (6)—

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

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

(8) The authority given by paragraph (6) constitutes a deemed consent under the relevant tree preservation order.

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

(10) Paragraphs (1) to (9) are subject to paragraphs 7, 8 and 12 of Part 1 (requirements) of Schedule 2.

Arbitration

43.—(1) Any difference under any provision of this Order, unless otherwise provided for, shall be referred to and settled in arbitration in accordance with the rules at Schedule 14 (arbitration rules) of this Order, by a single arbitrator to be agreed upon by 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 application of either party (after giving written notice to the other) by the Secretary of State.

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

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

Procedure in relation to certain approvals etc.

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

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

(3) Part 2 of Schedule 2 (procedure for discharge of requirements) has effect in relation to all consents, agreements or approvals required, granted, refused or withheld in relation to the requirements.

(4) Part 2 of Schedule 2 (procedure for discharge of requirements) does not apply in respect of any consents, agreements or approvals contemplated by the provisions of Schedule 11 (protective provisions) or any dispute under article 21(6) (protective works to buildings) to which paragraph (4) applies.

(5) In this article "consenting authority" means the relevant planning authority, highway authority, traffic authority, street authority, the owner of a watercourse, sewer or drain or the beneficiary of any of the protective provisions contained in Schedule 11 (protective provisions).

Guarantees in respect of payment of compensation

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

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

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

(2) The provisions are—

(a) article 23 (compulsory acquisition of land);

(b) article 27 (compulsory acquisition of rights and imposition of restrictive covenants);

(c) article 28 (private rights);

(d) article 30 (acquisition of subsoil only);

(e) article 32 (temporary use of land for carrying out the authorised development);

(f) article 34 (temporary use of land for maintaining or decommissioning the authorised development); and

(g) article 35 (statutory undertakers).

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

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

Application of landlord and tenant law

46.—(1) This article applies to—

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

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

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

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

(3) Accordingly, no such enactment or rule of law to which paragraph (2) 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.

National Grid extension works

47.—(1) If National Grid elects to undertake any elements of the works described in Work No. 5 pursuant to planning permission granted under Part 3 of the 1990 Act or Article 3 of the 2015 Order then the requirements contained in Part 1 of Schedule 2 (requirements) will not have effect in so far as they relate to those works and National Grid will serve written notice of the same on the relevant planning authority.

(2) As from the date on which Work No. 5 is commenced any conditions of the National Grid 2005 permission that relate to the land at plot 18-19 cease to have effect to the extent they are inconsistent with the authorised development or with anything done or approved under the requirements in Part 1 of Schedule 2 (requirements).

Funding contributions

48.—(1) Prior to the commencement of the authorised development the undertaker must make funding contributions—

(a) to North Kesteven District Council in the sum of £118,000;

(b) to Lincolnshire County Council in the sum of £13,500;

(c) to Boston Borough Council in the sum of £13,500; and

(d) to North Kesteven District Council in the sum of £1,470.

(2) Each of the relevant planning authorities is to allocate the funding contributions referred to in paragraph (1)(a) to (c) to the reasonable costs of their representatives in being part of the Beacon Fen ecological steering group pursuant to the landscape and ecological management plan approved pursuant to requirement 7.

(3) North Kesteven District Council is to allocate the funding contribution referred to in paragraph (1)(d) to officer time, materials or other measures for publicising its Stepping Out (or successor) programme including taking photographs of the path, creating a PDF map available for public download and installing wayfinding signage, rubbish bins, and footfall counter.

(4) The funding contributions referred to paragraph (1) shall be adjusted on each anniversary of the date this Order comes into force up until the point of payment by a percentage equal to the

index value of the Consumer Price Index (CPI) most recently published prior to that anniversary, provided that in no event shall any annual adjustment exceed 5%.

Ecology and planting contribution

49.—(1) The undertaker must allocate the ecology and planting contribution to the ecology purpose as follows—

(a) from the date of commencement of any part of Work No. 4A within the administrative area of Boston Borough Council the undertaker must offer relevant landowners the ecology and planting contribution and provide to Boston Borough Council—

(i) confirmation that agreement has been reached with relevant landowners to allocate part or all of the ecology and planting contribution to relevant landowners for the ecology purpose; and

(ii) evidence of the payment of part or all of the ecology and planting contribution to such relevant landowners or the expenditure of part or all of the ecology and planting contribution for the ecology purpose;

(b) If the undertaker has not provided confirmation to Boston Borough Council as required by paragraph (1)(a) in relation to the full amount of the ecology and planting contribution prior to the date of final commissioning of the authorised development the undertaker must allocate the remaining unallocated ecology and planting contribution to—

(i) provide for the ecology purpose and confirm details of allocation for that purpose in writing to Boston Borough Council; or

(ii) Boston Borough Council.

(2) If the undertaker has allocated all or part of the ecology and planting contribution to Boston Borough Council in accordance with paragraph (1)(b)(ii), Boston Borough Council is to allocate such funding to the ecology purpose.

(3) The ecology and planting contribution shall be adjusted on each anniversary of the date this Order comes into force up until the point of payment of the full amount of the ecology and planting contribution by a percentage equal to the index value of the Consumer Price Index (CPI) most recently published prior to that anniversary, provided that in no event shall any annual adjustment exceed 5%.

(4) In this article—

(a) "ecology and planting contribution" means a funding contribution in the sum of £15,000, and for the avoidance of doubt where the ecology and planting contribution is allocated to multiple relevant landowners the total amount allocated for all landowners combined will not exceed £15,000;

(b) "ecology purpose" means the provision of hedgerow planting, gapping up of existing hedgerows or another improvement to connectivity for biodiversity between natural habitats or visual amenity within the administrative area of Boston Borough Council and in reasonable proximity to the southern boundary of the existing substation; and

(c) "relevant landowners" means one or more landowners of land within the administrative area of Boston Borough Council and also either within Work No. 4A or within the highway.

Signed by authority of the Secretary of State for Energy Security and Net Zero

John Wheadon
Head of Energy Infrastructure Planning and Innovation
Department for Energy Security and Net Zero

21st August 2026

SCHEDULES

SCHEDULE 1

Article 3

AUTHORISED DEVELOPMENT

1. In this Schedule—

"balance of solar system (BoSS) plant" means inverters, transformers and switch gear and would be either—

(a) solar stations being a station comprising centralised inverters, transformers and switch gear with each component for each solar station either—

(i) a "solar station" located outside, with a concrete foundation slab or placed on metal skids for each of the inverters and transformers and switch gear; or

(ii) housed together within a container sitting on a concrete foundation slab or placed on metal skids; or

(b) string inverters attached either to mounting structures or a ground mounted frame, switchgear and transformers on a concrete foundation slab or placed on metal skids;

"bespoke access road" means the access road connecting Work Nos 1 to 4 to the A17 required to facilitate the construction, ongoing maintenance and decommissioning of the authorised development;

"CCTV" means a closed circuit television security system;

"electrical cables" means—

(a) cables of differing types and voltages installed for the purposes of conducting electricity, auxiliary cables, cables connecting to direct current (DC) boxes, earthing cables and optical fibre cables; and

(b) works associated with cable laying including jointing pits, hardstanding adjoining the jointing pits, combiner boxes, fibre bays, cable ducts, cable protection, joint protection, manholes, kiosks, marker posts, underground cable marker, tiles and tape, send and receive pits for horizontal directional drilling, trenching, lighting, and a pit or container to capture fluids associated with drilling;

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

"mounting structure" means a frame or rack made of galvanised steel, anodised aluminium or other material designed to support the solar panels and mounted on piles driven into the ground, piles rammed into a pre-drilled hole, a pillar attaching to a steel ground screw, or pillars fixed to a concrete foundation;

"permissive paths" means access tracks providing restricted public access within the Order limits;

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

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

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

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

2. In the Districts of North Kesteven and Boston and in the County of Lincolnshire a nationally significant infrastructure project as defined in sections 14 and 15 of the 2008 Act and associated development under section 115(1)(b) of the 2008 Act.

The nationally significant infrastructure project comprises a generating station with a gross electrical output capacity of over 50 megawatts comprising all or any of the work numbers in this Schedule or any part of any work number in this Schedule—

Work No. 1— a ground mounted solar photovoltaic generating station with a gross electrical output capacity of over 50 megawatts including—

(a) solar panels fitted to mounting structures; and

(b) balance of solar system (BoSS) plant.

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

Work No. 2— a battery energy storage system compound and associated works comprising—

(a) battery energy storage system (BESS) units each comprising an enclosure for BESS electro-chemical components and associated equipment, with the enclosure being of metal façade, joined or close coupled to each other, mounted on a reinforced concrete foundation slab or concrete piles;

(b) transformers and associated bunding;

(c) inverters, switch gear, power conversion systems (PCS) and ancillary equipment;

(d) containers or enclosures housing all or any of Work Nos. 2(b) and (c) and ancillary equipment;

(e) monitoring and control systems housed within the containers or enclosures comprised in Work Nos. 2(a) or (d) or located separately in its own container or enclosure;

(f) heating, ventilation and air conditioning (HVAC) systems either housed on or within each of the containers or enclosures comprised in Work Nos. 2(a), (d) and (e), attached to the side or top of each of the containers or enclosures, or located separate to but near to each of the containers or enclosures;

(g) electrical cables including electrical cables connecting to Work No. 3;

(h) fire safety infrastructure including water storage tanks, lagoons and a shut-off valve for containment of fire water and hard standing to accommodate emergency vehicles;

(i) containers or similar structures to house spare parts and materials required for the day to day operation of the BESS facility; and

(j) office, warehouse and plant storage building comprising—

(i) offices and welfare facilities;

(ii) storage facilities;

(iii) waste storage within a fenced compound;

(iv) parking areas; and

(v) a warehouse building for the storage of spare parts, operational plant and vehicles.

Work No. 3— development of an onsite substation and associated works including—

(a) substation, switch room buildings and ancillary equipment including reactive power units;

(b) monitoring and control systems for this Work No. 3 and Work Nos. 1 and 2 housed within a control building or located separately in their own containers or control rooms;

(c) water storage tanks;

(d) 400 kilovolt harmonic filter compound; and

(e) office, warehouse and plant storage building comprising—

(i) offices and welfare facilities;

(ii) storage facilities;

(iii) waste storage within a fenced compound;

(iv) parking areas; and

(v) a warehouse building for the storage of spare parts, operational plant and vehicles.

Work No. 4— works in connection with electrical cabling including—

(a) Work No. 4A— works to lay high voltage electrical cables including—

(i) works to lay electrical cables connecting Work No. 3 to Work No. 5 including open cut trenching, tunnelling, boring and drilling works for trenchless crossings;

(ii) works to allow electrical cable crossings of non-navigable rivers, other watercourses and drains, permissive paths, public rights of way and other highways;

(iii) works to allow installation of bridge crossings over non-navigable rivers and other watercourses and drains;

(iv) works to divert and underground existing electrical overhead lines and other services;

(v) laying down of internal access tracks, ramps, means of access, footpaths, roads, landscaping and vegetation management, signage and information boards; and

(vi) construction laydown areas, including site and welfare offices and areas to store materials and equipment.

(b) Work No. 4B— construction compounds in connection with Work No. 4A including—

(i) areas of hardstanding;

(ii) car parking;

(iii) site and welfare offices, canteens and workshops;

(iv) area to store materials and equipment;

(v) storage and waste skips;

(vi) areas for offloading and turning;

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

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

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

Work No. 5— works to the existing substation including—

(a) Work No. 5A— creation of a new generation bay and associated works at the existing substation including—

(i) an electrical bay including associated outdoor air insulated switchgear (AIS) or indoor gas insulated switchgear (GIS) and electrical apparatus, circuit breakers, disconnectors and earth switches;

(ii) substation electrical apparatus, including bus-bars, steel supports, insulation posts, cable sealing ends, surge arrestors, instrument transformers;

(iii) control building; and

(iv) underground and above ground electrical cables and electrical connectors, including cables for power, control and communication with electrical bays and to connect into Work No. 5B, including associated outdoor AIS or indoor GIS and electrical apparatus.

(b) Work No. 5B— an extension to the existing substation including—

(i) outdoor AIS or indoor GIS, including circuit breakers, disconnectors and earth switches;

(ii) substation electrical apparatus, including bus-bars, bus-section and a bus-coupler, steel supports, insulation posts, cable sealing ends, surge arrestors, instrument transformers; and

(iii) underground and above ground electrical cables and electrical conductors, including cables for power, control and communication with electrical bays and to connect into Work No. 5A and the existing network within the existing substation, including associated outdoor AIS or indoor GIS and electrical apparatus.

(c) Work No. 5C— cabling works and overhead line works in connection with the extension to the existing substation including—

(i) a cable sealing end compound and construction of new circuit bays connecting into the existing substation and/or Work No. 5B;

(ii) installation of a new 400 kV transmission tower to be located between an existing tower which will link into the new electrical bay comprising part of Work No. 5B which will be linked via overhead and/or underground cables to the existing substation (including Work No. 5B) and to existing overhead lines and/or towers;

(iii) underground and above ground electrical cables and electrical conductors, connecting to an existing 400kV transmission tower, the new 400 kV transmission tower and the new electrical bay; and

(iv) modifications to existing towers.

(d) Work No. 5D— temporary laydown area including—

(i) areas of hardstanding, compacted ground or tracking matting;

(ii) car parking and access;

(iii) area to store materials and equipment, including electrical cables;

(iv) site and welfare offices and cabins;

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

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

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

(e) Work No. 5E— further works in connection with the extension to the existing substation including—

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

(ii) the laying and construction of drainage infrastructure.

Work No. 6— works including—

(a) electrical cables, including but not limited to electrical cables connecting Work Nos. 1, 2 and 3 to one another and connecting solar panels to one another and the BoSS;

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

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

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

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

(f) laying down of internal access tracks, ramps, means of access, footpaths, crossing of watercourses, including via footbridges, and roads, including the laying and construction of drainage infrastructure, signage and information boards;

(g) laying down of temporary footpath diversions, permissive paths, signage and information boards;

(h) earthworks;

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

(j) construction and decommissioning compounds, including site and welfare offices and areas to store materials and equipment;

(k) works to divert and underground existing electrical overhead lines and other services; and

(l) works to facilitate connection to an existing water main including laying a new section of pipework and all associated works.

Work No. 7— construction and decommissioning compounds in connection with Work Nos. 1, 2 and 3 including—

(a) areas of hardstanding;

(b) car parking;

(c) site and welfare offices, canteens and workshops;

(d) area to store materials and equipment;

(e) storage and waste skips;

(f) areas for offloading and turning;

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

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

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

Work No. 8— works to create the bespoke access road including—

(a) creation of accesses from the public highway;

(b) works to divert and underground existing electrical overhead lines and other services;

(c) creation of visibility splays;

(d) works to widen and surface the public highway and private means of access;

(e) creation of public right of way crossings;

(f) works to create associated drainage infrastructure, including works to existing drainage infrastructure;

(g) creation of temporary construction compounds;

(h) erection of temporary fencing and hording and permanent access gates; and

(i) works to facilitate connection to an existing water main including laying a new section of pipework and all associated works.

Work No. 9— areas of habitat management including—

(a) landscape and biodiversity enhancement measures;

(b) habitat creation and management, including earthworks, landscaping, and the laying and construction of drainage infrastructure; and

(c) fencing, gates, boundary treatment and other means of enclosure.

Work No. 10— works to facilitate access to Work Nos. 1 to 9 including—

(a) creation of accesses from the public highway;

(b) creation of visibility splays; and

(c) works to widen and surface the public highway and private means of access.

In connection with and in addition to Work Nos. 1 to 10 further associated development within the Order limits including—

(a) works for the provision of fencing and security measures such as CCTV and lighting;

(b) laying down of internal access tracks;

(c) ramps, means of access, non-motorised links, footpaths, footways;

(d) boundary treatments, including means of enclosure;

(e) bunds, embankments, trenching and swales;

(f) habitat creation and management including earthworks, landscaping, means of enclosure and the laying and construction of drainage infrastructure;

(g) works to existing irrigation systems and works to alter the position and extent of such irrigation systems;

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

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

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

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

(l) works required for the strengthening, improvement, maintenance, or reconstruction of any street;

(m) tunnelling, boring and drilling works;

(n) works for the benefit of protection of land affected by the authorised development;

(o) working sites in connection with the construction and decommissioning of the authorised development and its restoration; and

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

and further associated development comprising such other works or operations as may be necessary or expedient for the purposes of or in connection with the authorised development but only within the Order limits and insofar as they are unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

SCHEDULE 2

Article 3

REQUIREMENTS

PART 1

REQUIREMENTS

Interpretation

1. In this Schedule—

"relevant planning authority" means—

(a) Lincolnshire County Council for the purposes of—

(i) requirement 6 (battery safety management);

(ii) requirement 10 (surface and foul water drainage);

(iii) requirement 11 (archaeology);

(iv) requirement 13 (construction traffic management plan);

(v) requirement 18 (public rights of way);

(vi) requirement 20 (flood risk); and

(vii) requirement 22 (operational waste);

(b) North Kesteven District Council and Boston Borough Council for the purposes of—

(i) requirement 3 (approved details and amendments to them);

(ii) requirement 4 (community liaison group);

(iii) requirement 5 (detailed design approval);

(iv) requirement 7 (landscape and ecological management plan);

(v) requirement 8 (biodiversity net gain);

(vi) requirement 9 (fencing and other means of enclosure);

(vii) requirement 12 (construction environmental management plan)

(viii) requirement 14 (operational noise);

(ix) requirement 16 (soils management);

(x) requirement 17 (skills, supply chain and employment);

(xi) requirement 19 (decommissioning and restoration); and

(xii) requirement 21 (contaminated land and groundwater), and

"relevant planning authorities" means Lincolnshire County Council, North Kesteven District Council and Boston Borough Council, as applicable.

Commencement of the authorised development

2. The authorised development must commence no later than the expiration of five years from the date this Order comes into force.

Approved details and amendments to them

3.—(1) With respect to the documents certified under article 40 (certification of plans, etc.) and any plans, details or schemes which have been approved pursuant to any requirement (together the "approved documents, plans, details or schemes"), the undertaker may submit to the relevant planning authority or relevant planning authorities (as applicable) for approval any amendments to

any of the approved documents, plans, details or schemes and, following approval by the relevant planning authority or relevant planning authorities (as applicable), the relevant approved documents, plans, details or schemes is to be taken to include the amendments as so approved pursuant to this paragraph.

(2) Approval under sub-paragraph (1) for the amendments to any of the approved documents, plans, details or schemes must not be given except where it has been demonstrated to the satisfaction of the relevant planning authority or the relevant planning authorities (as applicable) that the subject matter of the approval sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

Community liaison group

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

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

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

Detailed design approval

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

(a) the layout;

(b) scale;

(c) proposed finished ground levels;

(d) external appearance;

(e) hard surfacing materials;

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

(g) refuse or other storage units, signs and lighting;

(h) drainage, water, power and communications cables and pipelines;

(i) landscaping works, planting works and programme for implementation;

(j) fencing;

(k) security measures; and

(l) any mitigation measures necessary to address noise impacts,

relating to that part have been submitted to and approved in writing by the relevant planning authority for that part or, where the part falls within the administrative areas of multiple relevant planning authorities, each of the relevant planning authorities, such approval to be in consultation with Lincolnshire County Council as local highway authority in relation to paragraph (f).

(2) The details submitted must accord with—

(a) the works plan; and

(b) the outline design principles.

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

Battery safety management

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

(2) The battery safety management plan must prescribe measures to facilitate safety during the construction, operation and decommissioning of Work No. 2.

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

(4) The relevant planning authority must consult with the Environment Agency, North Kesteven District Council and Lincolnshire Fire and Rescue before determining an application for approval of the battery safety management plan.

(5) The battery safety management plan must be implemented as approved and maintained throughout the construction, operation and decommissioning of the authorised development.

Landscape and ecological management plan

7.—(1) No part of the authorised development may commence until a written landscape and ecological management plan has been submitted to and approved by the relevant planning authority for that part or, where the part falls within the administrative areas of multiple relevant planning authorities, each of the relevant planning authorities, in consultation with Lincolnshire County Council and the Environment Agency.

(2) The landscape and ecological management plan must be in accordance with the outline landscape and ecological management plan and must include terms of reference for the ecological steering group which is to be known as the Beacon Fen ecological steering group, including details for the group's membership which is to include a representative from each of the relevant planning authorities and must include—

(a) terms of reference for the ecological steering group, including details for the group's membership which is to include a representative from each of the relevant planning authorities; and

(b) details of how the plan will secure funding for both the ecological steering group and provision of ecology and planting in Boston Borough Council's administrative area.

(3) Any landscape and ecological management plan submitted must include a commitment to regularly share all relevant pre-construction, construction, post-construction and operational survey and monitoring data in the appropriate formats with the relevant local environmental records centre(s) and relevant national/regional environmental recording schemes.

(4) The landscape and ecological management plan must be implemented as approved and maintained throughout the operation of the relevant part of the authorised development to which the plan relates.

(5) For the purposes of sub-paragraph (1) "commence" includes part (b) (site clearance (including vegetation removal and demolition of existing structures)) of permitted preliminary works.

Biodiversity net gain

8.—(1) No part of the authorised development may commence until a biodiversity net gain strategy has been submitted to and approved by the relevant planning authority.

(2) The biodiversity net gain strategy must include details of how the strategy will secure a minimum of 30% biodiversity net gain in area-based habitat units, a minimum of 10% biodiversity net gain in hedgerow units, and 10% biodiversity net gain in watercourse units for all of the authorised development during the operation of the authorised development, using the Department of Environment, Food and Rural Affairs' Statutory Metric (February 2024), or if this is withdrawn or replaced, a biodiversity metric approved by the local planning authority in consultation with the relevant statutory nature conservation body.

(3) The biodiversity net gain strategy must be in accordance with the outline landscape and ecological management plan and must be implemented as approved and maintained throughout the operation of the relevant part of the authorised development to which the plan relates.

Fencing and other means of enclosure

9.—(1) No part of the authorised development may commence until written details of all proposed temporary fences, walls or other means of enclosure have been submitted to and approved by the relevant planning authority or, where the part falls within the administrative areas of multiple relevant planning authorities, each of the relevant planning authorities.

(2) No part of the authorised development may commence until written details of all permanent fences, walls or other means of enclosure for that part (which must be in accordance with the relevant outline design principles) have been submitted to and approved by the relevant planning authority or, where the part falls within the administrative areas of multiple relevant planning authorities, each of the relevant planning authorities.

(3) For the purposes of sub-paragraph (1), "commence" includes any permitted preliminary works.

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

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

(6) Any approved permanent fencing in a part must be completed before the date of completion in respect of such part.

Surface and foul water drainage

10.—(1) No part of the authorised development may commence until written details of the surface water drainage scheme and (if any) foul water drainage system (both of which must be in accordance with the principles in the outline drainage strategy) have been submitted to and approved by the relevant planning authority for that part, such approval to be in consultation with Anglian Water Services Limited and the Environment Agency.

(2) Any approved scheme must be implemented as approved and maintained throughout the construction and operation of the authorised development.

Archaeology

11.—(1) The authorised development must be implemented in accordance with the archaeological mitigation strategy.

(2) No part of the authorised development may commence until a written scheme of archaeological investigation (which must accord with the archaeological mitigation strategy) for that part has been submitted to and approved by the relevant planning authority.

(3) For the purposes of sub-paragraph (1), "commence" includes any permitted preliminary works.

(4) Any archaeological works or watching brief must be carried out in accordance with the approved scheme.

Construction environmental management plan

12.—(1) No part of the authorised development may commence until a construction environmental management plan (which must be in accordance with the outline construction environmental management plan) for that part has been submitted to and approved by the relevant planning authority, or, where the part falls within the administrative areas of more than one of the relevant planning authorities, each of the relevant planning authorities, in consultation with Lincolnshire County Council and the Environment Agency.

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

(3) Any construction environmental management plan submitted must include a commitment to regularly share all relevant pre-construction, construction, post-construction and operational

survey and monitoring data in the appropriate formats with the relevant local environmental records centre(s) and relevant national/regional environmental recording schemes.

Construction traffic management plan

13.—(1) No part of the authorised development may commence until a construction traffic management plan for that part has been submitted to and approved by the relevant planning authority, such approval to be in consultation with the relevant highway authority.

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

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

Operational noise

14.—(1) No part of numbered Works No. 1, No. 2 and No. 3 may commence until an operational noise assessment containing details of how the design of that numbered work has incorporated mitigation to ensure the operational noise rating levels as set out in the environmental statement are to be complied with for that part has been submitted to and approved by the relevant planning authority for that part or, where the part falls within the administrative areas of multiple relevant planning authorities, each of the relevant planning authorities.

(2) The design as described in the operational noise assessment must be implemented as approved and maintained throughout the operation of the relevant part of the authorised development to which the plan relates.

Permissive path

15.—(1) A permissive path which runs between points PP 1/01 and PP 4/01 on the streets, rights of way and access plans must be provided and open to the public one year following the date of final commissioning of Work No. 1.

(2) The permissive path must be maintained and access by the public permitted for 364 days a year except where closure is required for maintenance or in an emergency until the date of decommissioning.

Soil management

16.—(1) No part of the authorised development may commence until a soil management plan (which must be in accordance with the outline soil management plan as relevant to construction activities) for that part has been submitted to and approved by the relevant planning authority or, where the part falls within the administrative areas of multiple relevant planning authorities, each of the relevant planning authorities.

(2) All construction works associated with the authorised development must be carried out in accordance with the soil management plan approved pursuant to sub-paragraph (1).

(3) Prior to the date of completion of any part of the authorised development, a soil management plan (which must be in accordance with the outline soil management plan as relevant to operational activities) for that part must be submitted to and approved by the relevant planning authority for that part or, where the part falls within the administrative areas of multiple relevant planning authorities, each of the relevant planning authorities.

(4) The operation of the authorised development must be carried out in accordance with the soil management plan approved pursuant to sub-paragraph (3) and maintained throughout the operation of the relevant part of the authorised development to which the plan relates.

(5) Prior to the start of any decommissioning works for any part of the authorised development, a soil management plan (which must be in accordance with the outline soil management plan as relevant to decommissioning activities) for that part must be submitted to and approved by the relevant planning authority for that part or, where the part falls within the administrative areas of multiple relevant planning authorities, each of the relevant planning authorities.

(6) The decommissioning of the authorised development must be carried out in accordance with the soil management plan approved pursuant to sub-paragraph (5).

Skills, supply chain and employment

17.—(1) No part of the authorised development may commence until a skills, supply chain and employment plan in relation to that part has been submitted to and approved by the relevant planning authority for that part or, where the part falls within the administrative areas of multiple planning authorities, each of the relevant planning authorities following consultation with Lincolnshire County Council.

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

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

(4) The skills, supply chain and employment plan must be implemented as approved and maintained throughout the operation of the relevant part of the authorised development to which the plan relates.

Public rights of way

18.—(1) No part of the authorised development may commence until a public rights of way management plan for any sections of public rights of way shown to be temporarily closed on the streets, rights of way and access plans for that part has been submitted to and approved by the relevant planning authority.

(2) The public rights of way management plan must be in accordance with the outline public rights of way management plan.

(3) The public rights of way management plan must be implemented as approved unless otherwise agreed with the relevant planning authority.

Decommissioning and restoration

19.—(1) Decommissioning of Work Nos. 1, 2 and 3 of the authorised development must commence no later than 40 years following the date of final commissioning of the authorised development.

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

(3) Within 12 months of the date notified pursuant to sub-paragraph (2), the undertaker must submit to the relevant planning authority for that part a decommissioning environmental management plan for approval (following consultation with the Environment Agency and Lincolnshire County Council) which must include a decommissioning traffic management plan and site waste management plan.

(4) Where the undertaker decides to decommission a part of the authorised development that falls within the administrative areas of multiple planning authorities, the decommissioning environmental management plan must be submitted to each relevant planning authority and the approval of all relevant planning authorities is required for the purposes of this paragraph.

(5) The decommissioning environmental management plan must be in accordance with the outline decommissioning environmental management plan.

(6) No decommissioning works may be carried out until the relevant planning authority has approved the decommissioning environmental management plan submitted in relation to those works.

(7) The decommissioning environmental management plan must be implemented as approved.

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

Flood risk

20.—(1) No part of the authorised development may commence until for that part, a flood mitigation strategy has been submitted to and approved by the relevant planning authority in consultation with the Environment Agency.

(2) The flood risk mitigation strategy submitted pursuant to sub-paragraph (1) must set out the flood risk mitigation incorporated in the detailed design for the part of the authorised development which is the subject of the strategy and—

(a) confirm that such mitigation accords with the flood risk operational mitigation; or

(b) to the extent such mitigation does not accord with the flood risk operational mitigation, demonstrate how the mitigation proposed does not give rise to impacts on flood risk that are worse than those set out in the flood risk assessment conclusions; and

(c) include details of the design of any floodplain compensation scheme required for that part based on the flood risk operational mitigation and which does not give rise to impacts on flood risk and floodplain storage that are worse than those set out in the flood risk assessment conclusions.

(3) Any strategy approved pursuant to this requirement must be implemented as approved and maintained throughout the construction and operation of the authorised development.

Contaminated land and groundwater

21. If, during the carrying out of any part of the authorised development, contamination not previously identified is found to be present within such part, no further development (unless otherwise agreed in writing with the relevant planning authority) must be carried out on the part on which the contamination has been found until the process set out at section 11.7 of ES chapter 11 (under the heading "operation phase") has been followed.

Operational waste

22.—(1) Prior to the date of final commissioning of Work Nos. 1, 2 and 3 an operational site waste management plan for that part must be submitted to and approved by the relevant planning authority.

(2) The operational site waste management plan must be in accordance with the waste and recycling strategy

(3) The operational site waste management plan must be implemented as approved and maintained throughout the operation of the relevant part of the authorised development to which the plan relates.

PART 2

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

Interpretation

23. In this Part of this Schedule—

"discharge" means any consent, agreement or approval required by—

(a) a requirement;

(b) a document referred to by a requirement; or

(c) a document that has been approved pursuant to a requirement;

"requirement consultee" means any body or authority named in a requirement as a body to be consulted by the relevant planning authority in discharging that requirement; and

"start date" means the date of the notification given by the Secretary of State under paragraph 77(2)(c).

Applications made under requirement

24.—(1) Where an application has been made to the relevant planning authority for any discharge, the relevant planning authority must give notice to the undertaker of its decision on the application within a period of ten weeks beginning with the later of—

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

(b) the day immediately following that on which further information has been supplied by the undertaker under paragraph 76; or

(c) such longer period that is agreed in writing by the undertaker and the relevant planning authority.

(2) Subject to paragraph 77, in the event that the relevant planning authority does not determine an application within the period set out in sub-paragraph (1), the relevant planning authority is to be taken to have granted all parts of the application (without any condition or qualification) at the end of that period.

(3) Any application for consent or approval under sub-paragraph (1) must include a statement that the provisions of sub-paragraph (2) apply to that application.

(4) If an application for consent under sub-paragraph (1) does not include the statement required under sub-paragraph (3), the provisions of sub-paragraph (2) will not apply to that application.

(5) Any application made to the relevant planning authority pursuant to sub-paragraph (1) must—

(a) include a statement to confirm whether it is likely that the subject matter of the application will give rise to any materially new or materially different environmental effects compared to those in the environmental statement and if it will then it must be accompanied by information setting out what those effects are; and

(b) include confirmation that the application has been notified and provided to the requirement consultees in accordance with sub-paragraph (7), if the provision governing or requiring the application specifies that consultation with a requirement consultee is required (such confirmation to include contact details for the requirement consultees).

(6) Where an application has been made to the relevant planning authority for any discharge and the relevant planning authority does not determine the application within the period set out in sub-paragraph (1) and the application is accompanied by a report pursuant to sub-paragraph (5)(a) 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 then the application is to be taken to have been refused by the relevant planning authority at the end of that period.

(7) Where an application has been made to the relevant planning authority for any discharge, the undertaker will also submit a copy of that application to any requirement consultee.

Further information and consultation

25.—(1) In relation to any application to which this Schedule applies, the relevant planning authority may request such reasonable further information from the undertaker as is necessary to enable it to consider the application.

(2) In the event that the relevant planning authority considers such further information to be necessary and the provision governing or requiring the application does not specify that consultation with a requirement consultee is required, the relevant planning authority must, within 20 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 requirement consultee is required, the relevant planning authority must issue the consultation to the requirement consultee within 10 business days of receipt of the application, and must notify the undertaker in writing specifying any further information the relevant planning authority considers necessary or that is requested by the requirement consultee within 10 business days of receipt of such a request and in any event within 20 business days of receipt of the application (or such other period as is agreed in writing between the undertaker and the relevant planning authority).

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

Appeals

26.—(1) The undertaker may appeal in the event that—

(a) the relevant planning authority refuses an application for any discharge or grants it subject to conditions;

(b) the relevant planning authority is deemed to have refused an application pursuant to paragraph 75(6);

(c) on receipt of a request for further information pursuant to paragraph 76 the undertaker considers that either the whole or part of the specified information requested by the relevant planning authority is not necessary for consideration of the application; or

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

(2) The steps to be followed in the appeal process are as follows—

(a) any appeal by the undertaker must be made within 42 days of the date of the notice of the decision or the determination, or (where no determination has been made) the expiry of the time period set out in paragraph 24(1), giving rise to the appeal referred to in sub-paragraph (1);

(b) the undertaker must submit the appeal documentation to the Secretary of State and must on the same day provide copies of the appeal documentation to the relevant planning authority and any requirement consultee;

(c) the Secretary of State must appoint a person to determine the appeal as soon as reasonably practicable and must forthwith notify the appeal parties of the identity of the appointed person and the address to which all correspondence for the appointed person's attention should be sent;

(d) the relevant planning authority and any requirement consultee must submit written representations to the appointed person in respect of the appeal within 10 business days of the start date and must ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;

(e) the undertaker may make any counter-submissions to the appointed person within 10 business days of receipt of written representations pursuant to paragraph (d);

(f) the appointed person must make their decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable; and

(g) the appointment of the person pursuant to paragraph (c) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(3) In the event that the appointed person considers that further information is necessary to enable the appointed person to consider the appeal they must as soon as reasonably practicable, notify the appeal parties in writing specifying the further information required.

(4) Any further information required pursuant to sub-paragraph (3) must be provided by the relevant party to the appointed person and the other appeal parties on the date specified by the appointed person (the "specified date"), and the appointed person must notify the appeal parties of the revised timetable for the appeal on or before that day. The revised timetable for the appeal must require submission of written representations to the appointed person within 10 business days of the specified date, but otherwise the process and time limits set out in paragraphs (d) to (f) of sub-paragraph (2) apply.

(5) The appointed person may—

(a) allow or dismiss the appeal; or

(b) reverse or vary any part of the decision of the relevant planning authority (whether the appeal relates to that part of it or not),

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

(6) The appointed person may proceed to a decision on an appeal taking into account only such written representations as have been sent within the relevant time limits.

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

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

(9) If an approval is given by the appointed person pursuant to this Schedule, it is to be deemed to be an approval for the purpose of Part 1 of this Schedule as if it had been given by the relevant planning authority. The relevant planning authority may confirm any determination given by the appointed person in identical form in writing but a failure to give such confirmation (or a failure to give it in identical form) is not to be taken to affect or invalidate the effect of the appointed person's determination.

(10) Save where a direction is given pursuant to sub-paragraph (11) requiring the costs of the appointed person to be paid by the relevant planning authority, the reasonable costs of the appointed person must be met by the undertaker.

(11) On application by the relevant planning authority or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it is to be made, the appointed person must have regard to advice on planning appeals and award costs published in Planning Practice Guidance: Appeals (March 2014) or any circular or guidance which may from time to time replace it.

Fees

27.—(1) Where an application is made to the relevant planning authority for any consent, agreement or approval required by a requirement, a fee is to apply and must be paid to the relevant planning authority for each application.

(2) The fee payable for each application under sub-paragraph (1) is as follows—

(a) a fee of £2,578 for the first application for the discharge of each of the requirements 56 (detailed design approval), 57 (battery safety management), 58 (landscape and ecological management plan), 59 (biodiversity net gain) 61 (surface and foul water drainage), 63 (construction environmental management plan), 64 (construction traffic management plan), 67 (soils management), requirement 68 (skills, supply chain and employment), 70 (decommissioning and restoration), requirement 71 (flood risk) and requirement 73 (operational waste);

(b) a fee of £588 for each subsequent application for the discharge of each of the requirements listed in paragraph (a) and any application under requirement 56 in respect of the requirements listed in paragraph (a); and

(c) a fee of £298 for any application for the discharge of—

(i) any other requirements not listed in paragraph (a);

(ii) any application under requirement 54 (approved details and amendments to them) in respect of requirements not listed in paragraph (a); and

(iii) any approval required by a document referred to by any requirement or a document approved pursuant to any requirement.

(3) Any fee paid under this Part of this Schedule must be refunded to the undertaker within four weeks of—

(a) the application being rejected as invalidly made; or

(b) the relevant planning authority failing to determine the application within the relevant period in paragraph 24(1),

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.

(4) The fees specified in sub-paragraph (2) shall be adjusted on each anniversary of the date this Order comes into force by a percentage equal to the index value of the Consumer Price Index (CPI) most recently published prior to that anniversary, provided that in no event shall any annual adjustment exceed 5%.

SCHEDULE 3

Article 11

STREETS SUBJECT TO STREET WORKS

(1) Area	*(2) Street*	*(3) Description of the street works*
North Kesteven District Council	Halfpenny Toll Lane	Works to upgrade existing access for the length shown in green at access point 2/01 on sheet 2 of the streets, rights of way and access plans.
North Kesteven District Council	Halfpenny Toll Lane	Works to upgrade existing access for the length shown in green at access point 2/03 on sheet 2 of the streets, rights of way and access plans.
North Kesteven District Council	Heckington Road	Works to construct Work No. 8 and upgrade existing access to provide primary access to Work Nos. 1, 2 and 3 for the length shown in green on sheet 4 of the streets, rights of way and access plans.
North Kesteven District Council	Howell Fen Drove	Works to upgrade existing access for the length shown in green on sheet 5 of the streets, rights of way and access plans.
North Kesteven District Council	Howell Fen Drove	Works to construct access for the construction of Work No. 4 for the length shown in green on sheet 5 of the streets, rights of way and access plans.
North Kesteven District Council	A17 layby	Works to construct access for the construction of Work No. 8 for the length shown in green on sheet 6 of the streets, rights of way and access plans.
North Kesteven District Council	Asgarby Road	Works to construct Work No. 8 for the length shown in green on sheet 6 of the streets, rights of way and access plans.
North Kesteven District Council	Littleworth Drove	Works to construct access for the construction of Work No. 4 for the length shown in green on sheet 7 of the streets, rights of way and access plans.
North Kesteven District Council	A17	Works to upgrade existing access for the length shown in green on sheet 8 of the streets, rights of way and access plans.
North Kesteven District Council	A17	Works to facilitate the construction of Work No. 4 for the length shown in green on sheet 8 of the streets, rights of

		way and access plans.
North Kesteven District Council	Carterplot Road	Works to enable construction vehicle access for the construction of Work No. 4 for the length shown in green on sheet 8 of the streets, rights of way and access plans.
North Kesteven District Council	Carterplot Road/Great Hale Drove	Works to enable construction vehicle access for the construction of Work No. 4 for the length shown in green on sheet 9 of the streets, rights of way and access plans.
North Kesteven District Council	Great Hale Drove	Works to enable construction vehicle access for the construction of Work No. 4 for the length shown in green on sheet 10 of the streets, rights of way and access plans.
North Kesteven District Council	A17	Works to manage existing access for the length shown in green on sheet 12 of the streets, rights of way and access plans.
Boston Borough Council	Bicker Drove	Works to manage traffic associated with access to the existing substation for the length shown in green on sheets 13 and 14 of the streets, rights of way and access plans.
Boston Borough Council	North Drove	Works to manage the construction of Work No. 4 for the length shown in green on sheet 16 of the streets, rights of way and access plans.
Boston Borough Council	Bicker Drove/Vicarage Drove	Works to manage construction of Work No. 4 and traffic associated with access to the existing substation for the length shown in green on sheet 16 of the streets, rights of way and access plans.
Boston Borough Council	Vicarage Drove	Works to accommodate construction access to the existing substation for the length shown in green on sheet 17 of the streets, rights of way and access plans.

SCHEDULE 4

Article 13

ALTERATION OF STREETS

PART 1

PERMANENT ALTERATION OF LAYOUT

(1) Area	*(2) Street*	*(3) Description of alteration*
North Kesteven District Council	Field Access Halfpenny Toll Lane	Permanent alteration of layout at the point marked 2/01 on sheet 2 of the streets, rights of way and access plans.
North Kesteven District Council	Field Access Halfpenny Toll Lane	Permanent alteration of layout at the point marked 2/03 on sheet 2 of the streets, rights of way and access plans.
North Kesteven District Council	Proposed access off Heckington Road	Permanent alteration of layout at the point marked 4/01 on sheet 4 of the streets, rights of way and access plans.
North Kesteven District Council	Access track off Heckington Road	Permanent alteration of layout at the point marked 4/02 on sheet 4 of the streets, rights of way and access plans.
North Kesteven District Council	Field Access at Howell Fen Drove	Permanent alteration of layout at the point marked 5/01 on sheet 5 of the streets, rights of way and access plans.
North Kesteven District Council	Proposed accesses off Howell Fen Drove	Permanent alteration of layout at the points marked 5/05 and 5/06 on sheet 5 of the streets, rights of way and access plans.
North Kesteven District Council	Proposed access off A17 Layby	Permanent alteration of layout at the point marked 6/01 on sheet 6 of the streets, rights of way and access plans.
North Kesteven District Council	Proposed accesses off Asgarby Road	Permanent alteration of layout at the points marked 6/03 and 6/04 on sheet 6 of the streets, rights of way and access plans.
North Kesteven District Council	Proposed accesses off Littleworth Drove	Permanent alteration of layout at the points marked 7/01 and 7/02 on sheet 7 of the streets, rights of way and access plans.
North Kesteven District Council	Access track off A17	Permanent alteration of layout at the point marked 8/01 on sheet 8 of the streets, rights of way and access plans.
North Kesteven District Council	Proposed access off Carterplot Road	Permanent alteration of layout at the point marked 9/02 on sheet 9 of the streets, rights of way and access plans.

Boston Borough Council	Access to the existing substation at Vicarage Drove	Permanent alteration of layout at the point marked 17/03 on sheet 17 of the streets, rights of way and access plans.

PART 2

TEMPORARY ALTERATION OF LAYOUT

(1) Area	*(2) Street*	*(3) Description of alteration*
North Kesteven District Council	Carterplot Road	Temporary alteration of layout within the area shaded green on sheet 8 of the streets, rights of way and access plans.
North Kesteven District Council	Carterplot Road and Great Hale Drove	Temporary alteration of layout within the area shaded green on sheet 9 of the streets, rights of way and access plans.
North Kesteven District Council	Great Hale Drove	Temporary alteration of layout within the area shaded green on sheet 10 of the streets, rights of way and access plans.
Boston Borough Council	Bicker Drove	Temporary alteration of layout within the area shaded green on sheets 13 and 14 of the streets, rights of way and access plans.
Boston Borough Council	Bicker Drove and Vicarage Drove	Temporary alteration of layout within the area shaded green on sheet 16 of the streets, rights of way and access plans.
Boston Borough Council	Vicarage Drove	Temporary alteration of layout within the area shaded green on sheet 17 of the streets, rights of way and access plans.

SCHEDULE 5

Article 16

STREETS AND PUBLIC RIGHTS OF WAY

PART 1

PUBLIC RIGHTS OF WAY TO BE TEMPORARILY CLOSED

(1) Area	*(2) Public right of way*	*(3) Measures*
North Kesteven District Council	Ewer/12/1	Temporarily closed to all traffic save for traffic under the direction of the undertaker between points PRoW-1/01 and PRoW-1/02 as shown in blue on sheet 1 of the streets, access and rights of way plans.
North Kesteven District Council	KkLT/5/1	Temporarily closed to all traffic save for traffic under the direction of the undertaker between points PRoW-6/03 and PRoW-6/04 as shown in blue on sheet 6 of the streets, access and rights of way plans.
North Kesteven District Council	KkLT/4/2	Temporarily closed to all traffic save for traffic under the direction of the undertaker between points PRoW-6/01 and PRoW-6/02 as shown in blue on sheet 6 of the streets, access and rights of way plans.
North Kesteven District Council	Heck/14/1	Temporarily closed to all traffic save for traffic under the direction of the undertaker between points PRoW-7/01 and PRoW-7/02 as shown in blue on sheet 7 of the streets, access and rights of way plans.
North Kesteven District Council	Heck/2/4	Temporarily closed to all traffic save for traffic under the direction of the undertaker between points PRoW-8/01 and PRoW-8/02 as shown in blue on sheet 8 of the streets, access and rights of way plans.

PART 2

PERMANENT USE OF MOTOR VEHICLES ON PUBLIC RIGHTS OF WAY

(1) Area	*(2) Public right of way*	*(3) Measures*
North Kesteven District	Ewer/9/1	Permanent use of motor

Council		vehicles under the direction of the undertaker between points PRoW-1/01 and PRoW-1/03 as shown in blue on sheet 1 of the streets, access and rights of way plans to facilitate construction, operation and decommissioning of the authorised development.

PART 3

TEMPORARY USE OF MOTOR VEHICLES ON PUBLIC RIGHTS OF WAY

(1) Area	*(2) Public right of way*	*(3) Measure*
North Kesteven District Council	Ewer/12/1	Use of motor vehicles under the direction of the undertaker between points PRoW-1/01 and PRoW-1/02 as shown in blue on sheet 1 of the streets, access and rights of way plans to facilitate construction of the authorised development.
North Kesteven District Council	KkLT/5/1	Use of motor vehicles under the direction of the undertaker between points PRoW-6/03 and PRoW-6/04 as shown in blue on sheet 6 of the streets, access and rights of way plans to facilitate construction of the authorised development.
North Kesteven District Council	KkLT/4/2	Use of motor vehicles under the direction of the undertaker between points PRoW-6/01 and PRoW-6/02 as shown in blue on sheet 6 of the streets, access and rights of way plans to facilitate construction of the authorised development.
North Kesteven District Council	Heck/14/1	Use of motor vehicles under the direction of the undertaker between points PRoW-7/01 and PRoW-7/02 as shown in blue on sheet 7 of the streets, access and rights of way plans to facilitate construction of the authorised development.
North Kesteven District Council	Heck/2/4	Use of motor vehicles under the direction of the undertaker between points PRoW-8/01 and PRoW-8/02 as shown in blue on sheet 8 of the streets, access and rights of way plans to facilitate construction of the

		authorised development.

PART 4

TEMPORARY MANAGEMENT OF PUBLIC RIGHTS OF WAY

(1) Area	*(2) Public right of way*	*(3) Measure (public right of way to be managed during construction to maintain public right of way continuity and access through the authorised development)*
North Kesteven District Council	Ewer/12/1	Public right of way between points PRoW-1/01 and PRoW-1/02 as shown in blue on sheet 1 of the streets, access and rights of way plans to be managed during construction of the authorised development.
North Kesteven District Council	Ewer/9/1	Public right of way between points PRoW-1/01 and PRoW-1/03 as shown in blue on sheet 1 of the streets, access and rights of way plans to be managed during construction of the authorised development.
North Kesteven District Council	KkLT/5/1	Public right of way between points PRoW-6/03 and PRoW-6/04 as shown in blue on sheet 6 of the streets, access and rights of way plans to be managed during construction of the authorised development.
North Kesteven District Council	KkLT/4/2	Public right of way between points PRoW-6/01 and PRoW-6/02 as shown in blue on sheet 6 of the streets, access and rights of way plans to be managed during construction of the authorised development.
North Kesteven District Council	Heck/14/1	Public right of way between points PRoW-7/01 and PRoW-7/02 as shown in blue on sheet 7 of the streets, access and rights of way plans to be managed during construction of the authorised development.
North Kesteven District Council	Heck/2/4	Public right of way between points PRoW-8/01 and PRoW-8/02 as shown in blue on sheet 8 of the streets, access and rights of way plans to be managed during construction of the authorised development.

SCHEDULE 6

Article 17

ACCESS TO WORKS

PART 1

PERMANENT MEANS OF ACCESS TO WORKS

(1) Area	*(2) Street*	*(3) Description of means of access*
North Kesteven District Council	Halfpenny Toll Lane Westbound	The provision of a permanent means of access to the authorised development from the point marked 2/01 on sheet 2 of the streets, rights of way and access plans.
North Kesteven District Council	Halfpenny Toll Lane Southbound	The provision of a permanent means of access to the authorised development from the point marked 2/03 on sheet 2 of the streets, rights of way and access plans.
North Kesteven District Council	Heckington Road Northbound	The provision of a permanent means of access to the authorised development from the point marked 4/01 on sheet 4 of the streets, rights of way and access plans.
North Kesteven District Council	Heckington Road Southbound	The provision of a permanent means of access to the authorised development from the point marked 4/02 on sheet 4 of the streets, rights of way and access plans.
North Kesteven District Council	Howell Fen Drove Eastbound	The provision of a permanent means of access to the authorised development from the point marked 5/02 on sheet 5 of the streets, rights of way and access plans.
North Kesteven District Council	A17 Layby	The provision of a permanent means of access to the authorised development from the point marked 6/01 on sheet 6 of the streets, rights of way and access plans.
North Kesteven District Council	Asgarby Road Northbound	The provision of a permanent means of access to the authorised development from the point marked 6/03 on sheet 6 of the streets, rights of way and access plans.
North Kesteven District	Asgarby Road Southbound	The provision of a permanent

Council		means of access to the authorised development from the point marked 6/04 on sheet 6 of the streets, rights of way and access plans.

PART 2

TEMPORARY MEANS OF ACCESS TO WORKS

(1) Area	*(2) Street*	*(3) Description of means of access*
North Kesteven District Council	Howell Fen Drove Eastbound	The provision of a temporary means of access to the authorised development from the point marked 5/05 on sheet 5 of the streets, rights of way and access plans.
North Kesteven District Council	Howell Fen Drove Westbound	The provision of a temporary means of access to the authorised development from the point marked 5/06 on sheet 5 of the streets, rights of way and access plans.
North Kesteven District Council	Littleworth Drove Eastbound	The provision of a temporary means of access to the authorised development from the point marked 7/01 on sheet 7 of the streets, rights of way and access plans.
North Kesteven District Council	Littleworth Drove Westbound	The provision of a temporary means of access to the authorised development from the point marked 7/02 on sheet 7 of the streets, rights of way and access plans.
North Kesteven District Council	A17 Eastbound	The provision of a temporary means of access to the authorised development from the point marked 8/01 on sheet 8 of the streets, rights of way and access plans.
North Kesteven District Council	Carterplot Road Northbound	The provision of a temporary means of access to the authorised development from the point marked 9/02 on sheet 9 of the streets, rights of way and access plans.

SCHEDULE 7

Article 19

TRAFFIC REGULATION MEASURES

(1) Area	*(2) Extent of temporary traffic signal and banksman control area*
Halfpenny Toll Lane	Extents of banksman control and temporary traffic signal control to enable street works for the improvement of access 2/01 in the area shaded green shown on sheet 2 of the streets, rights of way and access plans.
Halfpenny Toll Lane	Extents of banksman control and temporary traffic signal control to enable street works for the improvement of access 2/03 in the area shaded green shown on sheet 2 of the streets, rights of way and access plans.
Heckington Road	Extents of banksman control and temporary traffic signal control to enable street works for the creation of access 4/01 and improvement of access 4/02 in the area shaded green shown on sheet 4 of the streets, rights of way and access plans.
Howell Fen Drove	Extents of banksman control and temporary traffic signal control to enable street works for the improvement of access 5/02 in the area shaded green shown on sheet 5 of the streets, rights of way and access plans.
Howell Fen Drove	Extents of banksman control and temporary traffic signal control to enable street works for the creation of accesses 5/05 and 5/06 in the area shaded green shown on sheet 5 of the streets, rights of way and access plans.
A17 Layby	Extents of banksman control and temporary traffic signal control to enable street works for the creation of access 6/01 in the area shaded green shown on sheet 6 of the streets, rights of way and access plans.
A17 Layby	Extents of temporary closure to all non-site traffic, to allow establishment and operation of a construction traffic access to the authorised development between points TTRO-6/01 and TTRO-6/02 as shown on sheet 6 of the streets, rights of way and access plans.
Asgarby Road	Extents of banksman control and temporary traffic signal control to enable street works for the creation of accesses 6/03 and 6/04 in the area shaded green shown on sheet 6 of the streets, rights of way and access plans.
Littleworth Drove	Extents of banksman control and temporary traffic signal control to enable street works for the creation of accesses 7/01 and 7/02 in the area shaded green shown on sheet 7 of the streets, rights of way and access plans.

A17	Extents of banksman control and temporary traffic signal control to enable street works for the improvement of access 8/01 in the area shaded green shown on sheet 8 of the streets, rights of way and access plans.
Carterplot Road	Extents of banksman control and temporary traffic signal control to enable street works for the creation of access 9/02 in the area shaded green shown on sheet 9 of the streets, rights of way and access plans.

SCHEDULE 8

Article 27

LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED

(1) Plot reference(s) (as shown on the land plans)	*(2) Purpose for which rights over land may be acquired and restrictive covenants imposed*
7-2, 8-1, 8-2, 8-3, 8-4, 8-5, 8-6, 8-7, 9-1, 9-2, 9-3, 9-9, 9-10, 9-12, 10-3, 10-4, 10-10, 10-12, 10-13, 10-14, 11-1, 11-2, 11-3, 11-6, 11-7, 11-8, 12-1, 12-2, 12-3, 12-8, 12-10, 12-12, 12-13, 12-14, 12-19, 13-3, 13-6, 13-7, 13-8, 13-9, 13-10, 17-1, 17-2, 17-3, 17-4, 17-5, 17-7, 18-1, 18-6, 18-7, 18-9, 18-10, 18-11, 18-25, 18-26, 18-27, 18-28, 18-30, 18-31, 18-32, 18-33, 18-34, 18-35, 18-37, 18-38, 18-39, 18-40, 18-41, 18-42, 18-43, 18-44, 18-46, 18-48, 18-49, 18-50, 18-51, 18-52, 18-54, 18-55, 18-56	To construct, operate, maintain and use Work No. 4A and to construct, operate, maintain, use, inspect and alter any protective works, access works, utility apparatus or other ancillary or related development (as set out in Schedule 1 (authorised development)) in connection therewith.
10-5, 13-4, 15-1	To construct, operate, maintain and use Work No. 4A and Work No. 4B, and to construct, operate, maintain, use, inspect and alter any protective works, access works, utility apparatus or other ancillary or related development (as set out in Schedule 1 (authorised development)) in connection therewith.
18-19	To construct, operate, maintain and use Work No. 4A, Work No. 5A, Work No. 5B, Work No. 5C, and Work No. 5E, and to construct, operate, maintain, use, inspect and alter any protective works, access works, utility apparatus or other ancillary or related development (as set out in Schedule 1 (authorised development)) in connection therewith.
18-8, 18-12	To construct, operate, maintain and use Work No. 4A, Work No. 5D, and Work No. 10, and to construct, operate, maintain, use, inspect and alter any protective works, access works, utility apparatus or other ancillary or related development (as set out in Schedule 1 (authorised development)) in connection therewith.
3-5, 3-6, 3-7, 3-9	To construct, operate, maintain and use Work No. 4A and Work No. 6, and to construct, operate, maintain, use, inspect and alter any protective works, access works, utility apparatus or other ancillary or related development (as set out in Schedule 1 (authorised development)) in connection therewith.
7-1, 9-5, 9-6, 9-7, 9-8, 10-8, 11-4, 12-4, 12-9, 12-17, 13-11, 18-3, 18-20, 18-21, 18-22, 18-23, 18-24, 18-29, 18-36, 18-45, 18-47, 18-53	To construct, operate, maintain and use Work No. 4A and Work No. 10, and to construct, operate, maintain, use, inspect and alter any protective works, access works, utility apparatus or other ancillary or related development (as set out in Schedule 1 (authorised development)) in connection therewith.

18-57	To construct, operate, maintain and use Work No. 4A, Work No. 5C and Work No. 5E, and to construct, operate, maintain, use, inspect and alter any protective works, access works, utility apparatus or other ancillary or related development (as set out in Schedule 1 (authorised development)) in connection therewith.
18-13, 18-14, 18-16	To construct, operate, maintain and use Work No. 5D and Work No. 5E, and to construct, operate, maintain, use, inspect and alter any protective works, access works, utility apparatus or other ancillary or related development (as set out in Schedule 1 (authorised development)) in connection therewith.
3-1, 3-2, 3-3, 3-4, 6-1	To construct, operate, maintain and use Work No. 6, and to construct, operate, maintain, use, inspect and alter any protective works, access works, utility apparatus or other ancillary or related development (as set out in Schedule 1 (authorised development)) in connection therewith.
1-3, 1-4	To construct, operate, maintain and use Work No. 6 and Work No. 9, and to construct, operate, maintain, use, inspect and alter any protective works, access works, utility apparatus or other ancillary or related development (as set out in Schedule 1 (authorised development)) in connection therewith.
4-2, 4-3, 4-4, 4-5, 4-6, 5-1, 5-2, 5-3	To construct, operate, maintain and use Work No. 8, and to construct, operate, maintain, use, inspect and alter any protective works, access works, utility apparatus or other ancillary or related development (as set out in Schedule 1 (authorised development)) in connection therewith.
1-1, 1-2, 2-1, 2-3, 4-1, 6-3, 9-11, 10-1, 10-2, 10-6, 10-9, 10-11, 11-5, 12-5, 12-6, 12-7, 12-11, 12-15, 12-16, 12-18, 13-1, 13-2, 13-12, 13-13, 13-14, 13-16, 13-17, 13-18, 14-1, 14-2, 14-3, 14-4, 14-5, 14-6, 14-7, 14-8, 14-9, 14-10, 14-11, 15-2, 15-3, 15-4, 16-1, 18-2, 18-4, 18-5	To construct, operate, maintain and use Work No. 10, and to construct, operate, maintain, use, inspect and alter any protective works, access works, utility apparatus or other ancillary or related development (as set out in Schedule 1 (authorised development)) in connection therewith.

SCHEDULE 9

Article 27

MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS AND IMPOSITION OF RESTRICTIVE COVENANTS

Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right or the imposition of a restrictive covenant as they apply as respects compensation on the compulsory purchase of land and interests in land.

2.—(1) Without limiting the scope of paragraph 79, the Land Compensation Act 1973(**a**) has effect subject to the modifications set out in sub-paragraph (2).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 (measure of compensation in case of severance) of the 1965 Act as substituted by paragraph 83—

(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 or the restrictive covenant is enforceable".

3.—(1) Without limiting the scope of paragraph 79, the 1961 Act has effect subject to the modification set out in sub-paragraph (2).

(2) For section 5A(5A) (Relevant valuation date) of the 1961 Act, after "If" substitute—

"(a) the acquiring authority enters on land for the purpose of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act (as modified by paragraph 7 of Schedule 9 to the Beacon Fen Energy Park Order 2026;

(b) the acquiring authority is subsequently required by a determination under paragraph 3 of Schedule 2A to the 1965 Act (as substituted by paragraph 10 of Schedule 9 to the Beacon Fen Energy Park Order 2026) to take the additional land; and

(c) the acquiring authority enters on and takes possession of that land,

the authority is deemed for the purposes of subsection (3)(a) to have entered on that land 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 restriction imposed or to be imposed; or

(b) the land over which the right is or is to be exercisable, or the restriction is or is to be enforceable.

(**a**) 1973 c. 26.

(2) Without limiting the scope of sub-paragraph (1), Part 1 of the 1965 Act (compulsory purchase under Acquisition of Land Act 1946) 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.

5. For section 7 (measure of compensation in case of severance) of the 1965 Act substitute—

"**Measure of compensation in case of severance**

7. In assessing the compensation to be paid by the acquiring authority under this Act, regard must be had not only to the extent (if any) to which the value of the land over which the right is to be acquired or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or the imposition of the covenant but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act."

6. The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

(a) section 9(4) (refusal to convey, failure to make title, etc);

(b) paragraph 10(3) of Schedule 1 (persons without power to sell their interests);

(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 (powers of entry) of the 1965 Act is modified to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right or restriction, 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), 11B (counter-notice requiring possession to be taken on specified date), 12 (unauthorised entry) and 13 (refusal to give possession to acquiring authority) of the 1965 Act are modified correspondingly.

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

9. Section 22 (Interests omitted from purchase) of the 1965 Act is modified so as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

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

"SCHEDULE 2A

Counter-notice requiring purchase of land

Introduction

1.—(1) This Schedule applies where an acquiring authority serve 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 Beacon Fen Energy Park Order 2026 in respect of the land to which the notice to treat relates.

(2) But see article 30 (acquisition of subsoil only) of the Beacon Fen Energy Park Order 2026 which excludes acquisition of subsoil only from this Schedule.

2. In this Schedule, "house" includes any park or garden belonging to a house.

Counter-notice requiring purchase of land

3. A person who is able to sell the house, building or factory ("the owner") may serve a counter-notice requiring the authority to purchase the owner's interest in the house, building or factory.

4. A counter-notice under paragraph 3 must be served within the period of 28 days beginning with the day on which the notice to treat was served.

Response to counter-notice

5. On receiving a counter-notice, the acquiring authority must decide whether to—

(a) withdraw the notice to treat;

(b) accept the counter-notice; or

(c) refer the counter-notice to the Upper Tribunal.

6. The authority must serve notice of their decision on the owner within the period of 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 they must do so within the decision period.

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

9. If the authority serves notice of a decision to accept the counter-notice, the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in the house, building or factory.

Determination by Upper Tribunal

10. On a referral under paragraph 7, the Upper Tribunal must determine whether the acquisition of the right or the imposition of the restrictive covenant would—

(a) in the case of a house, building or factory, cause material detriment to the house, building or factory; or

(b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

11. In making its determination, the Upper Tribunal must take into account—

(a) the effect of the acquisition of the right or the imposition of the covenant;

(b) the use to be made of the right or covenant proposed to be acquired or imposed; and

(c) if the right or covenant is proposed to be acquired or imposed for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.

12. If the Upper Tribunal determines that the acquisition of the right or the imposition of the covenant would have either of the consequences described in paragraph 10, it must determine how much of the house, building or factory the authority ought to be required to take.

13. If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in that land.

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

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

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

SCHEDULE 10

Article 32

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

(1) Plot reference number shown on the land plans	*(2) Purpose for which temporary possession may be taken*
7-3, 10-7, 13-5, 13-15, 17-6	Temporary use to facilitate the carrying out of Work No. 4B and further associated development.
9-4	Temporary use to facilitate the carrying out of Work No. 4B, Work No. 10 and further associated development.

SCHEDULE 11

Article 38

PROTECTIVE PROVISIONS

PART 1

FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

Application

1. For the protection of the affected undertakers referred to in this Part of this Schedule (save for any utility undertakers which are specifically protected by any other Part of this Schedule, which will take precedence) the following provisions have effect, unless otherwise agreed in writing between the undertaker and the affected undertaker concerned.

Interpretation

2. In this Part of this Schedule—

"affected undertaker" means—

(a) any licence holder within the meaning of Part 1 (electricity supply) of the 1989 Act;

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

(c) a water undertaker within the meaning of the Water Industry Act 1991(**b**); or

(d) a sewerage undertaker within the meaning of Part 1 (preliminary) of the Water Industry Act 1991,

for the area of the authorised development but, for the avoidance of doubt, does not include the undertakers specified in Parts 3 to 15 of this Schedule, and in relation to any apparatus, means the undertaker to whom it belongs or by whom it is maintained;

"alternative apparatus" means alternative apparatus adequate to enable the affected undertaker in question to fulfil its statutory functions in a manner not less efficient than previously;

"apparatus" means—

(a) in the case of an electricity undertaker, electric lines or electric plant (as defined in the 1989 Act), belonging to or maintained by that affected undertaker;

(b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;

(c) in the case of a water undertaker—

(i) mains, pipes or other apparatus belonging to or maintained by that affected undertaker for the purposes of water supply; and

(ii) any water mains or service pipes (or part of a water main or service pipe) that is the subject of an agreement to adopt made under section 51A (agreements to adopt water main or service pipe at future date) of the Water Industry Act 1991;

(d) in the case of a sewerage undertaker—

(i) any drain or works vested in the affected undertaker under the Water Industry Act 1991; and

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

(**b**) 1991 c. 56.

(ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) (adoption of sewers and disposal works) of that Act or an agreement to adopt made under section 104 of that Act,

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

"functions" includes powers and duties; and

"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.

Precedence of the 1991 Act in respect of apparatus in the streets

3. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the affected undertaker are regulated by the provisions of Part 3 (water supply) of the Water Industry Act 1991.

Apparatus in temporarily closed streets

4. Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 16 (temporary prohibition or restriction of use of streets and public rights of way), an affected undertaker is at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

Acquisition of land

5. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

Removal of apparatus

6.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that the affected undertaker's apparatus is relocated or diverted, that apparatus must not be removed under this part of this Schedule, and any right of an affected undertaker to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided, to the reasonable satisfaction of the affected undertaker in question in accordance with sub-paragraphs (2) to (7).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to the affected undertaker in question written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order an affected undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the affected undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (1), in the land in which the alternative apparatus or part of such apparatus is to be constructed, the affected undertaker in question must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use reasonable endeavours

to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the affected undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 43 (arbitration).

(5) The affected undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 43 (arbitration) and after the grant to the affected undertaker of any such facilities and rights as are referred to in sub-paragraph (1) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the affected undertaker in question that it desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land controlled by the undertaker, that work, instead of being executed by the affected undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the affected undertaker.

(7) Nothing in sub-paragraph (6) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

Facilities and rights for alternative apparatus

7.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to an affected undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and the affected undertaker in question or in default of agreement settled by arbitration in accordance with article 43 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the affected undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to that affected undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus

8.—(1) Not less than 28 days before starting the execution of any works of the type referred to in paragraph 6(1) that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 6(1), the undertaker must submit to the affected undertaker in question a plan, section and description of the works to be executed.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the affected undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the affected undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by an affected undertaker under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If an affected undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 7 apply as if the removal of the apparatus had been required by the undertaker under paragraph 6(1).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the affected undertaker in question notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

Expenses and costs

9.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to an affected undertaker the reasonable expenses incurred by that affected undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 6(1).

(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,

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 43 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the affected undertaker in question by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

(a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to an affected undertaker in respect of works by virtue of sub-paragraph (1) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the affected undertaker 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.

10.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraph 6(1), 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 an affected undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any affected undertaker, the undertaker must—

(a) bear and pay the cost reasonably incurred by that affected undertaker in making good such damage or restoring the supply; and

(b) provide reasonable compensation to that affected undertaker for any other expenses, loss, damages, penalty or costs incurred by the affected undertaker,

by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an affected undertaker, its officers, servants, contractors or agents.

(3) An affected undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise may be made without the consent of the undertaker which, if it withholds such consent, will have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

Enactments and agreements

11. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an affected undertaker in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 2

FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

12. For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the operator.

13. In this Part of this Schedule—

"the code rights" has the same meaning as in the Paragraph 3 of the electronic communications code(**a**);

"electronic communications apparatus" has the same meaning as in the electronic communications code;

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

"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 communications code operator" means a person in whose case the electronic communications code is applied by a direction under section 106 (Application of the electronic communications code) of the 2003 Act;

(**a**) See section 106 of the 2003 Act. Section 106 was amended by section 4(3) of the Digital Economy Act 2017 (c. 30).

"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.

14. The exercise of the powers conferred by this Order is subject to Part 10 (undertaker's works affecting electronic communications apparatus) of the electronic communications code.

15.—(1) Subject to sub-paragraph (2), if as a result of the authorised development or its construction, or of any subsidence resulting from any of the authorised development—

(a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised development), or other property of an operator; or

(b) there is any interruption in the supply of the service provided by an operator,

the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and make reasonable compensation to that operator for any other reasonable expenses, loss, damages, penalty or costs incurred by it, by reason, or in consequence of, any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.

16. 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.

17. 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 43 (arbitration).

18. 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.

19. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus in land belonging to the undertaker on the date on which this Order is made.

PART 3

FOR THE PROTECTION OF ANGLIAN WATER SERVICES LIMITED

Application

20. For the protection of Anglian Water the following provisions have effect, unless otherwise agreed in writing between the undertaker and Anglian Water.

Interpretation

21. In this Part of this Schedule—

"alternative apparatus" means alternative apparatus adequate to enable Anglian Water to fulfil its statutory functions in a manner no less efficient than previously;

"Anglian Water" means Anglian Water Services Limited, or any successor in its functions, and, only in respect of any matter relating to, or connected with, the Lincolnshire Reservoir Project, any entity granted an infrastructure provider project licence under the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013 in relation to the Lincolnshire Reservoir Project;

"apparatus" means—

(a) works, mains, pipes or other apparatus belonging to or maintained by Anglian Water for the purposes of water supply and sewerage;

(b) any drain or works vested in Anglian Water under the Water Industry Act 1991;

(c) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,

(d) any drainage system constructed for the purpose of reducing the volume of surface water entering any public sewer belonging to Anglian Water; and

(e) includes a sludge main, disposal main or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and includes any structure in which any apparatus under this definition is or is to be lodged or which gives or will give access to apparatus,

and for the purpose of this definition, where words are defined by section 219 of that Act, they shall be taken to have the same meaning;

"functions" includes powers and duties;

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

"Lincolnshire Reservoir Land" means the land which Anglian Water anticipates to be required for the construction, commissioning, operation and maintenance of the Lincolnshire Reservoir Project, as notified in writing by Anglian Water to the undertaker, which may be updated from time to time;

"Lincolnshire Reservoir Project" means the proposals being promoted by Anglian Water by way of an application for a development consent order, to construct, operate and maintain a reservoir exceeding 30 million cubic metres of water storage, together with associated development which is anticipated to include, but is not limited to, water transfer pipelines, abstraction facilities, pumping stations, treatment works, renewable energy generation, access roads, utility diversions, rail works, parking, wildlife and environmental areas, and recreation facilities on land south-east of Sleaford, Lincolnshire; and

"plan" includes all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed.

On street apparatus

22. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and Anglian Water are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus in stopped up streets

23.—(1) Where any street is stopped up under article 16 (temporary prohibition or restriction of use of streets and public rights of way), where Anglian Water has apparatus in the street or accessed by virtue of that street, it has the same powers and rights in respect of that apparatus as it enjoyed immediately before the temporary prohibition or restriction and the undertaker must grant to Anglian Water legal easements reasonably satisfactory to Anglian Water in respect of such apparatus and access to it, but nothing in this paragraph affects any right of the undertaker or of Anglian Water to require the removal of that apparatus under paragraph 114 or the power of the undertaker to carry out works under paragraph 116.

(2) Regardless of the temporary stopping up or diversion of any highway under the powers conferred by article 16 (temporary prohibition or restriction of use of streets and public rights of way), Anglian Water is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

Protective works to buildings

24. The undertaker, in the case of the powers conferred by article 21 (protective works to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus.

Acquisition of land

25. 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

26.—(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 115.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to Anglian Water 28 days' written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order an undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to Anglian Water the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of 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 43 (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 43 (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 required, and to the reasonable satisfaction of Anglian Water.

(7) If Anglian Water fails either reasonably to approve, or to provide reasons for its failure to approve along with an indication of what would be required to make acceptable, any proposed details relating to required removal works under sub-paragraph (2) within 28 days of receiving a notice of the required works from the undertaker, then such details are deemed to have been approved. For the avoidance of doubt, any such "deemed consent" does not extend to the actual undertaking of the removal works, which shall remain the sole responsibility of Anglian Water or its contractors unless these works are to be carried out by the undertaker in accordance with sub-paragraph (6).

(8) Whenever alternative apparatus is to be or is being substituted for existing apparatus, the undertaker shall, before taking or requiring any further step in such substitution works, use reasonable endeavours to comply with Anglian Water's reasonable requests for a reasonable period of time to enable Anglian Water to—

(a) make network contingency arrangements; or

(b) bring such matters as it may consider reasonably necessary to the attention of end users of the utility in question.

(9) In respect of apparatus constructed or being constructed by Anglian Water for the purposes of the Lincolnshire Reservoir Project—

(a) this paragraph applies whether or not such apparatus is operational;

(b) "best endeavours" in sub-paragraph (3) shall be read as "reasonable endeavours" and

(c) "28 days" in sub-paragraphs (2) and (7) shall be read as "42 days".

Facilities and rights for alternative apparatus

27.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the undertaker and Anglian Water or in default of agreement settled by arbitration in accordance with article 43 (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 or other legislation.

Retained apparatus

28.—(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 114(2), the undertaker must submit to Anglian Water a plan of the works to be executed.

(2) Those works must be executed only in accordance with the plan submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance

with sub-paragraph (3) by Anglian Water for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and Anglian Water is entitled to watch and inspect the execution of those works.

(3) Any requirements made by Anglian Water under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan under sub-paragraph (1) is submitted to it.

(4) If Anglian Water in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 20 to 22 and 25 to 27 apply as if the removal of the apparatus had been required by the undertaker under paragraph 114(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case must give to Anglian Water notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (3) in so far as is reasonably practicable in the circumstances, using its best endeavours to keep to a minimum the impact of those emergency works on Anglian Water's apparatus, the operation of its water and sewerage network and end-users of its services.

(7) For the purposes of sub-paragraph (1) and without prejudice to the generality of the principles set out in that sub-paragraph, works are deemed to be in land near Anglian Water's apparatus (where it is a pipe) if those works fall within the following distances measured from the medial line of such apparatus—

(a) 4 metres where the diameter of the pipe is less than 250 millimetres;

(b) 5 metres where the diameter of the pipe is between 250 and 400 millimetres, and

(c) a distance to be agreed on a case by case basis and before the submission of the plan under sub-paragraph (1) where the diameter of the pipe exceeds 400 millimetres.

Expenses and costs

29.—(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 43 (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.

30.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction or maintenance of any of the authorised development or of any such works referred to in paragraphs 112 or 114(2), or by reason of any subsidence resulting from such development or works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of such development or 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, accompanied by an invoice or claim from 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.

(5) Anglian Water must use reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands and penalties to which the undertaker must bear and pay the costs for.

Cooperation

31. 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 114(2) or Anglian Water makes requirements for the protection or alteration of apparatus under paragraph 116, 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.

32. Where the undertaker identifies any apparatus which may belong to or be maintainable by Anglian Water but which does not appear on any statutory map kept for the purpose by Anglian

Water, it shall inform Anglian Water of the existence and location of the apparatus as soon as reasonably practicable.

33. 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.

Interface with the Lincolnshire Reservoir Project

34. As regards the interface (including any potential interface) between the authorised development and the Lincolnshire Reservoir Project, the undertaker and Anglian Water agree to—

(a) work positively and collaboratively with each other to manage that interface, including having regard to the impact that each project's design, construction and operation and maintenance may have on the other party's project;

(b) engage proactively with the other party's project, including providing timely responses to any consultations, public examinations, or reasonable requests for informal engagement concerning that interface; and

(c) use reasonable endeavours to agree the details of a cooperation framework in relation to the interface (pursuant to the outline construction environmental management plan and outline decommissioning environmental management plan) within 56 days of the undertaker providing a draft cooperation framework to Anglian Water, and for the purposes of agreeing the cooperation framework pursuant to the outline construction environmental management plan the undertaker will provide the draft cooperation agreement framework to Anglian Water within 12 months of the date this Order comes into force.

35. The undertaker will work with Anglian Water during the design and construction of the authorised development to ensure that where the two projects interface there is no impediment to any works associated with or required for the Lincolnshire Reservoir Project crossing under the cabling infrastructure of the authorised development in a timely and cost-effective manner. Without prejudice to the generality of the previous sentence, the undertaker must only construct Work No. 4 to a maximum depth of 10 metres below ground level within the area shown edged blue on the plans appended to the outline construction environmental management plan (drawing title: Extend of Beacon Fen Energy Park Limited Order Boundary and Anglian Water Restriction), unless otherwise agreed with Anglian Water.

36. Before finalising the detailed design of any part of the authorised development which is within or within 500m of the Lincolnshire Reservoir Land, the undertaker will provide Anglian Water with the opportunity (within a period of at least 42 days) to review and comment on the proposed detailed design of such part of the authorised development, and will consider any comments reasonably made by Anglian Water where this would influence the consenting, design, construction, operation or maintenance of the Lincolnshire Reservoir Project.

37. Before finalising the detailed design of any part of the Lincolnshire Reservoir Project which is within or within 500m of the Order Limits, Anglian Water will provide the undertaker with the opportunity (within a period of at least 42 days) to review and comment on the proposed detailed design of any such part of the Lincolnshire Reservoir Project, and will consider any comments reasonably made by the undertaker where this would influence the construction, design or operation of the authorised development.

38. The undertaker will not unreasonably withhold consent for Anglian Water to enter onto land within the undertaker's control to undertake pre-consent surveys and site investigations as reasonably necessary for the preparation of the Lincolnshire Reservoir Project development consent order application, subject to the undertaker being given—

(a) at least 14 days written notice of any non-intrusive surveys;

(b) at least 28 days written notice of any intrusive surveys,

and Anglian Water will comply with any conditions reasonably imposed by the undertaker in granting such consent and will reimburse the undertaker any costs reasonably incurred by it in facilitating the undertaking of the surveys.

39. 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 4

FOR THE PROTECTION OF NATIONAL GAS TRANSMISSION PLC AS GAS UNDERTAKER

Application

40.—(1) For the protection of National Gas as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and National Gas.

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and National Gas, where the benefit of this Order is transferred or granted to another person under article 7 (consent to transfer benefit of the Order)—

(a) any agreement of the type mentioned in sub-paragraph (1) has effect as if it had been made between National Gas and the transferee or grantee (as the case may be); and

(b) written notice of the transfer or grant must be given to National Gas on or before the date of that transfer or grant.

(3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to National Gas under article 7 (consent to transfer benefit of the Order) (but without prejudice to paragraph 138(3)(b).

Interpretation

41. In this Part of this Schedule—

"acceptable credit provider" means a bank or financial institution with a credit rating that is not lower than: (i) "A-" if the rating is assigned by Standard & Poor's Ratings Group or Fitch Ratings; and "A3" if the rating is assigned by Moody's Investors Services Inc.;

"acceptable insurance" means general third party liability insurance effected and maintained by the undertaker with a combined property damage and bodily injury limit of indemnity of not less than £50,000,000.00 (fifty million pounds) per occurrence or series of occurrences arising out of one event. Such insurance must be maintained (a) during the construction period of the authorised works; and (b) after the construction period of the authorised works in respect of any use and maintenance of the authorised development by or on behalf of the undertaker which constitute specified works and arranged with an insurer whose security/credit rating meets the same requirements as an "acceptable credit provider", such insurance must include (without limitation)—

(a) a waiver of subrogation and an indemnity to principal clause in favour of National Gas;

(b) pollution liability for third party property damage and third party bodily damage arising from any pollution/contamination event with a (sub)limit of indemnity of not less than £10,000,000.00 (ten million pounds) per occurrence or series of occurrences arising out of one event or £20,000,000.00 (twenty million pounds) in aggregate;

"acceptable security" means either—

(a) a parent company guarantee from a parent company in favour of National Gas to cover the undertaker's liability to National Gas to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to National Gas and where required by National Gas, accompanied with a legal opinion confirming the due capacity and

authorisation of the parent company to enter into and be bound by the terms of such guarantee); or

(b) a bank bond or letter of credit from an acceptable credit provider in favour of National Gas to cover the undertaker's liability to National Gas for an amount of not less than £10,000,000.00 (ten million pounds) per asset per event up to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to National Gas);

"alternative apparatus" means appropriate alternative apparatus to the satisfaction of National Gas to enable National Gas to fulfil its statutory functions in a manner no less efficient than previously;

"apparatus" means any mains, pipes or other apparatus belonging to or maintained by National Gas 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 National Gas for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus—

(a) "authorised works" has the same meaning as is given to the term "authorised development" in article 2(1) of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Part of this Schedule;

(b) "commence" and "commencement" in this Part of this Schedule includes any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment;

"deed of consent" means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

"functions" includes powers and duties;

"ground mitigation scheme" means a scheme approved by National Gas (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

"ground monitoring scheme" means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, requires the undertaker to submit for National Gas'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 National Gas: construct, use, repair, alter, inspect, renew or remove the apparatus;

"National Gas" means National Gas Transmission PLC (Company Number 02006000) whose registered office is at National Grid House Warwick Technology Park, Gallows Hill, Warwick, CV34 6DA or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986;

"Network Code" means the network code prepared by National Gas pursuant to Standard Special Condition A11(3) of its Gas Transporter's Licence, which incorporates the Uniform Network Code, as defined in Standard Special Condition A11(6) of National Gas's Gas Transporters Licence, as both documents are amended from time to time;

"Network Code Claims" means any claim made against National Gas by any person or loss suffered by National Gas under the Network Code arising out of or in connection with any failure by National Gas to make gas available for off take at, or a failure to accept gas tendered for delivery from, any entry point to or exit point from the gas national transmission system as a result of the authorised works or any costs and/or expenses incurred by National Gas as a result of or in connection with, it taking action (including purchase or buy back of capacity) for the purpose of managing constraint or potential constraint on the gas national transmission system which may arise as a result of the authorised works;

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

"parent company" means a parent company of the undertaker acceptable to and approved by National Grid acting reasonably;

"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 paragraph 134(2) or otherwise; and/or

(b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 134(2) or otherwise; and/or

(c) includes any of the activities that are referred to in paragraph 8 of T/SP/SSW/22 (National Gas's policies for safe working in proximity to gas apparatus) "Specification for safe working in the vicinity of National Gas Transmission high pressure gas pipelines and associated installation – requirements for third parties T/SP/SSW/22 (March 2024)."

On Street Apparatus

42. Except for paragraphs 131 (apparatus of National Gas in stopped up streets), 136 (retained apparatus: protection) and 138 (indemnity) of this Part of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of National Gas, the other provisions of this Part of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Gas are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus of National Gas in stopped up streets

43.—(1) Where any street is stopped up under article 16 (temporary prohibition or restriction of use of streets and public rights of way), if National Gas has any apparatus in the street or accessed via that street National Gas has the same rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to National Gas, or procure the granting to National Gas of, legal easements reasonably satisfactory to National Gas 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 National Gas to require the removal of that apparatus under paragraph 134 or the power of the undertaker, subject to compliance with this sub-paragraph, to carry out works under paragraph 136.

(2) Notwithstanding the temporary stopping up or diversion of any street under the powers of article 16 (temporary prohibition or restriction of use of streets and public rights of way), National Gas is at liberty at all times to take all necessary access across any such stopped up street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that street.

Protective works to buildings

44. The undertaker, in the case of the powers conferred by article 21 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Gas.

Acquisition of land

45.—(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

(a) appropriate or acquire or take temporary possession of any land or apparatus; or

(b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of National Gas,

(c) otherwise than by agreement.

(2) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between National Gas and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of National Gas or affect the provisions of any enactment or agreement regulating the relations between National Gas and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as National Gas reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Gas and the undertaker acting reasonably and which must be no less favourable on the whole to National Gas unless otherwise agreed by National Gas, and it will be the responsibility of the undertaker to procure and 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) Save where otherwise agreed in writing between National Gas and the undertaker, the undertaker and National Gas agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation or removal of apparatus (including but not limited to the payment of costs and expenses relating to such relocation or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Gas or other enactments relied upon by National Gas as of right or other use in relation to the apparatus, then the provisions in this Part of this Schedule prevail.

(4) Any agreement or consent granted by National Gas under paragraph 136 (retained apparatus: protection) or any other paragraph of this Part of this Schedule, is not to be taken to constitute agreement under sub-paragraph (1).

Removal of apparatus

46.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in or possesses temporarily any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of National Gas to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Gas in accordance with sub-paragraph (2) to (5).

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Gas advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Gas reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), secure any necessary consents for the alternative

apparatus and afford to National Gas to its satisfaction (taking into account paragraph 47(1) below) the necessary facilities and rights—

(a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and

(b) subsequently for the maintenance of that apparatus.

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

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

(5) National Gas must, after the alternative apparatus to be provided or constructed has been agreed, and subject to a written diversion agreement having been entered into between the parties and the grant to National Gas of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

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

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Gas than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the matter may be referred to arbitration in accordance with paragraph 142 (Arbitration) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to National Gas as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection

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

(2) In relation to specified works the plan to be submitted to National Gas 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 National Gas has given written approval of the plan so submitted.

(4) Any approval of National Gas required under sub-paragraph (3)—

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (6); and,

(b) must not be unreasonably withheld.

(5) In relation to any work to which sub-paragraphs (1) and/or (2) apply, National Gas may require such modifications to be made to the plan as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) In relation to any work to which sub-paragraphs (1) or (2) apply, such works must be executed in accordance with—

(a) the plan, submitted under sub-paragraph (1) or as relevant sub paragraph (5), as approved or as amended from time to time by agreement between the undertaker and National Gas; and

(b) such reasonable requirements as may be made in accordance with sub-paragraphs (5) or (7) by National Gas for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Gas will be entitled to watch and inspect the execution of those works.

(7) Where, under sub-paragraph (6), National Gas requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature), such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to National Gas's satisfaction prior to the commencement of any specified works for which protective works are required and National Gas must give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(8) If National Gas in accordance with sub-paragraphs (5) or (7) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 128 to 130 and 133 to 135 apply as if the removal of the apparatus had been required by the undertaker under paragraph 134(2) (removal of apparatus).

(9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the specified works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph 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 National Gas notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (5), (6) and (7) insofar as is reasonably practicable in the circumstances and comply with sub paragraph (11) at all times;

(11) At all times when carrying out any works authorised under the Order the undertaker must comply with National Gas's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Gas Transmission high pressure gas pipelines and associated installation – requirements for third parties T/SP/SSW/22" (March 2024) and HSE's "HSG47 (Third Edition) Avoiding Danger from underground services" (2014).

(12) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker will implement an appropriate ground mitigation scheme

save that National Gas retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 137.

Expenses

49.—(1) Save where otherwise agreed in writing between National Gas and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to National Gas within 30 days of receipt of an itemised invoice or claim from National Gas all charges, costs and expenses reasonably anticipated within the following three months or reasonably and properly incurred by National Gas 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 including without limitation—

(a) any costs reasonably incurred by or compensation properly paid by National Gas in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Gas as a consequence of National Gas—

(i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 134(3); or

(ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Gas;

(b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;

(c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;

(d) the approval of plans;

(e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;

(f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 142 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Gas by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

(a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) Any amount which apart from this sub-paragraph would be payable to National Gas in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on National Gas 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

50.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, use maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by 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 National Gas, or there is any interruption in any service provided, or in the supply of any goods or energy, by National Gas, or National Gas becomes liable to pay any amount to any third party, the undertaker will—

(a) bear and pay on demand accompanied by an invoice or claim from National Gas the cost reasonably and properly incurred by National Gas in making good such damage or restoring the supply; and

(b) indemnify National Gas for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Gas, by reason or in consequence of any such damage or interruption or National Gas becoming liable to any third party and including Network Code Claims other than arising from any negligence or default of National Gas.

(2) The fact that any act or thing may have been done by National Gas on behalf of the undertaker or in accordance with a plan approved by National Gas or in accordance with any requirement of National Gas or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of sub-paragraph (1) unless National Gas 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 National Gas, its officers, servants, contractors or agents;

(b) any authorised works or any other works authorised by this Part of this Schedule carried out by National Gas as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article 7 (consent to transfer benefit of the Order) subject to the proviso that once such works become apparatus ("new apparatus"), any authorised works yet to be executed and not falling within this sub-paragraph (b) will be subject to the full terms of this Part of this Schedule including this paragraph 138; and

(c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable.

(4) National Gas must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

(5) National Gas must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(6) National Gas must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where it is within National Gas's reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of National Gas's control and if reasonably requested to do so by the undertaker National Gas must provide an explanation of how the claim has been minimised, where relevant.

(7) Not to commence construction (and not to permit the commencement of such construction) of the specified works on any land owned by National Gas or in respect of which National Gas has an easement or wayleave for its apparatus or any other interest or to carry out any works within 15 metres of National Gas's apparatus until the following conditions are satisfied—

(a) unless and until National Gas is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has first provided the acceptable security (and provided evidence that it will maintain such acceptable security for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and National Gas has confirmed the same to the undertaker in writing; and

(b) unless and until National Gas is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to National Gas that it will maintain such acceptable insurance for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and National Gas has confirmed the same in writing to the undertaker.

(8) In the event that the undertaker fails to comply with 138(7) of this Part of this Schedule, nothing un this Part of this Schedule will prevent National Gas from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

Enactments and agreements

51. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between National Gas and the undertaker, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and National Gas in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

52.—(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or National Gas requires the removal of apparatus under paragraph 134(2) or National Gas makes requirements for the protection or alteration of apparatus under paragraph 136 (retained apparatus: protection), the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of National Gas's undertaking and National Gas must use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever National Gas's consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

Access

53. If in consequence of the agreement reached in accordance with paragraph (1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable National Gas to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

54. Save for differences or disputes arising under paragraph 134(2), 134(4), 47(1) and 136(11) any difference or dispute arising between the undertaker and National Gas under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Gas, be determined by arbitration in accordance with article 43 (arbitration).

Notices

55. Notwithstanding article 41 (service of notices), any plans submitted to National Gas by the undertaker pursuant to paragraph 136 must be submitted to https://lsbud.co.uk/ or such other address as National Gas may from time to time appoint instead for that purpose and notify to the undertaker in writing.

PART 5

FOR THE PROTECTION OF NATIONAL GRID VIKING LINK LIMITED

Application

56.—(1) For the protection of Viking Link as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and Viking Link.

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and Viking Link, where the benefit of this Order is transferred or granted to another person under article 7 (consent to transfer benefit of the Order)—

(a) any agreement of the type mentioned in sub-paragraph (1) has effect as if it had been made between Viking Link and the transferee or grantee (as the case may be); and

(b) written notice of the transfer or grant must be given to Viking Link on or before the date of that transfer or grant.

(3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to Viking Link or National Grid under article 7 (consent to transfer benefit of the Order) (but without prejudice to paragraph 154(3)(b)).

Interpretation

57. In this Part of this Schedule—

"alternative apparatus" means appropriate alternative apparatus to the satisfaction of Viking Link to enable Viking Link to fulfil its statutory functions in a manner no less efficient than previously;

"apparatus" means any electric lines or electrical plant as defined in section 64 of the 1989 Act belonging to or maintained by Viking Link together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of Viking Link for the purposes of the conveyance of electricity between Great Britain and Denmark and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

"authorised works" has the same meaning as is given to the term "authorised development" in article 2(1) of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Part of this Schedule;

"commence" and "commencement" in this Part of this Schedule includes any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment;

"deed of consent" means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

"functions" includes powers and duties;

"ground mitigation scheme" means a scheme approved by Viking Link (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

"ground monitoring scheme" means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, requires the undertaker to submit for Viking Link'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 Viking Link: construct, use, repair, inspect, renew or remove the apparatus of Viking Link;

"Viking Link" means National Grid Viking Link Limited (Company Number 09075537) whose registered office is at 1-3 Strand, London, UK WC2N 5EH or any successor as a licence holder within the meaning of Part 1 of the 1989 Act;

"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; 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; or

(b) may in any way adversely affect any apparatus; and

On Street Apparatus

58. Except for paragraphs 147 (apparatus in stopped up streets); 152 (apparatus: protection), 153 (expenses) and 154 (indemnity) of this Part of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of Viking Link, the other provisions of this Part of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and Viking Link are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus in stopped up streets

59.—(1) Where any street is stopped up under article 16 (temporary prohibition or restriction of use of streets and public rights of way), if Viking Link has any apparatus in the street or accessed via that street Viking Link has the same rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to Viking Link, or procure the granting to Viking Link of, legal easements reasonably satisfactory to Viking Link in respect of such apparatus and access to it prior to the stopping up of any such street but nothing in this paragraph affects any right of the undertaker or Viking Link to require the removal of that apparatus under paragraph 150 or the power of the undertaker, subject to compliance with this sub-paragraph, to carry out works under paragraph 152 (apparatus: protection).

(2) Notwithstanding the temporary stopping up or diversion of any street under the powers of article 16 (temporary prohibition or restriction of use of streets and public rights of way), Viking Link is at liberty at all times to take all necessary access across any such stopped up street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that street.

Protective works to buildings

60. The undertaker, in the case of the powers conferred by article 21 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of Viking Link.

Acquisition of land

61.—(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—

(a) appropriate or acquire or take temporary possession of any land or apparatus of Viking Link; or

(b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of Viking Link,

otherwise than by agreement with Viking Link (such agreement not to be unreasonably withheld).

(2) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between Viking Link and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of Viking Link or affect the provisions of any enactment or agreement regulating the relations between Viking Link and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as Viking Link reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between Viking Link and the undertaker acting reasonably and which must be no less favourable on the whole to Viking Link unless otherwise agreed by Viking Link, and it will be the responsibility of the undertaker to procure and 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) Save where otherwise agreed in writing between Viking Link and the undertaker the undertaker and Viking Link agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus/including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by Viking Link and/or other enactments relied upon by Viking Link as of right or other use in relation to the apparatus, then the provisions in this Part of this Schedule prevail.

(4) Any agreement or consent granted by Viking Link under paragraph 152 (apparatus: protection) or any other paragraph of this Part of this Schedule, is not to be taken to constitute agreement under sub-paragraph (1).

Removal of apparatus

62.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in or possesses temporarily any land in which any apparatus is placed, that apparatus must not be removed under this Schedule and any right of Viking Link to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of Viking Link in accordance with sub-paragraphs (2) to (5).

(2) If, for the purpose of executing any works comprised in the authorised development 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 Viking Link advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order Viking Link reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), secure any necessary consents for the alternative apparatus and afford to Viking Link to its satisfaction (taking into account paragraph 63(1) (facilities and rights for alternative apparatus) below) the necessary facilities and rights—

(a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and

(b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, Viking Link may, in its sole discretion, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

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

(5) Viking Link must, after the alternative apparatus to be provided or constructed has been agreed, and subject to a written diversion agreement having been entered into between the parties and the grant to Viking Link 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

63.—(1) Subject to sub-paragraph (2), where, in accordance with the provisions of this Schedule, the undertaker affords to or secures for Viking Link facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and Viking Link and must be no less favourable on the whole to Viking Link than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by Viking Link.

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to Viking Link than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject the matter may be referred to arbitration in accordance with paragraph 158

(arbitration) of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to Viking Link as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case. In respect of the appointment of an arbitrator under this sub-paragraph, article 43 (arbitration) applies.

Apparatus: protection

64.—(1) Not less than 56 days before the commencement of any specified works, the undertaker must submit to Viking Link a plan of the works to be executed and seek from Viking Link details of the underground extent of their electricity assets.

(2) In relation to specified works the plan to be submitted to Viking Link under sub-paragraph (1) must include a method statement and describe—

(a) the exact position of the works;

(b) the level at which these are proposed to be constructed or renewed;

(c) the manner of their construction or renewal including details of excavation, positioning of plant;

(d) the position of all apparatus;

(e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;

(f) any intended maintenance regimes;

(g) an assessment of risks of rise of earth issues; and

(h) a ground monitoring scheme in respect of those works, if reasonably required by Viking Link.

(3) The undertaker must not commence any works to which sub-paragraph (2) applies until Viking Link has given written approval of the plan so submitted.

(4) Any approval of Viking Link 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-paragraph (2) applies, Viking Link may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage, for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Specified works must be executed in accordance with—

(a) the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (5), as approved or as amended from time to time by agreement between the undertaker and Viking Link; and

(b) such reasonable requirements as may be made in accordance with sub-paragraphs (5) or (7) by Viking Link for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and Viking Link will be entitled to watch and inspect the execution of those works.

(7) Where, under sub-paragraph (6), Viking Link requires any protective works to be carried out by itself or by the undertaker such protective works (whether of a temporary or permanent nature) inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to Viking Link's reasonable satisfaction prior to the commencement of any specified works for which protective works are required and Viking Link must give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(8) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the specified works,

a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(9) 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 Viking Link notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (5), (6) and (7) insofar as is reasonably practicable in the circumstances.

(10) If Viking Link in accordance with sub-paragraphs (5) or (7) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, sub-paragraphs (1) to (3) and (6) to (8) apply as if the removal of the apparatus had been required by the undertaker under paragraph 150(2) (removal of apparatus).

Expenses

65. Subject to the following provisions of this paragraph, the undertaker must pay to Viking Link within 30 days of receipt of an itemised invoice or claim from Viking Link all charges, costs and expenses reasonably anticipated within the following three months or reasonably and properly incurred by Viking Link in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus which may be required in consequence of the execution of any authorised works including without limitation—

(a) any costs reasonably incurred by or compensation properly paid by Viking Link in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by Viking Link as a consequence of Viking Link exercising any compulsory purchase powers in the Order transferred to or benefitting Viking Link;

(b) the approval of plans under this Part of this Schedule;

(c) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works; and

(d) 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.

Indemnity

66.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, use maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by 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 Viking Link, or there is any interruption in any service provided, or in the supply of any goods, by Viking Link, the undertaker will—

(a) bear and pay on demand accompanied by an invoice or claim from Viking Link the cost reasonably and properly incurred by Viking Link in making good such damage or restoring the supply; and

(b) indemnify Viking Link for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from Viking Link, by reason or in consequence of any such damage or interruption other than arising from any default of Viking Link

(2) The fact that any act or thing may have been done by Viking Link on behalf of the undertaker or in accordance with a plan approved by Viking Link or in accordance with any requirement of Viking Link or under its supervision will not (unless sub-paragraph (3) applies),

excuse the undertaker from liability under the provisions of sub-paragraph (1) unless Viking Link 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 Viking Link, its officers, servants, contractors or agents;

(b) any authorised works or any other works authorised by this Part of this Schedule carried out by Viking Link as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article 7 (consent to transfer 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 sub-paragraph 154(3)(b) will be subject to the full terms of this Part of this Schedule including this paragraph 154; and/or

(c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable.

(4) Viking Link must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations (such representations not to be unreasonably withheld or delayed).

(5) Viking Link must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(6) Viking Link must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where it is within Viking Link's reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of Viking Link's control and if reasonably requested to do so by the undertaker Viking Link must provide an explanation of how the claim has been minimised, where relevant.

(7) Any dispute between the undertaker and Viking Link regarding the terms, cover or insured level of the insurance policy shall be resolved in accordance with paragraph 158 (Arbitration).

Enactments and agreements

67. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Viking Link in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

68.—(1) Where in consequence of the proposed construction of any part of the authorised works, Viking Link makes requirements for the protection or alteration of apparatus under paragraph 152, the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of Viking Link's undertaking and Viking Link must use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever Viking Link's consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

Access

69. If in consequence of the agreement reached under paragraph 61(1) (acquisition of land) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable Viking Link to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

70. Save for differences or disputes arising under paragraph 152 (apparatus: protection), any difference or dispute arising between the undertaker and Viking Link under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and Viking Link, be determined by arbitration in accordance with article 43 (arbitration).

Notices

71. Notwithstanding article 41 (Service of notices), any plans submitted to Viking Link by the undertaker pursuant to paragraph 152 (apparatus: protection) must be submitted using the "LSBUD" system (https://lsbud.co.uk/) or to such other address as Viking Link may from time to time appoint instead for that purpose and notify to the undertaker in writing.

PART 6

FOR THE PROTECTION OF LINCOLNSHIRE FIRE & RESCUE SERVICE

Application

72. For the protection of Lincolnshire Fire and Rescue as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and Lincolnshire Fire and Rescue.

Interpretation

73. In this Part of this Schedule—

"Index" means the Consumer Price Index;

"Index Linked" means an increase in the sums payable on an annual basis or pro rata per diem from the first day following the first year of operation of the authorised development, to the date of payment, based upon the relevant Index last published before the first day following the first year of operation of the authorised development; and

"Lincolnshire Fire and Rescue" means Lincolnshire County Council in its capacity as a fire and rescue authority pursuant to section 1(2)(a) of the Fire and Rescue Services Act 2004.

Site visits

74. The undertaker must, prior to the date of completion of Work No. 2 or Work No. 3, use reasonable endeavours to facilitate a site familiarisation exercise in connection with Work No. 2 or Work No. 3 of the authorised development for Lincolnshire Fire and Rescue for the purposes of providing the necessary assurance to Lincolnshire Fire and Rescue that all the required systems and measures are in place in accordance with the battery storage safety management plan.

75. Following the anniversary of the date of completion of Work No. 2 or Work No. 3 of the authorised development, the undertaker must use reasonable endeavours to facilitate an annual review of the site by Lincolnshire Fire and Rescue at the reasonable request of Lincolnshire Fire and Rescue, up until the date of decommissioning of Work No. 2 or Work No. 3 of the authorised development.

Costs

76. Pursuant to the provisions set out in paragraphs 162 and 163, the undertaker must pay to Lincolnshire Fire and Rescue—

(a) £16,665 in the first year of operation of the authorised development for, or in connection with Lincolnshire Fire and Rescue's attendance at the site familiarisation exercise facilitated by the undertaker pursuant to paragraph 162, such sum to be paid on a date mutually agreed between the parties (the "Payment Date"); and

(b) £1,530 in each subsequent year of operation of the authorised development until the later of the date of decommissioning of Work No. 2 and the date of decommissioning of Work No. 3, payable on the anniversary of the Payment Date, if in that year an annual review has taken place pursuant to paragraph 163.

77. The costs payable under sub-paragraph 164(b) are to be Index Linked.

Arbitration

78. Any difference or dispute arising between the undertaker and Lincolnshire Fire and Rescue under this Part of this Schedule must be determined by arbitration in accordance with article 43 (arbitration).

PART 7

FOR THE PROTECTION OF ECOTRICITY (HECK FEN SOLAR) LIMITED

79. The provisions of this Part of this Schedule apply for the protection of Heckington Fen unless otherwise agreed in writing between the undertaker and Heckington Fen.

80. In this Part of this Schedule—

"Heckington Fen" means Ecotricity (Heck Fen Solar) Limited (company number 13225224) whose registered office address is at Lion House, Rowcroft, Stroud, England, GL5 3BY;

"Heckington Fen Solar Park" means the proposed solar and battery storage park on land near Boston, Lincolnshire, consented by the Heckington Fen Solar Park Order 2025;

"Heckington Fen Works" means works to install cables, structures or other infrastructure within the Interface Area in conjunction with the proposed Heckington Fen Solar Park;

"Interface Area" means those areas hatched yellow on the Interface Area Plan; and

"Interface Area Plan" means the plan entitled Interface Area Plan and certified as the Interface Area Plan for the purposes of this Part of this Schedule.

81. The undertaker does not need to comply with the obligations in this Part of this Schedule where the order authorising the Heckington Fen Solar Park has expired without the authorised development having been commenced.

82. The undertaker must consult with Heckington Fen in the formulation of the proposed method of working and timing of execution of the undertaker's works within the Interface Area, not less than 60 days prior to such works commencing, and have regard to reasonable representations received from Heckington Fen made at least 30 days prior to such works commencing.

83. The undertaker and Heckington Fen must act in good faith and use reasonable endeavours to cooperate to formulate the proposed method of working and timing of execution of works within the Interface Area (in accordance with paragraph 170 above) in a way which enables the undertaker and Heckington Fen to deliver the authorised development and the Heckington Fen Works respectively.

84. The undertaker must give to Heckington Fen not less than 30 days' written notice of its intention to commence the construction of the undertaker's works within the Interface Area and, not more than 14 days after completion of their construction, must give Heckington Fen written notice of the completion.

85. The undertaker must at all reasonable times during construction of the undertaker's works in the Interface Area allow Heckington Fen and its servants and agents reasonable access to the Interface Area and all reasonable facilities for inspection of the works within the Interface Area.

86. In the event that Heckington Fen notifies the undertaker that it no longer has an interest in the Interface Area or no longer proposes to carry out works in the Interface Area, the undertaker does not need to comply with the obligations in paragraphs 170 to 173 above.

87. Any difference or dispute arising between Heckington Fen and the undertaker must, unless otherwise agreed in writing between Heckington Fen and the undertaker, be determined by arbitration in accordance with article 43 (arbitration) of the Order.

PART 8

FOR THE PROTECTION OF TRITON KNOLL LIMITED

Application

88.—(1) For the protection of Triton Knoll as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and Triton Knoll.

(2) Where the benefit of this Order is transferred or granted to another person under article 7 (consent to transfer benefit of the Order)—

(a) any agreement of the type mentioned in sub-paragraph (1) has effect as if it had been made between Triton Knoll and the transferee or grantee (as the case may be); and

(b) written notice of the transfer or grant must be given to Triton Knoll on or before the date of that transfer or grant.

Interpretation

89. In this Part of this Schedule—

"alternative apparatus" means appropriate alternative apparatus to the reasonable satisfaction of Triton Knoll to enable Triton Knoll to fulfil its statutory functions in a manner no less efficient than previously;

"apparatus" means any electric lines or electrical plant as defined in the 1989 Act, belonging to or maintained by Triton Knoll together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of Triton Knoll 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(1) of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Part of this Schedule;

"commence" and "commencement" in this Part of this Schedule includes any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment;

"functions" includes powers and duties;

"ground mitigation scheme" means a scheme approved by Triton Knoll (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

"ground monitoring scheme" means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, requires the undertaker to submit for Triton Knoll'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 construct, use, repair, alter, inspect, renew or remove any apparatus or alternative apparatus of Triton Knoll;

"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;

"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 paragraph 181(2) or otherwise; or

(b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 181(2) or otherwise;

"Triton Knoll" means Triton Knoll OFTO Limited (company number 14141892) whose registered office is at 3rd Floor (South), 200 Aldersgate Street, London, United Kingdom, EC1A 4HD; and

"Triton Knoll access track" means the area of the Order land comprised of plots 13-11, 13-12, 13-14, 13-16, 13-17, 14-1, 14-2, 14-3, 14-4, 14-5, 14-6, 14-7, 14-8, 14-9, 15-2, 15-3 and 15-4 contained in the book of reference to the Order connecting the A17 to Doubletwelves Drove required in connection with Work No. 10.

On Street Apparatus

90. Except for paragraph 95 (retained apparatus: protection), and 97 (indemnity) of this Part of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of Triton Knoll, the other provisions of this Part of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and Triton Knoll are regulated by the provisions of Part 3 of the 1991 Act.

Protective works to buildings

91. The undertaker, in the case of the powers conferred by article 21 (protective works to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of Triton Knoll (such consent not to be unreasonably withheld).

Acquisition of land

92.—(1) Save in respect of the Triton Knoll access track (to which the restrictions of this paragraph do not apply for the avoidance of doubt), the undertaker may not—

(a) appropriate or acquire or take temporary possession of any land or apparatus of Triton Knoll; or

(b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right or apparatus of Triton Knoll,

otherwise than by agreement (such agreement not to be unreasonably withheld or delayed).

(2) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between Triton Knoll and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of Triton Knoll or affect the provisions of any enactment or agreement regulating the relations between Triton Knoll and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as Triton Knoll reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between Triton Knoll and the undertaker acting reasonably and which must be no less favourable on the whole to Triton Knoll unless otherwise agreed by Triton Knoll, and it will be the responsibility of the undertaker to procure and 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 Triton Knoll 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 Triton Knoll or other enactments relied upon by Triton Knoll as of right or other use in relation to the apparatus, then the provisions in this Part of this Schedule prevail, save to the extent otherwise agreed in writing between the undertaker and Triton Knoll.

(4) Any agreement or consent granted by Triton Knoll under paragraph 183 or any other paragraph of this Part of this Schedule, is not to be taken to constitute agreement under sub-paragraph (1).

Removal of apparatus

93.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in or possesses temporarily any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of Triton Knoll to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of Triton Knoll in accordance with sub-paragraph (2) to (5).

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to Triton Knoll advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order Triton Knoll reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), secure any necessary consents for the alternative apparatus and afford to Triton Knoll to its reasonable satisfaction (taking into account paragraph 94(1) below) the necessary facilities and rights—

(a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and

(b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, Triton Knoll must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be

constructed save that this obligation does not extend to the requirement for Triton Knoll to use its compulsory purchase powers to this end unless it elects to so do.

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

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

Facilities and rights for alternative apparatus

94.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for Triton Knoll facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and Triton Knoll and must be no less favourable on the whole to Triton Knoll than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by Triton Knoll (acting reasonably).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to Triton Knoll than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the matter may be referred to arbitration in accordance with paragraph 189 (arbitration) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to Triton Knoll as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection

95.—(1) Not less than 56 days (or such lesser period agreed by Triton Knoll, acting reasonably) before the commencement of any specified works the undertaker must—

(a) submit to Triton Knoll a plan of those works to be executed including a ground monitoring scheme; and

(b) seek from Triton Knoll details of the underground extent of their electricity assets.

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

(a) the exact position of the works;

(b) the level at which these are proposed to be constructed or renewed;

(c) the manner of their construction or renewal including details of excavation, positioning of plant;

(d) the position of all apparatus;

(e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;

(f) any intended maintenance regimes;

(g) an assessment of risks of rise of earth issues; and

(h) a methodology to demonstrate that all such works will have no adverse effect on the rating of the apparatus.

(3) The undertaker must not commence any specified works until Triton Knoll has given written approval of the plan so submitted (and the ground monitoring scheme).

(4) Any approval of Triton Knoll required under sub-paragraph (3)—

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5), (7) and (8); and

(b) must not be unreasonably withheld or delayed.

(5) Triton Knoll may require such modifications to be made to the plan as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage, for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus. Triton Knoll must give notice of its requirement for such works as soon as reasonably practicable and in any event within 42 days of the date of submission of a plan pursuant to sub-paragraph (1) (except in an emergency).

(6) Specified works must be executed in accordance with—

(a) the plan, submitted under sub-paragraph (1) (and the ground monitoring scheme), as approved or as amended from time to time by agreement between the undertaker and Triton Knoll; and

(b) all conditions imposed under sub-paragraph (4)(a), and Triton Knoll will be entitled to watch and inspect the execution of all specified works.

(7) Where Triton Knoll 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 Triton Knoll's reasonable satisfaction prior to the commencement of any specified works (or any relevant part thereof) (unless otherwise agreed by Triton Knoll, acting reasonably).

(8) If Triton Knoll, in accordance with sub-paragraphs (5) or (7) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 176 to 178 and 180 to 182 apply as if the removal of the apparatus had been required by the undertaker under paragraph 181(2) (removal of apparatus).

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

(10) The undertaker is not 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 Triton Knoll notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (5), (6) and (7) insofar as is reasonably practicable in the circumstances.

(11) Following completion of the works the undertaker shall submit a written report demonstrating that the works have had no adverse effect on the rating of the apparatus.

(12) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker will implement an appropriate ground mitigation scheme and Triton Knoll retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs pursuant to paragraph 184 (expenses).

Expenses

96.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to Triton Knoll within 40 days of receipt of an itemised invoice or claim (accompanied by supporting evidence) from Triton Knoll all charges, costs and expenses reasonably and properly incurred by Triton Knoll 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 including without limitation—

(a) any costs reasonably incurred by or compensation properly paid by Triton Knoll in connection with the acquisition of rights or the exercise of statutory powers for such

apparatus including without limitation all costs incurred by Triton Knoll as a consequence of Triton Knoll—

(i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 181(3); or

(ii) exercising any compulsory purchase powers in the Order transferred to or benefitting Triton Knoll;

(b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;

(c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;

(d) the approval of plans under this Part of this Schedule;

(e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;

(f) the supervision and surveillance of all specified works by Triton Knoll and its engineers, including the cost of travel, under paragraph 183(6)(b); and

(g) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 189 (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 Triton Knoll by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

(a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) Any amount which apart from this sub-paragraph would be payable to Triton Knoll 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 Triton Knoll 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

97.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction use maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by 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 Triton Knoll, or there is any interruption in any service provided, or in the supply of any goods, by Triton Knoll, or Triton Knoll becomes liable to pay any amount to any third party, the undertaker will—

(a) bear and pay on demand accompanied by an invoice or claim from Triton Knoll the cost reasonably and properly incurred by Triton Knoll in making good such damage or restoring the supply; and

(b) indemnify Triton Knoll for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from Triton Knoll, by reason or in consequence of any such damage or interruption or Triton Knoll becoming liable to any third party.

(2) The fact that any act or thing may have been done by Triton Knoll on behalf of the undertaker or in accordance with a plan approved by Triton Knoll or in accordance with any requirement of Triton Knoll as a consequence of the authorised works or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of sub-paragraph (1) unless Triton Knoll 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 Triton Knoll, its officers, servants, contractors or agents;

(b) any authorised works or any other works authorised by this Part of this Schedule carried out by Triton Knoll as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article 7 (consent to transfer 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 sub-paragraph (3)(b) will be subject to the full terms of this Part of this Schedule including this paragraph 185; and

(c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable.

(4) Triton Knoll must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must be made (unless payment is required in connection with a statutory compensation scheme) without first consulting the undertaker and considering their representations (such representations not to be unreasonably withheld or delayed).

(5) Triton Knoll must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(6) Triton Knoll must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity provisions under this paragraph applies where it is within Triton Knoll's reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of

Triton Knoll's control and if reasonably requested to do so by the undertaker Triton Knoll must provide an explanation of how the claim has been minimised, where relevant.

Enactments and agreements

98. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Triton Knoll in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

99.—(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or Triton Knoll requires the removal of apparatus under paragraph 181(2) (removal of apparatus) or Triton Knoll makes requirements for the protection or alteration of apparatus under paragraph 183 (retained apparatus: protection), the undertaker must use its reasonable endeavours to co-ordinate the execution of the works (which are subject to this Part of this Schedule) in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of Triton Knoll's undertaking and Triton Knoll must use its reasonable endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever Triton Knoll's consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

Access

100. If in consequence of the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable Triton Knoll to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

101. Save for differences or disputes arising under paragraph 181(2), 181(4), and 94(1), any difference or dispute arising between the undertaker and Triton Knoll under this Part of this Schedule must be determined by arbitration in accordance with article 43 (arbitration).

Notices

102. Notwithstanding article 41 (service of notices), any plans submitted to Triton Knoll by the undertaker pursuant to paragraph 183 (retained apparatus: protection) must be submitted to Triton Knoll at its registered office or to such other address as Triton Knoll may from time to time appoint instead for that purpose and notify to the undertaker in writing.

PART 9

FOR THE PROTECTION OF BICKER FEN WINDFARM LIMITED

103. The provisions of this Part of this Schedule apply for the protection of Bicker Fen unless otherwise agreed in writing between the undertaker and Bicker Fen.

104. In this Part of this Schedule—

"Bicker Fen" means Bicker Fen Windfarm Limited (company number 06708662) whose registered office address is at 5th Floor, 20 Fenchurch Street, London, England, EC3M 3BY;

"Bicker Fen interface area" means the area of the Order land comprised of plots 18-9 and 18-48 contained in the book of reference; and

"Bicker Fen Wind Farm" means the wind farm located on land near Boston, Lincolnshire.

Co-ordination and co-operation

105. The undertaker must consult with Bicker Fen in the formulation of the proposed method of working and timing of execution of the undertaker's works within the Bicker Fen interface area, not less than 60 days prior to such works commencing, and have regard to reasonable representations received from Bicker Fen made at least 30 days prior to such works commencing.

106. The undertaker and Bicker Fen must act in good faith and use reasonable endeavours to cooperate to formulate the proposed method of working and timing of execution of works within the Bicker Fen interface area (in accordance with paragraph 193 above) in a way which enables—

(a) the undertaker to deliver the authorised development; and

(b) Bicker Fen to operate and maintain Bicker Fen Wind Farm.

107. The undertaker must give to Bicker Fen not less than 30 days' written notice of its intention to commence the construction of the undertaker's works within the Bicker Fen interface area and, not more than 14 days after completion of their construction, must give Bicker Fen written notice of the completion.

108. The undertaker must at all reasonable times during construction of the undertaker's works in the Bicker Fen interface area allow Bicker Fen and its servants and agents reasonable access to the Bicker Fen interface area and all reasonable facilities for inspection of the works within the Bicker Fen interface area.

109. In the event that Bicker Fen notifies the undertaker that it no longer has an interest in the Bicker Fen interface area, the undertaker does not need to comply with the obligations in paragraphs 193 to 196 above.

Indemnity

110.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction, use, maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by it) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any infrastructure forming part of Bicker Fen Wind Farm, the undertaker will

(a) bear and pay on demand (accompanied by an invoice or claim from Bicker Fen) the cost reasonably incurred by Bicker Fen in making good such damage; and

(b) indemnify Bicker Fen up to a sum of £10,000,000 (ten million pounds) for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from Bicker Fen, by reason or in consequence of any such damage other than arising from any negligence or default of Bicker Fen.

(2) Nothing in sub-paragraph (1) will impose any liability on the undertaker in respect of any damage to the extent that it is attributable to the neglect or default of Bicker Fen, its officers, servants, contractors or agents.

(3) Bicker Fen must give the undertaker reasonable notice of any 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 undertaker and considering its representations.

(4) Before carrying out any of the authorised works within the Bicker Fen interface area the undertaker must put in place a policy of insurance with a reputable insurer the coverage and level of cover to be first agreed in writing between the undertaker and Bicker Fen (but to be no more

than £10,000,000 (ten million pounds)) per occurrence or series of occurrences arising out of one event), and evidence of such insurance to be provided on request and thereafter maintained for the duration of the carrying out of any specified works.

111. The total amount payable by the undertaker pursuant to this Part of this Schedule shall not exceed £10,000,000 (ten million pounds).

112. Any difference or dispute arising between Bicker Fen and the undertaker must, unless otherwise agreed in writing between Bicker Fen and the undertaker, be determined by arbitration in accordance with article 43 (arbitration) of the Order.

PART 10

FOR THE PROTECTION OF RAILWAY INTERESTS

113. The 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 215 of this Part of this Schedule any other person on whom rights or obligations are conferred by that paragraph.

114. In this Part of this Schedule—

"asset protection agreement" means an agreement to regulate the construction and maintenance of the specified work in a form prescribed from time to time by Network Rail;

"construction" includes execution, placing, alteration and reconstruction and "construct" and "constructed" have corresponding meanings;

"the engineer" means an engineer appointed by Network Rail for the purposes of this Order;

"network licence" means the network licence, as the same is amended from time to time, granted to Network Rail Infrastructure Limited by the Secretary of State in exercise of their powers under section 8 (licences) of the Railways Act 1993;

"Network Rail" means Network Rail Infrastructure Limited (company number 02904587, whose registered office is at Waterloo General Office, London SE1 8SW) and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition "associated company" means any company which is (within the meaning of section 1159 of the Companies Act 2006) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited and any successor to Network Rail Infrastructure Limited's railway undertaking;

"plans" includes sections, designs, 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;

"railway operational procedures" means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

"railway property" means any railway belonging to Network Rail and

(a) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and

(b) any easement or other property interest held or used by Network Rail or a tenant or licencee of Network Rail for the purposes of such railway or works, apparatus or equipment;

"regulatory consents" means any consent or approval required under—

(a) the Railways Act 1993;

(b) the network licence; and/or

(c) any other relevant statutory or regulatory provisions;

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 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 5 in respect of such works.

115.—(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 is or may be subject to railway operational procedures, Network Rail must—

(a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and

(b) use their reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development pursuant to this Order

116.—(1) The undertaker must not exercise the powers conferred by—

(a) article 3 (development consent etc. granted by the Order);

(b) article 5 (maintenance of the authorised development);

(c) article 20 (discharge of water);

(d) article 22 (authority to survey and investigate the land);

(e) article 23 (compulsory acquisition of land);

(f) article 24 (compulsory acquisition of land – incorporation of the mineral code);

(g) article 25 (statutory authority to override easements and other rights);

(h) article 27 (compulsory acquisition of rights and imposition of restrictive covenants);

(i) article 28 (private rights);

(j) article 30 (acquisition of subsoil only);

(k) article 32 (temporary use of land for carrying out the authorised development);

(l) article 34 (temporary use of land for maintaining or decommissioning the authorised development);

(m) article 35 (statutory undertakers);

(n) article 42 (felling or lopping of trees or removal of hedgerows);

(o) the powers conferred by section 11(3) (power of entry) of the 1965 Act;

(p) the powers conferred by section 203 (power to override easements and rights) of the Housing and Planning Act 2016;

(q) the powers conferred by section 172 (right to enter and survey land) of the Housing and Planning Act 2016; and

(r) any powers under in respect of the temporary possession of land under the Neighbourhood Planning Act 2017;

in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(3) The undertaker must not exercise the powers conferred by sections 271 or 272 of the 1990 Act, article 35 (statutory undertakers), article 25 (statutory authority to override easements and other rights) or article 28 (private rights), in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

(4) The undertaker must not under the powers of this Order acquire or use or acquire new rights over, or seek to impose any restrictive covenants over, any railway property or extinguish any existing rights of Network rail, in respect of any third party property, except with the consent of Network Rail.

(5) The undertaker must not under the powers of this Order do anything which would result in railway property being incapable of being used or maintained or which would affect the safe running of trains on the railway.

(6) Where Network Rail is asked to give its consent pursuant to this paragraph, such consent must not be unreasonably withheld but may be given subject to reasonable conditions but it shall never be unreasonable to withhold consent for reasons of operational or railway safety (such matters to be in Network Rail's absolute discretion).

(7) The undertaker must enter into an asset protection agreement prior to the carrying out of any specified work.

117.—(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.

(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 intimated their disapproval of those plans and the grounds of such disapproval the undertaker may serve upon the engineer written notice requiring the engineer to intimate approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further 28 days the engineer has not intimated approval or disapproval, the engineer shall be 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 their approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's 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 de-commissioning 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 until the engineer has notified the undertaker that the protective works have been completed to their reasonable satisfaction.

118.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 205(4) must, when commenced, be constructed—

(a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 205;

(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 thereon and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction shall be caused by the carrying out of, or in consequence of the construction of a specified work, the undertaker must, notwithstanding any such approval, make good such damage and must pay to Network Rail all reasonable expenses 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 servants, contractors or agents or any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

119. The undertaker must—

(a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and

(b) supply the engineer with all such information as they may reasonably require with regard to a specified work or the method of constructing it.

120. Network Rail must at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by Network Rail under this Part of this Schedule during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

121.—(1) If any permanent or temporary alterations or additions to railway property are reasonably necessary in consequence of the construction or completion of a specified work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the undertaker 56 days' notice (or in the event of an emergency or safety critical issue such notice as is reasonable in the circumstances) of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work is to be constructed, Network Rail must assume construction of that part of the specified work and the undertaker must, notwithstanding any such approval of a specified work under paragraph 205(3), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 210(a) provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

(4) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving must be set off against any sum payable by the undertaker to Network Rail under this paragraph.

122. 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 205(3) or in constructing any protective works under the provisions of paragraph 205(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;

(b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work;

(c) in respect of the employment or procurement of the services of any inspectors, signallers, watch-persons and other persons whom it shall be reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;

(d) in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and

(e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

123.—(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 117(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 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 117(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;

(b) Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail's apparatus identified pursuant to sub-paragraph (a); and

(c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail's apparatus identified pursuant to sub-paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail's apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail's apparatus, but the means of prevention and the

method of their execution must be selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 117(1) has effect subject to the sub-paragraph.

(6) Prior to the commencement of operation of the authorised development the undertaker shall test the use of the authorised development in a manner that shall 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 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 reasonably requested by the undertaker in respect of Network Rail's apparatus or such EMI; and

(d) the undertaker shall 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 206.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 127(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 210(a) any modifications to Network Rail's apparatus under this paragraph shall be deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph the reference in article 43 (arbitration) to the Institution of Civil Engineers shall be read as a reference to the Institution of Engineering and Technology.

124. If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.

125. The undertaker must not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail unless it has first consulted Network Rail and it must comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and

any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

126. 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 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.

127.—(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 (subject to article 37 (no double recovery)) which may be occasioned to or reasonably incurred by Network Rail—

(a) by reason of the construction, maintenance or operation of a specified work or the failure thereof;

(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;

(c) by reason of any act or omission of the undertaker or any person in its employ or of its contractors or others whilst accessing to or egressing from the authorised development;

(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; or

(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 must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission: 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 shall 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—

(a) give the undertaker reasonable written notice of any such claims or demands;

(b) not make any settlement or compromise of such a claim or demand without the prior consent of the undertaker; and

(c) take such steps as are within its control and are reasonable in the circumstances to mitigate any liabilities relating to such claims or demands.

(3) The sums payable by the undertaker under sub-paragraph (1) shall if relevant include a sum equivalent to the relevant costs.

(4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(5) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs shall, in the event of default, be enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-paragraph (4).

(6) In this paragraph—

"the relevant costs" means the costs, 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 subparagraph (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.

128. Network Rail must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part of this Schedule (including the amount of the relevant costs mentioned in paragraph 215) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Part of this Schedule (including any claim relating to those relevant costs).

129. 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.

130. 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.

131. Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part I of the Railways Act 1993.

132. The undertaker must give written notice to Network Rail if any application is proposed to be made by the undertaker for the Secretary of State's consent, under article 7 (consent to transfer benefit of the Order) of this Order and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

(a) the nature of the application to be made;

(b) the extent of the geographical area to which the application relates; and

(c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

133. The undertaker must no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 40 (certification of plans etc.) are certified by the Secretary of State, provide a set of those plans to Network Rail in a format specified by Network Rail.

134. Any dispute arising under this Part of this Schedule, unless otherwise provided for, must be referred to and settled by arbitration in accordance with article 43 (arbitration).

PART 11

FOR THE PROTECTION OF CADENT GAS LIMITED AS GAS UNDERTAKER

Application

135. For the protection of Cadent the following provisions will, unless otherwise agreed in writing between the undertaker and Cadent, have effect.

Interpretation

136. In this Part of this Schedule—

"1991 Act" means the New Roads and Street Works Act 1991;

"acceptable credit provider" means a bank or financial institution with a credit rating that is not lower than: (i) "A-" if the rating is assigned by Standard & Poor's Ratings Group or Fitch Ratings; and "A3" if the rating is assigned by Moody's Investors Services Inc.;

"acceptable insurance" means a third party liability insurance effected and maintained by the undertaker to a level of not less than £50,000,000 (fifty million pounds) per occurrence or series of occurrences arising out of one event. Such insurance must be maintained for the construction period of the authorised works which constitute specified works and arranged with an internationally recognised insurer of repute operating in the London and worldwide insurance market underwriters whose security/credit rating meets the same requirements as an "acceptable credit provider", such policy must include (but without limitation)—

(a) Cadent as a Co-Insured;

(b) a cross liabilities clause;

(c) a waiver of subrogation in favour of Cadent; and

(d) contractors' pollution liability for third party property damage and third party bodily damage arising from a pollution/contamination event with cover of £10,000,000.00 (ten million pounds) per event or £20,000,000.00 (twenty million pounds) in aggregate;

"acceptable security" means either—

(a) evidence provided to Cadent's reasonable satisfaction that the Undertaker has a tangible net worth of not less than £50,000,000.00 (Fifty Million Pounds (or an equivalent financial measure);

(b) a parent company guarantee from a parent company in favour of Cadent to cover the undertaker's liability to Cadent to a cap of not less than £50,000,000 (fifty million pounds) per asset per event up to a total liability cap of £50,000,000 (fifty million pounds) (in a form reasonably satisfactory to Cadent and where required by Cadent, accompanied with a legal opinion confirming the due capacity and authorisation of the parent company to enter into and be bound by the terms of such guarantee); or

(c) a bank bond or letter of credit from an acceptable credit provider in favour of Cadent Gas Limited to cover the undertaker's liability to Cadent for an amount of not less than £50,000,000 (fifty million pounds) per asset per event up to a total liability cap of £50,000,000 (fifty million pounds) (in a form reasonably satisfactory to Cadent);

"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, (including transformed rectifiers and any associated groundbeds or cables), cables, marker posts, block valves, hydrogen above ground installations or other apparatus belonging to or maintained by Cadent for the purposes of Cadent's undertaking together with any replacement apparatus and such other apparatus constructed pursuant to this Order that becomes operational apparatus of Cadent for the purposes of Cadent's undertaking 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 of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Part of this Schedule;

"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;

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

"commence" has the same meaning as in article 2 of this Order and commencement will be construed to have the same meaning save that for the purposes of this Part of the Schedule the terms commence and commencement include operations for the purposes of intrusive archaeological investigations and intrusive investigations of the existing condition of the ground or of structures within 15 metres in any direction of Cadent's apparatus;

"deed of consent" means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary and/or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

"functions" includes powers and duties;

"ground mitigation scheme" means a scheme approved by Cadent (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

"ground monitoring scheme" means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, must 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" will include 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 to properly and sufficiently describe and assess the works to be executed;

"parent company" means a parent company of the undertaker acceptable to Cadent and which will have been approved by Cadent acting reasonably;

"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 (including maintenance) 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 paragraph 229(2) or otherwise;

(b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 229(2) or otherwise; and/or

(c) include any of the activities that are referred to in CD/SP/SSW/22 (Cadent's policies for safe working in the vicinity of Cadent's Assets).

On Street Apparatus

137.—(1) Except for paragraphs 138 (apparatus in stopped up streets), 141 (removal of apparatus) in so far as paragraph 225(2) applies, 142 (facilities and rights for alternative apparatus)

in so far as sub-paragraph 137(2) below applies, 143 (retained apparatus: protection), 144 (expenses) and 145 (indemnity) of this Part of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of 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 141 and 142 of this Part of this Schedule 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 11 (street works) or any other powers in the Order generally, section 85 of the 1991 Act in relation to cost sharing and the regulations made thereunder will not apply in relation to any diversion of apparatus of Cadent under the 1991 Act.

Apparatus of Cadent in closed or diverted streets

138. Notwithstanding the temporary closure or diversion of any highway under the powers of article 15 (temporary 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 and/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 closure 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

139.—(1) The undertaker, in the case of the powers conferred by article 21 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of Cadent and, if by reason of the exercise of those powers any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) or property of Cadent or any interruption in the supply of gas by Cadent, as the case may be, is caused, the undertaker must bear and pay on demand the cost reasonably incurred by Cadent in making good such damage or restoring the supply; and, subject to sub-paragraph (2), will—

(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 workers; and Cadent will give to the undertaker reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made by Cadent, save in respect of any payment required under a statutory compensation scheme, without first consulting the undertaker and giving the undertaker an opportunity to make representations as to the claim or demand.

Acquisition of land

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

(2) As a condition of agreement between the parties in sub-paragraph 140(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 and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) The undertaker and Cadent agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation 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 Part of Schedule will prevail.

(4) Any agreement or consent granted by Cadent under paragraph 143 or any other paragraph of this Part of this Schedule, will not be taken to constitute agreement under sub-paragraph 140(1).

(5) As a condition of an agreement between the parties in sub-paragraph 140(1) that involves decommissioned apparatus being left in situ in land owned by the undertaker the undertaker must accept a surrender of any existing easement or 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 save that any liabilities related to subsisting breaches by Cadent of the existing easement or other interest at the time of such surrender will remain with Cadent.

(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 141 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

141.—(1) If, in the exercise of any agreement reached in accordance with paragraph 140 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 paragraph 142(1) below) the necessary facilities and rights—

(a) for the construction of alternative apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus);

(b) subsequently for the maintenance of that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus); and

(c) to allow access to that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus).

(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 will 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-paragraph (2) or (3) have been afforded to Cadent to its satisfaction, then proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to decommission or remove any apparatus required by the undertaker to be decommissioned or removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

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

(2) If the facilities and rights to be afforded by the undertaker and agreed with Cadent under paragraph 142(1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to Cadent than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed (in Cadent's opinion) then the terms and conditions to which those facilities and rights are subject in the matter will be referred to arbitration in accordance with paragraph 149 (arbitration) of this Part of this Schedule and the arbitrator will 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

143.—(1) Not less than 56 days (or such time period as may be agreed in writing between Cadent and the undertaker) 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 or delayed.

(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 (4), as approved or as amended from time to time by agreement between the undertaker and Cadent and in accordance with all conditions imposed under sub-paragraph (4)(a), and Cadent will be entitled to watch and inspect the execution of those works.

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

(8) If Cadent, in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 135 to 137 and 140 to 142 apply as if the removal of the apparatus had been required by the undertaker under paragraph 229(2) provided that such written notice must be given by Cadent to the undertaker no later than as part of the approval of a plan submitted pursuant to sub-paragraph (1).

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

(10) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to Cadent notice as soon as is reasonably practicable and a plan of those works and must comply with—

(a) the conditions imposed under sub-paragraph (4)(a) insofar as is reasonably practicable in the circumstances; and

(b) sub-paragraph (11) at all times.

(11) At all times when carrying out any works authorised under the Order the undertaker must comply with 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 works 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 line with paragraph 144(1).

Expenses

144.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to Cadent within 30 days of receipt of an invoice all charges, costs and expenses reasonably anticipated or 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 229(3) 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;

(g) any watching brief pursuant to paragraph 231(6).

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 43 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to Cadent by virtue of sub-paragraph (1) will be reduced by the amount of that excess save where it is not possible or appropriate in the circumstances (including due to statutory or regulatory changes) to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

(a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to Cadent in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on Cadent any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

Indemnity

145.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Part of this Schedule (including without limitation relocation, diversion, decommissioning, construction and maintenance of apparatus or alternative apparatus) or in consequence of the construction, use, maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by it) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of 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 (accompanied by an invoice or claim from Cadent) 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 negligence or 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 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 or in a manner as may otherwise be agreed between the undertaker and Cadent.

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

(a) any damage or interruption to the extent that it is attributable to the neglect or default of Cadent, its officers, servants, contractors or agents; and

(b) any authorised works or any other works authorised by this Part of this Schedule carried out by Cadent as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article 7 (consent to transfer benefit of the Order) subject to the proviso that once such works become apparatus ("new apparatus"), any authorised works yet to be executed and not falling within this paragraph (b) will be subject to the full terms of this Part of this Schedule including this paragraph 145.

(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 undertaker and considering its representations.

(5) The undertaker must not commence construction (and must not permit the commencement of such construction) of the specified works until Cadent is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to Cadent that it will maintain such acceptable insurance for the construction

period of the specified works from the proposed date of commencement of construction of the specified works) and Cadent has confirmed the same in writing to the undertaker.

(6) In the event that the undertaker fails to comply with sub-paragraph 233(5) of this Part of this Schedule, nothing in this Part of this Schedule will prevent Cadent from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

Enactments and agreements

146. 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 will affect the provisions of any enactment or agreement regulating the relations between the undertaker and Cadent in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

147.—(1) Where in consequence of the proposed construction of any of the authorised works, the undertaker or Cadent requires the removal of apparatus under paragraph 229(5) or Cadent makes requirements for the protection or alteration of apparatus under paragraph 143, the undertaker will use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of Cadent's undertaking and Cadent will use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever Cadent's consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, Cadent's consent must not be unreasonably withheld or delayed.

Access

148. If in consequence of any agreement reached in accordance with paragraph 140(1) or the powers granted under this Order the access to any apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus) is materially obstructed, the undertaker must provide such alternative rights and means of access to such apparatus as will enable Cadent to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

149. Save for differences or disputes arising under sub-paragraphs 229(2), 229(4), 142(1), paragraph 233(5) and paragraph 231 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 43 (arbitration) and in settling any difference or dispute, the arbitrator must have regard to the requirements of Cadent for ensuring the safety, economic and efficient operation of Cadent's apparatus.

Notices

150. The plans submitted to Cadent by the undertaker pursuant to paragraph 143(1) must be sent to Cadent Gas Limited Plant Protection by e-mail to plantprotection@cadentgas.com copied by e-mail to landservices@cadentgas.com and sent to the General Counsel Department at Cadent's registered office or such other address as Cadent may from time to time appoint instead for that purpose and notify to the undertaker.

PART 12

FOR THE PROTECTION OF VICARAGE DROVE ENERGY CENTRE LIMITED

151. The provisions of this Part of this Schedule apply for the protection of VDEC unless otherwise agreed in writing between the undertaker and VDEC.

Interpretation

152. In this Part of this Schedule—

"apparatus" means the cables, photovoltaic panels, structures or other infrastructure owned, occupied or maintained by VDEC at Vicarage Drove Energy Centre for the purposes of electricity generation and storage;

"maintain" shall include the ability and right to construct, use, repair, inspect, renew or remove the apparatus of VDEC at Vicarage Drove Energy Centre;

"plan" and "plans" includes sections, drawings, specifications, designs, design data, software, 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 the VDEC interface area;

"specified works" means so much of any works or operations authorised by this Order (or authorised by any planning permission intended to operate in conjunction with this Order) as is within the VDEC interface area;

"VDEC" means Vicarage Drove Energy Centre Limited (company number 12290001) whose registered office address is at 6th Floor, 338 Euston Road, London, England, NW1 3BG;

"VDEC interface area" means the area of the Order land comprised of plots 18-52 and 18-56 contained in the book of reference; and

"Vicarage Drove Energy Centre" means the solar farm located on land near Boston, Lincolnshire.

Retained apparatus: protection

153. The undertaker must consult with VDEC on the plans and formulation of the proposed method of working and timing of execution of any specified works, not less than 56 days prior to such works commencing and have regard to reasonable representations received from VDEC made at least 28 days prior to such works commencing.

154. The undertaker must give to VDEC not less than 28 days' written notice of its intention to commence the construction of any specified works and, not more than 14 days after completion of their construction, must give VDEC written notice of the completion.

155. Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of any specified works, a new method of working and plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.

156. The undertaker must at all reasonable times during construction of any specified works allow VDEC and its servants and agents reasonable access to the VDEC interface area and all reasonable facilities for inspection of the specified works.

Acquisition of land

157. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus owned, occupied or maintained by VDEC at Vicarage Drove Energy Centre for the purposes of electricity generation and storage otherwise than by agreement.

Access

158. If in consequence of the exercise of powers granted under this Order the access to Vicarage Drove Energy Centre is materially obstructed, the undertaker must provide such alternative means of access to Vicarage Drove Energy Centre as will enable VDEC to operate and maintain its apparatus no less effectively than was possible before such obstruction.

Consent of VDEC

159. The undertaker must not exercise the powers conferred pursuant to this Order in plots 18-63 and 18-64 (as shown on the land plans) without the written consent of VDEC.

Expenses

160. Save where otherwise agreed in writing between VDEC and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to VDEC within 30 days of receipt of an itemised invoice or claim from VDEC all charges, costs and expenses reasonably and properly incurred by VDEC comprising the review of plans under this Part of this Schedule.

Indemnity

161.—(1) Subject to paragraphs (2) to (6), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, use, maintenance or failure of any of the specified works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by it) in the course of carrying out such works, (including without limitation works carried out by the undertaker under this Schedule or any subsidence resulting from any of these works), any damage is caused to any apparatus (other than apparatus located within the VDEC interface area), the undertaker will bear and pay within 60 days of receipt of an invoice or claim from VDEC the cost reasonably and properly incurred by VDEC in making good such damage.

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

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

(a) any damage or interruption to the extent that it is attributable to the act, neglect or default of VDEC, its officers, servants, contractors or agents; or

(b) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable.

(4) VDEC must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability, compromise or demand must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering its representations.

(5) VDEC must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(6) VDEC must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where it is within VDEC's reasonable ability and control to do so and if reasonably requested to do so by the undertaker VDEC must provide an explanation of how the claim has been minimised, where relevant.

Arbitration

162. Any difference or dispute arising between VDEC and the undertaker must, unless otherwise agreed in writing between VDEC and the undertaker, be determined by arbitration in accordance with article 43 (arbitration) of the Order.

PART 13

FOR THE PROTECTION OF NATIONAL GRID AS ELECTRICITY UNDERTAKER

Application

163.—(1) For the protection of National Grid as referred to in this Schedule the following provisions have effect, unless National Grid is acting with the benefit of the Order or as otherwise agreed in writing, between the undertaker and National Grid.

(2) Subject to sub paragraph (3) or to the extent otherwise agreed in writing between the undertaker and National Grid, where the benefit of this Order is transferred or granted to another person under article 7 (consent to transfer benefit of the Order)—

(a) any agreement of the type mentioned in sub-paragraph (1) has effect as if it had been made between National Grid and the transferee or grantee (as the case may be); and

(b) written notice of the transfer or grant must be given to National Grid on or before the date of that transfer or grant

(3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to National Grid (but without prejudice to paragraph 261(3)(b)).

Interpretation

164. In this Part of this Schedule—

"acceptable credit provider" means a bank or financial institution with a credit rating that is not lower than: (i) "A-" if the rating is assigned by Standard & Poor's Ratings Group or Fitch Ratings; and "A3" if the rating is assigned by Moody's Investors Services Inc.;

"acceptable insurance" means general third party liability insurance effected and maintained by the undertaker with a combined property damage and bodily injury limit of indemnity of not less than £50,000,000.00 (fifty million pounds) per occurrence or series of occurrences arising out of one event. Such insurance shall be maintained (a) for the duration of the construction period of the authorised works; and (b) after the construction period of the authorised works in respect of any use and maintenance of the authorised development by or on behalf of the undertaker which constitute specified works and arranged with an insurer whose security/credit rating meets the same requirements as an "acceptable credit provider", such insurance shall include (without limitation)—

(a) a waiver of subrogation and an indemnity to principal clause in favour of National Grid;

(b) pollution liability for third party property damage and third party bodily damage arising from any pollution/contamination event with a (sub)limit of indemnity of not less than £10,000,000.00 (ten million pounds) per occurrence or series of occurrences arising out of one event or £20,000,000.00 (twenty million pounds) in aggregate;

"acceptable security" means either—

(a) a parent company guarantee from a parent company in favour of National Grid to cover the undertakers liability to National Grid to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to National Grid and where required by National Grid, accompanied with a legal opinion confirming the due capacity and authorisation of the parent company to enter into and be bound by the terms of such guarantee); or

(b) a bank bond or letter of credit from an acceptable credit provider in favour of National Grid to cover the undertaker's liability to National Grid for an amount of not less than £10,000,000.00 (ten million pounds) per asset per event up to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to National Grid); or "alternative apparatus" means appropriate alternative apparatus to the satisfaction of National Grid to enable National Grid to fulfil its statutory functions in a manner no less efficient than previously;

"apparatus" means any electric lines or electrical plant as defined in the 1989 Act, belonging to or maintained by National Grid; together with any replacement apparatus and such other apparatus whether or not constructed pursuant to the Order that becomes operational apparatus of National Grid for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

"authorised works" has the same meaning as is given to the term "authorised development" in article 2(1) (interpretation) of this Order and includes any associated development authorised by the Order and for the purposes of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

"commence" and "commencement" has the same meaning as in article 2(1) (interpretation) of this Order except for the purposes of this Schedule only where it shall include any below ground surveys, ground work operations or the erection of construction plant and equipment;

"deed of consent" means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Schedule;

"functions" includes powers and duties;

"ground mitigation scheme" means a scheme approved by National Grid (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

"ground monitoring scheme" means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, is to require the undertaker to submit for National Grid's approval a ground mitigation scheme;

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

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

"Incentive Deduction" means any incentive deduction National Grid Electricity Transmission plc receives under its electricity transmission licence which is caused by an event on its transmission system that causes electricity not to be supplied to a demand customer and which arises as a result of the authorised works;

"maintain" and "maintenance" shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of National Grid; construct, use, repair, alter, inspect, renew or remove the apparatus;

"NESO" means as defined in the STC;

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

"parent company" means a parent company of the undertaker acceptable to and which shall have been approved by National Grid acting reasonably; "specified works" means any of the authorised works which—

(a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 257(2) (removal of apparatus) or otherwise; or

(b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 257(2) or otherwise; and

(c) includes any of the activities that are referred to in development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines";

"STC" means the System Operator Transmission Owner Code prepared by the electricity transmission owner and NESO as modified from time to time;

"STC Claims" means any claim made under the STC against National Grid Electricity Transmission plc arising out of or in connection with the de-energisation (whereby no electricity can flow to or from the relevant system through the generator or interconnector's equipment) of a generator or interconnector party solely as a result of the de-energisation of plant and apparatus forming part of National Grid Electricity Transmission plc's transmission system which arises as a result of the authorised works; and

"Transmission Owner" means as defined in the STC.

On Street Apparatus

165. Except for paragraphs 254 (apparatus of National Grid in affected streets), 259 (retained apparatus: protection), 260 (expenses) and 261 (indemnity) of this Part of this Schedule which apply in respect of the exercise of all or any powers under this Order affecting the rights and apparatus of National Grid, the other provisions of this Part of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Grid are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

Apparatus of National Grid in affected streets

166.—(1) Where any street is stopped up under article 13 (power to alter layout etc. of streets), article 11 (street works), article 17 (access to works), if National Grid has any apparatus in the street or accessed via that street National Grid has the same rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to National Grid, or procure the granting to National Grid of, legal easements reasonably satisfactory to National Grid 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 National Grid to require the removal of that apparatus under paragraph 257 (removal of apparatus) or the power of the undertaker, subject to compliance with this sub-paragraph, to carry out works under paragraph 259 (retained apparatus: protection).

(2) Notwithstanding the temporary closure or diversion of any highway under the powers of article 16 (temporary prohibition or restriction of use of streets and public rights of way), National Grid is at liberty at all times to take all necessary access across any such closed highway or public right of way and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary to enable it to maintain any apparatus which at the time of the closure or diversion was in that highway or public right of way.

Protective works to buildings

167. The undertaker, in the case of the powers conferred by article 21 (protective works to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Grid.

Acquisition of land

168.—(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 (a) appropriate or acquire

or take temporary possession of any land or apparatus belonging to National Grid or (b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of National Grid otherwise than by agreement.

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

(3) Save where otherwise agreed in writing between National Grid and the undertaker, the undertaker and National Grid agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus (including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Grid and/or other enactments relied upon by National Grid as of right or other use in relation to the apparatus, then the provisions in this Part of this Schedule shall prevail.

(4) Any agreement or consent granted by National Grid under paragraph 170 (retained apparatus: protection) or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).

Removal of apparatus

169.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in or possesses temporarily any land in which any apparatus is placed, that apparatus must not be removed under this Schedule and any right of National Grid to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Grid in accordance with sub-paragraphs (2) to (5).

(2) If, for the purpose of executing any works comprised in the authorised development in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), secure any necessary consents for the alternative apparatus and afford to National Grid to its satisfaction (taking into account paragraph 169(1) (facilities and rights for alternative apparatus) below) the necessary facilities and rights—

(a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and

(b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Grid may, in its sole discretion, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances to assist the undertaker to obtain the necessary facilities and rights in the land in

which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for National Grid to use its compulsory purchase powers to this end unless it elects to so do.

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

(5) National Grid must, after the alternative apparatus to be provided or constructed has been agreed, and subject to a written diversion agreement having been entered into between the parties and the grant to National Grid of any such facilities and rights as are referred to in sub-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

170.—(1) Subject to sub-paragraph (2), where, in accordance with the provisions of this Schedule, the undertaker affords to or secures for National Grid facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and National Grid and must be no less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by National Grid.

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject the matter may be referred to arbitration in accordance with paragraph 265 (arbitration) of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case. In respect of the appointment of an arbitrator under this sub-paragraph, article 43 (arbitration) applies.

Retained apparatus: protection

171.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Grid a plan of the works to be executed and seek from National Grid details of the underground extent of their electricity assets.

(2) In relation to the Specified Works the plan to be submitted to National Grid under sub-paragraph (1) must include a method statement which shows and describes—

(a) the exact position of the specified works;

(b) the level at which the specified works are proposed to be constructed or renewed;

(c) the manner of their construction or renewal including details of excavation, positioning of plant;

(d) the position of all apparatus;

(e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;

(f) any intended maintenance regimes;

(g) an assessment of risks of rise of earth issues; and

(h) a ground monitoring scheme, where required.

(3) In relation to any specified works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (1) must, in addition to the matters set out in sub-paragraph (2), include a method statement describing—

(a) details of any cable trench design including route, dimensions, clearance to pylon foundations;

(b) demonstration that pylon foundations will not be affected prior to, during and post construction;

(c) details of load bearing capacities of trenches;

(d) details of any cable installation methodology including access arrangements, jointing bays and backfill methodology;

(e) a written management plan for high voltage hazard during construction and ongoing maintenance of any cable route;

(f) written details of the operations and maintenance regime for any cable, including frequency and method of access;

(g) assessment of earth rise potential if reasonably required by National Grid's engineers; and

(h) evidence that trench bearing capacity is to be designed to support overhead line construction traffic of up to and including 26 tonnes in weight.

(4) The undertaker must not commence any works to which sub-paragraphs (2) or (3) apply until National Grid has given written approval of the plan so submitted.

(5) Any approval of National Grid required under sub-paragraph (4)—

(a) may be given subject to reasonable conditions for any purpose mentioned in subparagraphs (6) or (8); and

(b) must not be unreasonably withheld or delayed.

(6) In relation to any work to which sub-paragraphs (2) or (3) apply, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage, for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus and National Grid must notify the undertaker of such modifications within a period of 56 days beginning with the date on which the plan required under sub-paragraph (1) has been submitted to National Grid.

(7) Works executed under sub-paragraphs (2) or (3) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (10), as approved or as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (6) or (8) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid will be entitled to watch and inspect the execution of those works.

(8) Where National Grid requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to National Grid's satisfaction prior to the commencement of any specified works (or any relevant part thereof) for which protective works are required and National Grid shall give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(9) If National Grid in accordance with sub-paragraphs (6) or (8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraph 257(2) (removal of apparatus) applies as if the removal of the apparatus had been required by the undertaker.

(10) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the works for which a plan has been submitted for specified works (or part thereof), a new plan for such works, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.

(11) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National

Grid notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (6), (7), and (8) insofar as is reasonably practicable in the circumstances and comply with sub-paragraph (12) at all times.

(12) At all times when carrying out any specified works authorised under this Order, the undertaker must comply with National Grid's policies for development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".

Expenses

172.—(1) Save where otherwise agreed in writing between National Grid and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to National Grid within 30 days of receipt of an itemised invoice or claim from National Grid all charges, costs and expenses reasonably anticipated within the following three months or reasonably and properly incurred by National Grid in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works including without limitation—

(a) any costs reasonably incurred by or compensation properly paid by National Grid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Grid as a consequence of National Grid—

(i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 257(3); or

(ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Grid;

(b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;

(c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;

(d) the approval of plans;

(e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works; and

(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 Schedule.

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this 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 existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 259 to be necessary, then, if such placing involves cost in the construction of works under 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 subparagraph would be payable to National Grid by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the

circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

(a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) Any amount which apart from this sub-paragraph would be payable to National Grid in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on National Grid any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

(6) Where reasonably anticipated charges, costs or expenses have been paid by the undertaker pursuant to sub-paragraph (1), if the actual charges, costs or expenses incurred by National Grid are less than the amount already paid by the undertaker National Grid will repay the difference to the undertaker as soon as reasonably practicable.

Indemnity

173.—(1) Subject to sub-paragraphs (2) to (7), if by reason or in consequence of the construction of any works authorised by this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by it) in the course of carrying out such works, (including without limitation works carried out by the undertaker under this Schedule or any subsidence resulting from any of these works), any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of National Grid or there is any interruption in any service provided, or in the supply of any goods by National Grid, or National Grid becomes liable to pay any amount to any third party, the undertaker will—

(a) bear and pay within 30 days of receipt of an invoice or claim from National Grid the cost reasonably and properly incurred by National Grid in making good such damage or restoring the supply; and

(b) indemnify National Grid for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Grid, by reason or in consequence of any such damage or interruption or National Grid becoming liable to any third party and including STC Claims or an incentive deduction other than arising from any default of National Grid.

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

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

(a) any damage or interruption to the extent that it is attributable to the act, neglect or default of National Grid, its officers, servants, contractors or agents;

(b) any authorised works and/or any other works authorised by this Schedule carried out by National Grid as an assignee, transferee or lessee of the undertaker with the benefit of this Order pursuant to section 156 of the 2008 Act or articles 6 (benefit of the Order) or 7 (consent to transfer benefit of the Order) subject to the proviso that once such works become apparatus ("new apparatus"), any authorised works yet to be executed and not

falling within this sub-paragraph (b) will be subject to the full terms of this Schedule including this paragraph; and

(c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable.

(4) National Grid must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability, compromise or demand must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering its representations.

(5) National Grid must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(6) National Grid must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where it is within National Grid's reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of National Grid's control and if reasonably requested to do so by the undertaker National Grid must provide an explanation of how the claim has been minimised, where relevant

(7) The undertaker must not commence construction (and not permit the commencement of such construction) of the specified works on any land owned by National Grid or in respect of which National Grid has an easement or wayleave for its Apparatus or other interest or to carry out any works within 15 metres of National Grid apparatus until the following conditions are satisfied—

(a) unless and until National Grid is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has first provided the acceptable security (and provided evidence that it shall maintain such acceptable security for the construction period of the authorised works (or maintenance thereof) from the proposed date of commencement of construction or maintenance of the authorised works) and National Grid has confirmed the same to the undertaker in writing; and

(b) unless and until National Grid is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to National Grid that it shall maintain such acceptable insurance for the construction period of the authorised works (or maintenance thereof) from the proposed date of commencement of construction or maintenance of the authorised works) and National Grid has confirmed the same in writing to the undertaker.

(8) In the event that the undertaker fails to comply with sub-paragraph (7) of this paragraph 261 (Indemnity), nothing in this Schedule shall prevent National Grid from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

Enactments and agreements

174. Save to the extent provided for to the contrary elsewhere in this Schedule or by agreement in writing between National Grid and the undertaker, nothing in this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and National Grid in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Cooperation

175.—(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or National Grid requires the removal of apparatus under paragraph 257(2) (removal of apparatus) or National Grid makes requirements for the protection or alteration of apparatus under paragraph 259 (retained apparatus: protection), the undertaker shall use reasonable endeavours to coordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to

ensure the safe and efficient operation of National Grid's undertaking and National Grid shall use reasonable endeavours to cooperate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever National Grid's consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

Access

176. If in consequence of the agreement reached in accordance with paragraph 167(1) (acquisition of land) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

177. Save for differences or disputes arising under paragraphs 257(2), 257(4), 169(1) and 259 any, difference or dispute arising between the undertaker and National Grid under this Schedule must, unless otherwise agreed in writing between the undertaker and National Grid, be determined by arbitration in accordance with article 43 (arbitration).

Notices

178. Notwithstanding article 41 (service of notices), any plans submitted to National Grid by the undertaker pursuant to paragraph 259 (retained apparatus: protection) must be submitted using the LSBUD system (https://lsbud.co.uk/) or to such other address as National Grid may from time to time appoint instead for that purpose and notify to the undertaker in writing.

PART 14

FOR THE PROTECTION OF NATIONAL GRID ELECTRICITY DISTRIBUTION (EAST MIDLANDS) PLC

Application

179. For the protection of NGED the following provisions have effect, unless otherwise agreed in writing between the undertaker and NGED.

Interpretation

180. In this Part of this Schedule—

"alternative apparatus" means alternative apparatus adequate to enable NGED to fulfil its statutory functions in a manner not less efficient than previously and where the context requires includes any part of such alternative apparatus;

"alternative rights" means all and any necessary legal easements, leases, consents or permissions required by NGED in order to permit or authorise a diversion and to permit or authorise NGED to lay, keep, operate, maintain, adjust, repair, alter, relay, renew, supplement, inspect, examine, test and remove the alternative apparatus;

"apparatus" means electric lines or electrical plant as defined in the Electricity Act 1989(**a**), belonging to or maintained by NGED;

(**a**) 1989 c. 29. The definition of "electricity plant" (in section 64) was amended by paragraphs 24 and 38(1) and (3) of Schedule 6 to the Utilities Act 2000 (c. 27).

"diversion" means an alteration to the NGED Network in order to enable or facilitate the authorised development;

"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;

"NGED" means National Grid Electricity Distribution (East Midlands) plc (company number 02366923) whose registered office is at Avonbank, Feeder Road, Bristol, BS2 0TB;

"NGED Network" means NGED's distribution network operated pursuant to its distribution licence issued pursuant to section 6 of the 1989 Act;

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

"specified work" means so much of any of the authorised development that is carried out within 15 metres of any apparatus;

other terms have the meaning given in article 2 (interpretation).

Precedence of 1991 Act in respect of apparatus in streets

181. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and NGED are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

Access to NGED apparatus in streets

182. Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 16 (temporary prohibition or restriction of use of streets and public rights of way), NGED is at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

No acquisition except by agreement

183. 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

184.—(1) If, in the exercise of the powers conferred by this Order, the undertaker requires that apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule and any right of NGED to maintain that apparatus in that land must not be extinguished until (a) alternative apparatus has been constructed, (b) alternative rights have been acquired or granted for the alternative apparatus, (c) the alternative apparatus is in operation and (d) access to it has been provided if necessary, to the reasonable satisfaction of NGED in accordance with sub-paragraphs (2) to (10) or with such alternative or supplementary provisions as the undertaker and NGED may agree between them.

(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, it must give to NGED 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.

(3) If as a direct consequence of the exercise of any of the powers conferred by this Order NGED reasonably needs to remove or divert any of its apparatus and the removal of that apparatus has not been required by the undertaker under sub-paragraph (2) then NGED must give to the

undertaker advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and this Part has effect as if the removal or diversion of such apparatus had been required by the undertaker under sub-paragraph (2).

(4) If as a direct consequence of the removal or diversion of apparatus under sub-paragraph (2) or (3) alternative apparatus is to be constructed in land owned or controlled by the undertaker then the undertaker must afford to NGED the necessary facilities alternative rights and any necessary third party consent or approvals for the construction of alternative apparatus in the other land owned or controlled by the undertaker.

(5) If the undertaker or NGED requires to remove or divert any apparatus placed within the Order land and alternative apparatus is to be constructed in land not owned or controlled by the undertaker as a consequence of the removal or diversion of apparatus then NGED shall use its reasonable endeavours, as soon as reasonably possible, to obtain alternative rights in the land in which the alternative apparatus is to be constructed.

(6) If alternative apparatus is to be constructed in land not owned or controlled by the undertaker and NGED is unable to obtain such alternative rights as are mentioned in sub-paragraph (5), the undertaker and NGED shall consider whether there is an alternative engineering solution that can achieve the diversion without the need for the use of compulsory powers. Should such an alternative engineering solution not be practicable and deliverable in a reasonable timescale and at a reasonable cost (which shall be determined by the undertaker acting reasonably), NGED may but shall not be compelled to use the powers of compulsory acquisition set out in this Order or the Electricity Act 1989 to obtain the necessary facilities and rights in the land outside the Order limits in which the alternative apparatus is to be constructed in accordance with a timetable agreed between NGED and the undertaker.

(7) Any alternative apparatus required pursuant to sub-paragraphs (2) or (3) must be constructed in such manner and in such line or situation as may be agreed between NGED and the undertaker or in default of agreement settled in accordance with paragraph 277.

(8) NGED must, after the alternative apparatus to be provided or constructed has been agreed or settled pursuant to paragraph 277, and after the acquisition by or grant to NGED of any such facilities and alternative rights as are referred to in sub-paragraphs (2) to (6), 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.

(9) Regardless of anything in sub-paragraph (8), if the undertaker gives notice in writing to NGED that it desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land controlled by the undertaker, that work, instead of being executed by NGED, must be executed by the undertaker—

(a) in accordance with plans and specifications and in such line or situation agreed between the undertaker and NGED, or, in default of agreement, determined in accordance with paragraph 277; and

(b) without unnecessary delay to the reasonable satisfaction of NGED.

(10) Nothing in sub-paragraph (9) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus or alternative apparatus, or execute any filling around the apparatus or alternative apparatus (where the apparatus or alternative apparatus is laid in a trench) within 600 millimetres of the point of connection or disconnection.

Facilities and rights for alternative apparatus

185.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to NGED facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and NGED or in default of agreement settled in accordance with paragraph 277.

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

(a) give effect to all reasonable requirements of the undertaker for ensuring the safety and efficient operation of the authorised development and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of the undertaker;

(b) have regard to the terms and conditions, if any, applicable to the apparatus for which the alternative apparatus is to be substituted;

(c) have regard to NGED's ability to fulfil its service obligations and comply with its licence conditions; and

(d) have regard to the standard form rights NGED ordinarily secures for the type of alternative apparatus to be constructed in the circumstances similar to the authorised development.

(3) If the facilities and alternative rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and alternative rights are to be granted, are in the opinion of the expert less favourable on the whole to NGED 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 expert must make such provision for the payment of compensation by the undertaker to NGED as appears to the expert to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus

186.—(1) Not less than 60 days before the undertaker intends to start the execution of any specified work where the removal of the apparatus in question has not been required under paragraph 5, the undertaker shall submit to NGED a plan of the works to be executed. Any submission must note the time limits imposed on NGED under sub-paragraph (3) below.

(2) Subject to sub-paragraph (3) below the undertaker shall not commence any works to which sub-paragraph (1) applies until NGED has identified, without unreasonable delay, any reasonable requirements it has for the alteration or protection of the apparatus, or for securing access to it.

(3) If by the expiry of 60 days beginning with the date on which a plan under sub-paragraph (1) is submitted NGED has not advised the undertaker in writing of any reasonable requirements for the alteration or protection of the apparatus, or for securing access to it, it shall be deemed not to have any such requirements and the undertaker shall be at liberty to proceed with the works.

(4) The works referred to in sub-paragraph (1) must be executed only in accordance with the plan submitted under sub-paragraph (1), and in accordance with any reasonable requirements as may be notified in accordance with sub-paragraph (2) by NGED and NGED shall be entitled to watch and inspect the execution of those works.

(5) At all times when carrying out the authorised development the undertaker shall comply with NGED's Avoidance of Danger from Electricity Overhead Lines and Underground Cables (2014), the Energy Network Association's A Guide to the Safe Use of Mechanical Plant in the Vicinity of Electricity Overhead Lines (undated), the Health and Safety Executive's GS6 Avoiding Danger from Overhead Power Lines and the Health and Safety Executive's HSG47 Avoiding Danger from Underground Services (Third Addition) (2014) as the same may be replaced from time to time.

(6) If NGED, in accordance with sub-paragraph (2) and in consequence of the works proposed by the undertaker, reasonably requires the removal or diversion of any apparatus and gives advance written notice to the undertaker of that requirement, this Part of this Schedule applies as if the removal or diversion of the apparatus had been required by the undertaker under paragraph 272(2).

(7) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 60 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.

(8) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to NGED notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable subsequently and must comply with any reasonable requirements stipulated by NGED under sub-paragraph (2) and with sub–paragraphs (4) and (5) in so far as is reasonably practicable in the circumstances. Nothing in this sub-paragraph prevents NGED from exercising its rights under sub-paragraph (6).

Expenses and costs

187.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to NGED the proper and reasonable expenses reasonably incurred by NGED in or in connection with, the inspection, removal, diversion, alteration or protection of any apparatus, the construction of any alternative apparatus and the acquisition or grant of alternative rights for the alternative apparatus, arising as a result of the powers conferred upon the undertaker pursuant to this Order.

(2) The value of any apparatus removed under the provisions of this Part of this Schedule must be deducted from any sum payable under sub-paragraph (1), that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule NGED requires that alternative apparatus of better type, of greater capacity, of greater dimensions or at a greater depth is placed in substitution for existing apparatus—

(a) for NGED's network requirements; and

(b) over and above what is necessary as a consequence of and for the purpose of the authorised development,

NGED shall reduce the amount payable by the undertaker pursuant to sub-paragraph (1) by an amount equal to the cost of such additional requirements.

(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 cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to NGED in respect of works by virtue of sub-paragraph (1) must, 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 NGED 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.

Liability

188.—(1) Subject to sub-paragraph (2), if by reason or in consequence of the construction of any specified work or any subsidence resulting from any such work 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 NGED the undertaker is to—

(a) bear and pay the cost reasonably incurred by NGED in making good such damage or restoring the supply; and

(b) reimburse NGED for any other expenses, loss, damages, penalty or costs reasonably and properly incurred by NGED, by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of NGED, its officers, servants, contractors or agents.

(3) NGED must give the undertaker reasonable notice of any such claim, including third-party claims, or demand and no settlement, admission of liability, compromise, or demand is to be made without the consent of the undertaker, unless payment is required in connection with a compensation scheme. If the undertaker withholds such consent, NGED is to have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) NGED must act reasonably in relation to any claim or demand served under sub-paragraph (1) and use its reasonable endeavours to mitigate and minimise any costs, expenses, loss, demands, proceedings and penalties to which a claim or demand under sub-paragraph (1) applies and at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(5) NGED's liability to the undertaker for negligence or breach of contract, in respect of each diversion, shall be limited to the value of that diversion and NGED shall not otherwise be liable to the undertaker for any losses or costs incurred by the undertaker resulting from delays to the authorised development as a result of its failure to undertake works to deliver any alternative apparatus.

Expert determination

189.—(1) Article 43 (arbitration) shall apply to any difference or dispute as to the legal interpretation of this Schedule and as provided for in sub-paragraph (7).

(2) Save as provided for in sub-paragraph (1) or sub-paragraph (7) any difference or dispute under this Part of this Schedule must be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers or the President of the Institution of RICS or the President of the Institution of Engineering and Technology (as relevant and agreed between NGED and the undertaker, both acting reasonably and without delay).

(3) All parties involved in settling any difference must use best endeavours to do so within 14 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the expert must be appointed within 21 days of the notification of the dispute.

(4) The costs and fees of the expert and the costs of NGED and the undertaker are payable by the parties in such proportions as the expert may determine. In the absence of such determination the costs and fees of the expert are payable equally by the parties who shall each bear their own costs.

(5) The expert must—

(a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 14 days of the expert's appointment;

(b) permit a party to comment on the submissions made by the other party within 7 days of receipt of the submission;

(c) issue a decision within 14 days of receipt of the submissions under sub-paragraph (b); and

(d) give reasons for the decision.

(6) The expert must consider where relevant—

(a) the development outcome sought by the undertaker;

(b) the ability of the undertaker to achieve its outcome in a timely and cost-effective manner;

(c) the nature of the power sought to be exercised by the undertaker;

(d) the effectiveness, cost and reasonableness of proposals for mitigation arising from any party;

(e) NGED's service obligations and licence conditions; and

(f) any other important and relevant consideration.

(7) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 43.

Enactments and agreements

190. Save to the extent provided for to the contrary elsewhere in this Schedule or by agreement in writing between NGED 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 NGED in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

191.—(1) Where in consequence of the proposed construction of any part of the authorised development, the undertaker or NGED requires the removal and/or diversion of apparatus under paragraph 272 (removal of apparatus) or NGED makes requirements for the protection or alteration of apparatus under paragraph 274 (retained apparatus), the undertaker must use its reasonable endeavours to co-ordinate the execution of the authorised works in the interests of safety and the efficient and economic operation of NGED's undertaking and NGED must use its reasonable endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever NGED's consent, agreement or approval is required in relation to plans, documents or other information submitted by NGED or the taking of action by NGED, it must not be unreasonably withheld or delayed.

Access

192. If in consequence of the agreement reached under paragraph 271 (no acquisition except by agreement) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable NGED to maintain or use the apparatus no less effectively than was possible before such obstruction.

PART 15

FOR THE PROTECTION OF BICKER DROVE LIMITED

Access

193. The provisions of this Part of this Schedule apply for the protection of Bicker Drove, subject to paragraph 194, and unless otherwise agreed in writing between the undertaker and Bicker Drove.

194.—(1) In the event that—

(a) UK Transition Power Holdings Limited or Bicker Drove no longer has an interest in the Bicker Drove land;

(b) Bicker Drove is no longer proceeding with the Bicker Drove Project; or

(c) The Bicker Drove Planning Permission lapses,

(2) Bicker Drove must notify the undertaker as soon as reasonably practicable.

(3) The provisions in this Part of this Schedule cease to apply in the case of any event listed under paragraph 194(1)(a), (b) or (c) above.

Interpretation

195. In this Part of this Schedule

"apparatus" means the battery energy storage or other infrastructure owned, occupied or maintained by Bicker Drove on the Bicker Drove land for the purposes of the Bicker Drove Project;

"authorised works" has the same meaning as is given to the term "authorised development" in article 2(1) (interpretation) of this Order and includes any associated development authorised by the Order and for the purposes of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Part of this Schedule;

"Bicker Drove" means Bicker Drove Limited (company number 15674780) whose registered office address is at 20 St. James's Street, 7th Floor, London, United Kingdom, SW1A 1ES;

"Bicker Drove interface area" means the area notified by the undertaker to Bicker Drove in accordance with paragraph 4;

"Bicker Drove land" means the land over which UK Transition Power Holdings Limited or Bicker Drove hold an interest and which is contained within the Order limits;

"Bicker Drove Project" means the proposed 1.2GW Battery Energy Storage System development subject to planning application reference B/25/0224 located on land near Boston, Lincolnshire;

"Bicker Drove stand-off area" means the Bicker Drove land within the Order limits, other than the Bicker Drove interface area;

"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, is to require the undertaker to submit for Bicker Drove'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" shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of Bicker Drove; construct, use, repair, inspect, renew or remove the apparatus;

"plan" and "plans" includes sections, drawings, specifications, designs, design data, software, 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 the Bicker Drove interface area or Bicker Drove stand-off area (as applicable);

"specified works" means so much of any works or operations authorised by this Order (or authorised by any planning permission intended to operate in conjunction with this Order) as is will or may be situated over, or within 15 metres measured in any direction of any apparatus of Bicker Drove and within the Bicker Drove interface area or Bicker Drove stand-off area (as applicable); and

"The Bicker Drove Planning Permission" means the planning permission granted by Boston Borough Council on 29 June 2026 for the Proposed installation and operation of a Battery Energy Storage System (BESS) and other ancillary and associated infrastructure at Land East of Bicker Fen substation, Bicker Fen, Boston, under the Application Reference: B/25/0224.

Notification of route within the Bicker Drove land

196.—(1) As soon as is reasonably practicable after the undertaker has identified the area of land required for the authorised works within the Bicker Drove land and in any event no later than three years from the date this Order takes effect, the undertaker must notify Bicker Drove in writing of the confirmed location of the Bicker Drove interface area (the "Route Confirmation Notice").

(2) The Route Confirmation Notice must include a plan sufficient to identify the Bicker Drove interface area.

(3) From (and including) the date the Route Confirmation Notice is given—

(a) the area identified in the Route Confirmation Notice shall constitute the "Bicker Drove interface area"; and

(b) the Bicker Drove land, other than the Bicker Drove interface area, shall constitute the "Bicker Drove stand-off area";

(4) for the purposes of this Part of this Schedule.

(5) The undertaker may, if reasonably required, issue a revised Route Confirmation Notice to vary the Bicker Drove interface area, provided that any revised notice is given as soon as is reasonably practicable and before the commencement of any specified works within any newly identified part of the Bicker Drove land. Any revised Route Confirmation Notice shall take effect from the date it is given and the Bicker Drove interface area and Bicker Drove stand-off area shall be construed accordingly.

(6) For the avoidance of doubt, the giving of the Route Confirmation Notice (or any revised Route Confirmation Notice) does not disapply or vary the undertaker's obligations in paragraph 197 (retained apparatus within the Bicker Drove interface area: protection), including consultation and notice periods prior to commencing specified works within the Bicker Drove interface area.

Retained apparatus within the Bicker Drove interface area: protection

197. The undertaker must consult with Bicker Drove on the plans and formulation of the proposed method of working and timing of execution of any specified works within the Bicker Drove interface area, not less than 56 days prior to such works commencing and have regard to reasonable representations received from Bicker Drove made at least 28 days prior to such works commencing.

198. Where, as a direct result of the specified works within the Bicker Drove interface area, Bicker Drove requires any diversion or protective works to be carried out either by themselves or by the undertaker (whether of a temporary or permanent nature) such diversion or protective works must be carried out to Bicker Drove's reasonable satisfaction prior to the commencement of any authorised development (or any relevant part thereof) for which diversion or protective works are required and Bicker Drove shall give notice of its requirement for such works within 28 days of the date of first being consulted in accordance with paragraph 197 (retained apparatus within the Bicker Drove interface area: protection).

199. The undertaker must give to Bicker Drove not less than 28 days' written notice of its intention to commence the construction of any specified works within the Bicker Drove interface area and, not more than 14 days after completion of their construction, must give Bicker Drove written notice of the completion.

200. Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of any specified works within the Bicker Drove interface area, a new method of working and plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.

201. The undertaker must at all reasonable times during construction of any specified works within the Bicker Drove interface area allow Bicker Drove and its servants and agents reasonable facilities for inspection of such specified works.

Retained apparatus within the Bicker Drove stand-off area: protection

202.—(1) Not less than 56 days before the commencement of any specified works within the Bicker Drove stand-off area, the undertaker must submit to Bicker Drove a plan of the works to be executed and seek from Bicker Drove details of the extent of their assets within the Bicker Drove stand-off area. In relation to the specified works within the Bicker Drove stand-off area the plan to

be submitted to Bicker Drove under this paragraph must include a method statement which shows and describes—

(a) the exact position of the specified works within the Bicker Drove stand-off area;

(b) the level at which the specified works within the Bicker Drove stand-off area are proposed to be constructed or renewed;

(c) the manner of their construction or renewal within the Bicker Drove stand-off area including details of excavation, positioning of plant;

(d) the position of all apparatus within the Bicker Drove stand-off area;

(e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus within the Bicker Drove stand-off area;

(f) any intended maintenance regimes within the Bicker Drove stand-off area;

(g) an assessment of risks of rise of earth issues within the Bicker Drove stand-off area; and

(h) a ground monitoring scheme within the Bicker Drove stand-off area, where required.

(2) The undertaker must not commence any specified works within the Bicker Drove stand-off area to which sub-paragraph (1) applies until Bicker Drove has given written approval of the plan so submitted.

(3) Any approval of Bicker Drove required under sub-paragraph (2)—

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (4) or (6); and

(b) must not be unreasonably withheld or delayed.

(4) In relation to any work to which this paragraph applies, Bicker Drove may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage, for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus within the Bicker Drove stand-off area and Bicker Drove must notify the undertaker of such modifications within a period of 56 days beginning with the date on which the plan required under sub-paragraph (1) has been submitted to Bicker Drove.

(5) Works executed under this paragraph must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (4), as approved or as amended from time to time by agreement between the undertaker and Bicker Drove and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (4) or (6) by Bicker Drove for the alteration or otherwise for the protection of the apparatus within the Bicker Drove stand-off area, or for securing access to it, and Bicker Drove will be entitled to watch and inspect the execution of those works within the Bicker Drove stand-off area.

(6) Where Bicker Drove requires any protective works within the Bicker Drove stand-off area 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 Bicker Drove's satisfaction prior to the commencement of any specified works within the Bicker Drove stand-off area (or any relevant part thereof) for which protective works are required and Bicker Drove shall give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(7) 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 works within the Bicker Drove stand-off area for which a plan has been submitted for specified works within the Bicker Drove stand-off area (or part thereof), a new plan for such works, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.

(8) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works within the Bicker Drove stand-off area as defined in the 1991 Act but in that case it must give to Bicker Drove notice as soon as is reasonably practicable and a plan of those

works and must comply with sub-paragraphs (4), (5) and (6) insofar as is reasonably practicable in the circumstances.

Acquisition of land within the Bicker Drove stand-off area

203.—(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 (a) appropriate or acquire or take temporary possession of any land or apparatus within the Bicker Drove stand-off area belonging to Bicker Drove or (b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus, within the Bicker Drove stand-off area, belonging to Bicker Drove otherwise than by agreement (such agreement not to be unreasonably withheld or delayed).

(2) Any agreement or consent granted by Bicker Drove under paragraph 202 (retained apparatus within the Bicker Drove stand-off area: protection) or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).

Cooperation within the Bicker Drove stand-off area

204.—(1) Where in consequence of the proposed construction of any part of the authorised works within the Bicker Drove stand-off area, Bicker Drove makes requirements for the protection or alteration of apparatus under paragraph 202 (retained apparatus: within the Bicker Drove stand-off area: protection), the undertaker shall use reasonable endeavours to coordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of Bicker Drove's undertaking and Bicker Drove shall use reasonable endeavours to cooperate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever Bicker Drove's consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

Access

205. If in consequence of the exercise of powers granted under this Order access to the Bicker Drove land is materially obstructed, the undertaker must provide such alternative means of access to the Bicker Drove land as will enable Bicker Drove to operate and maintain its apparatus no less effectively than was possible before such obstruction.

Expenses

206.—(1) Save where otherwise agreed in writing between Bicker Drove and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to Bicker Drove within 30 days of receipt of an itemised invoice or claim from Bicker Drove all charges, costs and expenses reasonably and properly incurred by Bicker Drove comprising the review of plans under this Part of this Schedule.

(2) Notwithstanding any other provision of this Part of this Schedule, Bicker Drove shall not be entitled to recover more than once in respect of the same loss, cost, expense, or liability arising out of or in connection with any matter for which the undertaker is liable under this Part of this Schedule or any related agreement.

(3) For the avoidance of doubt, where Bicker Drove is entitled to recover any sum under more than one provision of this Part of this Schedule or any related agreement in respect of the same loss, cost, expense, or liability, Bicker Drove shall only be entitled to recover such sum once.

Indemnity

207.—(1) Subject to sub-paragraphs (2) to (6), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the

construction, use, maintenance or failure of any of the specified works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by it) in the course of carrying out such works, (including without limitation works carried out by the undertaker under this Schedule or any subsidence resulting from any of these works), any damage is caused to any apparatus within the Bicker Drove land, the undertaker will bear and pay within 60 days of receipt of an invoice or claim from Bicker Drove the cost reasonably and properly incurred by Bicker Drove in making good such damage.

(2) The fact that any act or thing may have been done by Bicker Drove on behalf of the undertaker or in accordance with a plan reviewed by Bicker Drove pursuant to paragraph 4 or in accordance with any requirement of Bicker Drove or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of sub-paragraph (1) unless Bicker Drove fails to carry out and execute the works properly with due care and attention and in a skillful and workmanlike manner or in a manner that does not accord with the approved plan.

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

(a) any damage or interruption to the extent that it is attributable to the act, neglect or default of Bicker Drove, its officers, servants, contractors or agents; or

(b) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable.

(4) Bicker Drove must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability, compromise or demand must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering its representations.

(5) Bicker Drove must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(6) Bicker Drove must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where it is within Bicker Drove's reasonable ability and control to do so and if reasonably requested to do so by the undertaker Bicker Drove must provide an explanation of how the claim has been minimised, where relevant.

Arbitration

208. Any difference or dispute arising between Bicker Drove and the undertaker must, unless otherwise agreed in writing between Bicker Drove and the undertaker, be determined by arbitration in accordance with article 43 (arbitration) of the Order.

SCHEDULE 12

Article 40

DOCUMENTS AND PLANS TO BE CERTIFIED

PART 1

DOCUMENTS AND PLANS

(1) Document name	*(2) Document reference*	*(3) Revision number*	*(4) Date*
Archaeological mitigation strategy	6.3.74	2	October 2025
Book of reference	4.3	9	February 2026
Crown land plan	2.3	1	April 2025
Environmental statement	6.1-6.4	1	April 2025
Environmental statement addendum	10.5	1	December 2025
Flood risk assessment conclusions	Section 10.3 of Environmental Statement Appendix 11.1 Flood Risk Assessment (document reference 6.3.81)	5	February 2026
Flood risk operational mitigation	Section 9.2 of Environmental Statement Appendix 11.1 Flood Risk Assessment (document reference 6.3.81)	5	February 2026
Land plans	2.2	4	December 2025
Outline battery safety management plan	7.2	2	December 2025
Outline construction environmental management plan	6.3.7	5	February 2026
Outline construction traffic management plan	6.3.78	6	February 2026
Outline decommissioning environmental management plan	6.3.8	4	February 2026
Outline design principles	Appendix 1 to the Design and Access Approach Document (document reference 5.6)	4	February 2026
Outline drainage strategy	Section 8 of Environmental Statement Appendix 11.1 Flood Risk Assessment (document reference 6.3.81)	4	January 2026

Outline landscape and ecological management plan	6.3.19	6	February 2026
Outline public rights of way management plan	9.5	2	December 2025
Outline skills, supply chain and employment plan	6.3.98	2	February 2026
Outline soil management plan	6.3.95	4	February 2026
Streets, rights of way and access plans	2.5	2	June 2025
Waste and recycling strategy	6.3.103	2	December 2025
Works plan	2.4	4	February 2026
Vegetation removal plan	6.4.43	2	December 2025

PART 2

SUBSTITUTE DOCUMENTS

(1) Originating document	*(2) Replacement or supplementary part*	*(3) Document reference*	*(4) Date*	*(5) Examination library reference*
Environmental statement	Chapter 2: Proposed Development	6.2.2	January 2026	[REP6-017]
Environmental statement	Chapter 6: Landscape and Visual	6.2.6	December 2025	[REP5-011]
Environmental statement	Appendix 6.4: Visual assessment	6.3.16	December 2025	[REP5-021]
Environmental statement	Appendix 6.5: Residential visual amenity assessment	6.3.17	December 2025	[REP5-023]
Environmental statement	Chapter 7: Ecology	6.2.7	February 2026	
Environmental statement	Chapter 11: Water resources and flood risk	6.2.11	December 2025	[REP5-015]
Environmental statement	Appendix 11.3: Summary of watercourse crossings and photographs	6.3.83	December 2025	[REP5-029]
Environmental statement	Chapter 17: Other environmental topics	6.2.17	October 2025	[REP1-007]

SCHEDULE 13

Article 42

HEDGEROWS

PART 1

REMOVAL OF IMPORTANT HEDGEROWS

(1) Area	*(2) Number of Important Hedgerow and extent of removal*	*(3) Purpose of removal*
North Kesteven District Council	Removal of part of the hedgerow (approximately 9m in length) as shown within the area identified by purple shading with the extent of important hedgerow identified by a green dashed line on the vegetation removal plan (Sheet 1 of 26), reference H3.	To facilitate construction of Work Nos. 1, 2 and 3.
North Kesteven District Council	Removal of part of the hedgerow (approximately 2m in length) as shown within the area identified by purple shading with the extent of important hedgerow identified by a green dashed line on the vegetation removal plan (Sheet 1 of 26), reference H4.	To facilitate construction of Work Nos. 1, 2 and 3.
North Kesteven District Council	Removal of part of the hedgerow (approximately 10m in length) as shown within the area identified by purple shading with the extent of important hedgerow identified by a green dashed line on the vegetation removal plan (Sheet 1 of 26), reference H32.	To facilitate construction of Work Nos. 1, 2 and 3.
North Kesteven District Council	Removal of part of the hedgerow (approximately 2m in length) as shown within the area identified by purple shading with the extent of important hedgerow identified by a green dashed line on the vegetation removal plan (Sheet 3 of 26), reference H14.	To facilitate construction of Work Nos. 1, 2 and 3.
North Kesteven District Council	Removal of a total length of hedgerow (approximately 11.6m), as shown within the area identified by yellow	To facilitate construction of Work No. 8.

	shading with the extent of important hedgerow identified by a green dashed line on the vegetation removal plan (Sheet 13 of 26), reference H037.	
North Kesteven District Council	Removal of part of the hedgerow (approximately 15m), as shown within the area identified by yellow shading with the extent of important hedgerow identified by a green dashed line on the vegetation removal plan (Sheet 13 of 26), reference H038.	To facilitate construction of Work No. 8.
North Kesteven District Council	Removal of part of the hedgerow (approximately 15m), as shown within the area identified by yellow shading with the extent of important hedgerow identified by a green dashed line on the vegetation removal plan (Sheet 13 of 26), reference H039.	To facilitate construction of Work No. 8.
North Kesteven District Council	Removal of a total length of hedgerow (approximately 8.5m), as shown within the area identified by yellow shading with the extent of important hedgerow identified by a green dashed line on the vegetation removal plan (Sheet 13 of 26), reference H050.	To facilitate construction of Work No. 8.
North Kesteven District Council	Removal of part of the hedgerow (approximately 15m in length) as shown within the area identified by yellow shading with the extent of important hedgerow identified by a green dashed line on the vegetation removal plan (Sheet 14 of 26), reference H015.	To facilitate construction of Work No. 8.
North Kesteven District Council	Removal of part of the hedgerow (approximately 15m in length) as shown within the area identified by yellow shading with the extent of important hedgerow identified by a green dashed line on the vegetation removal plan (Sheet 14 of 26), reference H016.	To facilitate construction of Work No. 8.
North Kesteven District	Removal of part of the	To facilitate construction of

Council	hedgerow (approximately 15m), as shown within the area identified by yellow shading with the extent of important hedgerow identified by a green dashed line on the vegetation removal plan (Sheet 14 of 26), reference H021.	Work No. 8.
North Kesteven District Council	Removal of part of the hedgerow (approximately 15m), as shown within the area identified by yellow shading with the extent of important hedgerow identified by a green dashed line on the vegetation removal plan (Sheet 14 of 26), reference H022.	To facilitate construction of Work No. 8.
North Kesteven District Council	Removal of a total length of hedgerow (approximately 6.6m), as shown within the area identified by yellow shading with the extent of important hedgerow identified by a green dashed line on the vegetation removal plan (Sheet 14 of 26), reference H023.	To facilitate construction of Work No. 8.
North Kesteven District Council	Removal of a total length of hedgerow (approximately 7.8m), as shown within the area identified by yellow shading with the extent of important hedgerow identified by a green dashed line on the vegetation removal plan (Sheet 14 of 26), reference H024.	To facilitate construction of Work No. 8.
North Kesteven District Council	Removal of part of the hedgerow (approximately 15m), as shown within the area identified by yellow shading with the extent of important hedgerow identified by a green dashed line on the vegetation removal plan (Sheet 14 of 26), reference H025.	To facilitate construction of Work No. 8.
North Kesteven District Council	Removal of a total length of hedgerow (approximately 7.3m), as shown within the area identified by yellow shading with the extent of important hedgerow identified by a green dashed line on the vegetation removal plan	To facilitate construction of Work No. 8.

	(Sheet 14 of 26), reference H026.	
North Kesteven District Council	Removal of part of the hedgerow (approximately 15m), as shown within the area identified by yellow shading with the extent of important hedgerow identified by a green dashed line on the vegetation removal plan (Sheet 14 of 26), reference H032.	To facilitate construction of Work No. 8.
North Kesteven District Council	Removal of part of the hedgerow (approximately 15m in length) as shown within the area identified by yellow shading with the extent of important hedgerow identified by a green dashed line on the vegetation removal plan (Sheet 14 of 26), reference H033.	To facilitate construction of Work No. 8.
North Kesteven District Council	Removal of part of the hedgerow (approximately 15m in length) as shown within the area identified by yellow shading with the extent of important hedgerow identified by a green dashed line on the vegetation removal plan (Sheet 14 of 26), reference H036.	To facilitate construction of Work No. 8.
North Kesteven District Council	Removal of part of the hedgerow (approximately 15m in length) as shown within the area identified by yellow shading with the extent of important hedgerow identified by a green dashed line on the vegetation removal plan (Sheet 14 of 26), reference H041.	To facilitate construction of Work No. 8.
North Kesteven District Council	Removal of part of the hedgerows (approximately 15m), as shown within the area identified by yellow shading with the extent of important hedgerow identified by a green dashed line on the vegetation removal plan (Sheet 14 of 26), reference H042.	To facilitate construction of Work No. 8.
North Kesteven District Council	Removal of part of the hedgerow (approximately 15m), as shown within the area identified by yellow shading with the extent of	To facilitate construction of Work No. 8.

	important hedgerow identified by a green dashed line on the vegetation removal plan (Sheet 14 of 26), reference H043.	
North Kesteven District Council	Removal of part of the hedgerow (approximately 15m in length) as shown within the area identified by yellow shading with the extent of important hedgerow identified by a green dashed line on the vegetation removal plan (Sheet 14 of 26), reference H044.	To facilitate construction of Work No. 8.
North Kesteven District Council	Removal of part of the hedgerow (approximately 15m in length) as shown within the area identified by yellow shading with the extent of important hedgerow identified by a green dashed line on the vegetation removal plan (Sheet 14 of 26), reference H045.	To facilitate construction of Work No. 8.
North Kesteven District Council	Removal of a total length of hedgerow (approximately 8.6m), as shown within the area identified by yellow shading with the extent of important hedgerow identified by a green dashed line on the vegetation removal plan (Sheet 15 of 26), reference H005.	To facilitate construction of Work No. 8.
North Kesteven District Council	Removal of part of the hedgerow (approximately 30m in length) as shown within the area identified by yellow shading with the extent of important hedgerow identified by a green dashed line on the vegetation removal plan (Sheet 16 of 26), reference H1049.	To facilitate construction of Work No. 4.
North Kesteven District Council	Removal of part of the hedgerow (approximately 4.9m in length) as shown within the area identified by yellow shading with the extent of important hedgerow identified by a green dashed line on the vegetation removal plan (Sheet 16 of 26), reference H1050.	To facilitate construction of Work No. 4.
North Kesteven District Council	Removal of part of the hedgerow (approximately 30m	To facilitate construction of Work No. 4.

	in length) as shown within the area identified by yellow shading with the extent of important hedgerow identified by a green dashed line on the vegetation removal plan (Sheet 16 of 26), reference H1052.	
North Kesteven District Council	Removal of part of the hedgerow (approximately 30m), as shown within the area identified by yellow shading with the extent of important hedgerow identified by a green dashed line on the vegetation removal plan (Sheet 18 of 26), reference H1042.	To facilitate construction of Work No. 4.
North Kesteven District Council	Removal of a total length of hedgerow (approximately 26.7m), as shown within the area identified by yellow shading with the extent of important hedgerow identified by a green dashed line on the vegetation removal plan (Sheet 18 of 26), reference H1064.	To facilitate construction of Work No. 4.
North Kesteven District Council	Removal of a total length of hedgerow (approximately 19.7m), as shown within the area identified by yellow shading with the extent of important hedgerow identified by a green dashed line on the vegetation removal plan (Sheet 20 of 26), reference H1006.	To facilitate construction of Work No. 4.
North Kesteven District Council	Removal of part of the hedgerow (approximately 30m), as shown within the area identified by yellow shading with the extent of important hedgerow identified by a green dashed line on the vegetation removal plan (Sheet 20 of 26), reference H1007.	To facilitate construction of Work No. 4.
Boston Borough Council	Removal of part of the hedgerow (approximately 30m), as shown within the area identified by yellow shading with the extent of important hedgerow identified by a green dashed line on the vegetation removal plan (Sheet 26 of 26), reference	To facilitate construction of Work No. 4.

	H1018.	
Boston Borough Council	Removal of part of the hedgerow (approximately 30m), as shown within the area identified by yellow shading with the extent of important hedgerow identified by a green dashed line on the vegetation removal plan (Sheet 26 of 26), reference H1019.	To facilitate construction of Work No. 4.
Boston Borough Council	Removal of part of the hedgerow (approximately 30m), as shown within the area identified by yellow shading with the extent of important hedgerow identified by a green dashed line on the vegetation removal plan (Sheet 26 of 26), reference H1020.	To facilitate construction of Work No. 4.
Boston Borough Council	Removal of part of the hedgerow (approximately 15.7m), as shown within the area identified by yellow shading with the extent of important hedgerow identified by a green dashed line on the vegetation removal plan (Sheet 26 of 26), reference H1021.	To facilitate construction of Work No. 4.
Boston Borough Council	Removal of a total length of hedgerow (approximately 17.6m), as shown within the area identified by yellow shading with the extent of important hedgerow identified by a green dashed line on the vegetation removal plan (Sheet 26 of 26), reference H1022.	To facilitate construction of Work No. 4.
Boston Borough Council	Removal of part of the hedgerow (approximately 30m), as shown within the area identified by yellow shading with the extent of important hedgerow identified by a green dashed line on the vegetation removal plan (Sheet 26 of 26), reference H1023.	To facilitate construction of Work No. 4.
Boston Borough Council	Removal of a total length of hedgerow (approximately 9.8m), as shown within the area identified by yellow shading with the extent of important hedgerow identified	To facilitate construction of Work No. 4.

	by a green dashed line on the vegetation removal plan (Sheet 26 of 26), reference H1024.	
Boston Borough Council	Removal of part of the hedgerow (approximately 30m), as shown within the area identified by yellow shading with the extent of important hedgerow identified by a green dashed line on the vegetation removal plan (Sheet 26 of 26), reference H1026.	To facilitate construction of Work No. 4.
Boston Borough Council	Removal of a total length of hedgerow (approximately 15.4m), as shown within the area identified by yellow shading with the extent of important hedgerow identified by a green dashed line on the vegetation removal plan (Sheet 26 of 26), reference H1027.	To facilitate construction of Work No. 4.
Boston Borough Council	Removal of part of the hedgerow (approximately 30m), as shown within the area identified by yellow shading with the extent of important hedgerow identified by a green dashed line on the vegetation removal plan (Sheet 26 of 26), reference H1028.	To facilitate construction of Work No. 4.
Boston Borough Council	Removal of a total length of hedgerow (approximately 23.7m), as shown within the area identified by yellow shading with the extent of important hedgerow identified by a green dashed line on the vegetation removal plan (Sheet 26 of 26), reference H1029.	To facilitate construction of Work No. 4.
Boston Borough Council	Removal of part of the hedgerow (approximately 30m), as shown within the area identified by yellow shading with the extent of important hedgerow identified by a green dashed line on the vegetation removal plan (Sheet 26 of 26), reference H1033.	To facilitate construction of Work No. 4.
Boston Borough Council	Removal of a total length of hedgerow (approximately 8.5m), as shown within the	To facilitate construction of Work No. 4.

	area identified by yellow shading with the extent of important hedgerow identified by a green dashed line on the vegetation removal plan (Sheet 26 of 26), reference H1034.	
Boston Borough Council	Removal of part of the hedgerow (approximately 30m in length) as shown within the area identified by yellow shading with the extent of important hedgerow identified by a green dashed line on the vegetation removal plan (Sheet 26 of 26), reference H1041.	To facilitate construction of Work No. 8.

PART 2

REMOVAL OF HEDGEROWS

(1) Area	*(2) Number of Hedgerow and extent of removal*	*(3) Purpose of removal*
North Kesteven District Council	Removal of part of the hedgerow (approximately 1.6m in length) as shown within the area identified by purple shading on the vegetation removal plan (Sheet 2 of 26), reference H11.	To facilitate construction of Work Nos. 1, 2 and 3.
North Kesteven District Council	Removal of part of the hedgerow (approximately 5.5m in length) as shown within the area identified by purple shading on the vegetation removal plan (Sheet 3 of 26), reference H33.	To facilitate construction of Work Nos. 1, 2 and 3.
North Kesteven District Council	Removal of part of the hedgerow (approximately 23m in length) as shown within the area identified by purple shading on the vegetation removal plan (Sheet 6 of 26), reference H29.	To facilitate construction of Work Nos. 1, 2 and 3.
North Kesteven District Council	Removal of part of the hedgerow (approximately 2m in length) as shown within the area identified by purple shading on the vegetation removal plan (Sheet 8 of 26), reference H16.	To facilitate construction of Work Nos. 1, 2 and 3.
North Kesteven District Council	Removal of part of the hedgerow (approximately 4m	To facilitate construction of Work Nos. 1, 2 and 3.

	in length) as shown within the area identified by purple shading on the vegetation removal plan (Sheet 9 of 26), reference H24.	
North Kesteven District Council	Removal of part of the hedgerow (approximately 16m in length) as shown within the area identified by purple shading on the vegetation removal plan (Sheet 12 of 26), reference H39.	To facilitate construction of Work Nos. 1, 2 and 3.
North Kesteven District Council	Removal of part of a hedgerow (approximately 15m), as shown within the area identified by yellow shading on the vegetation removal plan (Sheet 14 of 26), reference H027.	To facilitate construction of Work No. 8.
North Kesteven District Council	Removal of part of the hedgerow (approximately 15m in length) as shown within the area identified by yellow shading on the vegetation removal plan (Sheet 14 of 26), reference H028.	To facilitate construction of Work No. 8.
North Kesteven District Council	Removal of part of the hedgerow (approximately 16.7m in length) as shown within the area identified by yellow shading on the vegetation removal plan (Sheet 15 of 26), reference H008.	To facilitate construction of Work No. 8.
North Kesteven District Council	Removal of part of the hedgerow (approximately 30m in length) as shown within the area identified by yellow shading on the vegetation removal plan (Sheet 16 of 26), reference H1048.	To facilitate construction of Work No. 4.
North Kesteven District Council	Removal of part of the hedgerow (approximately 5.4m in length) as shown within the area identified by yellow shading on the vegetation removal plan (Sheet 18 of 26), reference H1059.	To facilitate construction of Work No. 4.
Boston Borough Council	Removal of part of the hedgerow (approximately 30m), as shown within the area identified by yellow shading on the vegetation removal plan (Sheet 25 of 26), reference H1125.	To facilitate construction of Work No. 4.
Boston Borough Council	Removal of part of the	To facilitate construction of

	hedgerow (approximately 30m in length) as shown within the area identified by yellow shading on the vegetation removal plan (Sheet 26 of 26), reference H1114.	Work No. 4.
Boston Borough Council	Removal of part of the hedgerow (approximately 30m in length) as shown within the area identified by yellow shading on the vegetation removal plan (Sheet 26 of 26), reference H1122.	To facilitate construction of Work No. 4.

SCHEDULE 14

Article 43

ARBITRATION RULES

Primary objective

1. The primary objective of these arbitration rales is to achieve a fair, impartial, final and binding award on the substantive difference between the parties (save as to costs) within 4 months from the date the arbitrator is appointed pursuant to article 43 (arbitration) of the Order.

2.—(1) The parties must first use their reasonable endeavours to settle a dispute amicably through negotiations undertaken in good faith by the senior management of the parties. Any dispute which is not resolved amicably by the senior management of the parties within twenty working days of the dispute arising, or such longer period as agreed in writing by the parties, will be subject to arbitration in accordance with the terms of this Schedule.

(2) 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

3.—(1) All time periods in these arbitration rules will be measured in days and this is to include weekends, but not bank or public holidays.

(2) Time periods will be calculated from the day after the arbitrator is appointed which must be either—

(a) the date the arbitrator notifies the parties in writing of his/her acceptance of an appointment by agreement of the parties; or

(b) the date the arbitrator is appointed by the Secretary of State.

Timetable

4.—(1) The timetable for the arbitration is to be that set out in sub-paragraphs (2) to (4) unless amended in accordance with sub-paragraph 326(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 differences between the parties, the legal and factual issues, the claimant's contentions as to those issues, the amount of its claim and 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 responding to the claimant's statement of claim, all statement in respect of the nature of the differences, the legal and factual issues in the claimant's claim, its acceptance of any element(s) of the claimant's claim, 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 report(s) (if submitted by the claimant) and explanations for the objections.

(4) Within 7 days of the respondent serving its statements under sub-paragraph (3), the claimant may make a statement of reply by providing both the respondent and the arbitrator with—

(a) a written statement responding to the respondent's submissions, including its reply in respect of the nature of the difference, the issues (both factual and legal) and its contentions in relation to the issues;

(b) all statements of evidence and copies of documents in response to the respondent's submissions;

(c) any expert report in response to the respondent's submissions;

(d) any objections to the statements of evidence, expert reports or other documents submitted by the respondent; and

(e) written submissions in response to the legal and factual issues involved.

Procedure

5.—(1) The parties' pleadings, witness statements and expert reports (if any) must be concise. No single pleading is to exceed 30 single-sided A4 pages using 10pt Arial font.

(2) The arbitrator must make an award on the substantive difference(s) 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 2 days of delivery of the last submission, request a hearing giving specific reasons why it considers a hearing is required.

(4) Within 7 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 he/she is to hold a hearing, the date and venue for the hearing must be fixed by agreement with the parties, save that if there is no agreement the arbitrator must direct a date and venue which he/she 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 will 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 expert(s) attending the hearing may be asked questions by the arbitrator.

(7) There will be no process of examination and cross—examination of experts, but the arbitrator will invite the parties to ask questions of the experts by way of clarification of any answers given by the expert(s) in response to the arbitrator's questions. Prior to the hearing the procedure for the expert(s) will be that—

(a) at least 28 days before a hearing, the arbitrator will provide a list of issues to be addressed by the expert(s);

(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 7 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 will lake 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 4 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 submitted information attaching the appropriate weight to any evidence submitted beyond any timetable or in breach of any procedure and/or direction.

(11) The arbitrator's award must include reasons. The parties will accept that the extent to which reasons are given must be proportionate to the issues in dispute and the time available to the arbitrator to deliver the award.

Arbitrator's powers

6.—(1) The arbitrator has all the powers of the Arbitration Act 1996(**a**), including the non-mandatory sections, save where modified by these arbitration rules in this Schedule.

(2) There will be no discovery or disclosure, except that the arbitrator will 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 and/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

7.—(1) The costs of the arbitration must include the fees and expenses of the arbitrator, the reasonable fees and expenses of any experts and the reasonable legal and other costs incurred by the parties for the arbitration.

(2) Where the difference involves connected/interrelated issues, the arbitrator will consider the relevant costs collectively.

(3) The final award must fix the costs of the arbitration and decide which of the parties will bear them or in what proportion they will be borne by the parties.

(4) The arbitrator will 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 and/or defences, the degree of success for different elements of the claims, claims that have incurred substantial costs, the conduct of the parties and the degree of success of a party.

Confidentiality

8.—(1) Subject to sub-paragraphs (2) and (3), any arbitration hearing and documentation will be open to and accessible by the public.

(2) The arbitrator may direct that the whole or part of a hearing is to be private or any documentation to be confidential where it is necessary in order to protect commercially sensitive information.

(3) Nothing in this paragraph will prevent any disclosure of a document by a party pursuant to an order of a court in England and Wales or where disclosure is required under any enactment.

(**a**) 1996 c. 23.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises Beacon Fen Energy Park Ltd (referred to in this Order as the undertaker) to construct, operate, maintain and decommission a ground mounted solar photovoltaic generating station with a gross electrical output capacity over 50 megawatts and associated development. The Order would permit the undertaker to acquire, compulsorily or by agreement, land and rights in land and to use land for this purpose.

A copy of the Order plans and the book of reference mentioned in the Order and certified in accordance with article 40 (certification of plans, etc) of this Order may be inspected free of charge during working hours at Lincolnshire County Council, County Offices, Newland, Lincoln LN1 1YL.

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