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

2025 No. 934

INFRASTRUCTURE PLANNING

The Byers Gill Solar Order 2025

Made - - - -	*23rd July 2025*
Coming into force	*14th August 2025*

CONTENTS

PART 1
PRELIMINARY

1. Citation and commencement
2. Interpretation

PART 2
PRINCIPAL POWERS

3. Development consent etc. granted by the Order
4. Maintenance of authorised development
5. Operation of generating stations
6. Consent to transfer benefit of Order
7. Disapplication and modification of legislative provisions
8. Defence to proceedings in respect of statutory nuisance

PART 3
STREETS

9. Street works
10. Application of the 1991 Act
11. Power to alter layout, etc., of streets
12. Construction and maintenance of altered streets
13. Temporary closure of public rights of way
14. Public rights of way
15. Access to works
16. Agreements with street authorities
17. Traffic regulation measures

PART 4
SUPPLEMENTAL POWERS

18. Discharge of water
19. Protective work to buildings
20. Authority to survey and investigate the land

PART 5
POWERS OF ACQUISITION

21. Compulsory acquisition of land
22. Time limit for exercise of authority to acquire land compulsorily
23. Compulsory acquisition of rights
24. Private rights
25. Acquisition of subsoil only
26. Application of the 1981 Act
27. Power to override easements and other rights
28. Modification of Part 1 of the Compulsory Purchase Act 1965
29. Rights under or over streets
30. Temporary use of land for carrying out the authorised development
31. Temporary use of land for maintaining authorised development
32. Statutory undertakers
33. Apparatus and rights of statutory undertakers in temporarily closed streets
34. Recovery of costs of new connections

PART 6
GENERAL

35. Operational land for the purposes of the 1990 Act
36. Certification of plans, etc.
37. Service of notices
38. Felling or lopping of trees or removal of hedgerows
39. Trees subject to tree preservation orders
40. Arbitration
41. Requirements, appeals, etc.
42. Application of landlord and tenant law
43. Crown rights
44. Protective provisions
45. Funding
46. Inconsistent planning permissions

SCHEDULE 1 — AUTHORISED DEVELOPMENT
SCHEDULE 2 — REQUIREMENTS
PART 1 — REQUIREMENTS
PART 2 — PROCEDURE FOR DISCHARGE OF REQUIREMENTS
SCHEDULE 3 — STREETS SUBJECT TO STREET WORKS
SCHEDULE 4 — ALTERATION OF STREETS
PART 1 — PERMANENT ALTERATION OF LAYOUT AND MAINTAINED BY THE HIGHWAY AUTHORITY

PART 2 — TEMPORARY ALTERATION OF LAYOUT
SCHEDULE 5 — PUBLIC RIGHTS OF WAY TO BE CLOSED
PART 1 — PUBLIC RIGHTS OF WAY TO BE TEMPORARILY CLOSED
PART 2 — PUBLIC RIGHTS OF WAY TO BE PERMANENTLY STOPPED UP
SCHEDULE 6 — ACCESS TO WORKS
PART 1 — PERMANENT MEANS OF ACCESS TO WORKS
PART 2 — TEMPORARY MEANS OF ACCESS TO WORKS
SCHEDULE 7 — REMOVAL OF HEDGEROWS
SCHEDULE 8 — LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED
SCHEDULE 9 — MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR THE CREATION OF NEW RIGHTS AND IMPOSITION OF NEW RESTRICITVE COVENANTS
SCHEDULE 10 — LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN
SCHEDULE 11 — PROTECTIVE PROVISIONS
PART 1 — PROTECTION FOR ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS
PART 2 — FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS
PART 3 — FOR THE PROTECTION OF THE DRAINAGE AUTHORITIES
PART 4 — FOR THE PROTECTION OF NATIONAL GRID ELECRICITY TRANSMISSION PLC AS ELECTRICITY UNDERTAKER
PART 5 — FOR THE PROTECTION OF NATIONAL GAS TRANSMISSION PLC AS GAS UNDERTAKER
PART 6 — FOR THE PROTECTION OF NORTHERN POWERGRID
PART 7 — FOR THE PROTECTION OF NORTHUMBRIAN WATER LIMITED
PART 8 — FOR THE PROTECTION OF NORTHERN GAS NETWORK'S APPARATUS
SCHEDULE 12 — ARBITRATION RULES
SCHEDULE 13 — DOCUMENTS TO BE CERTIFIED

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 has been 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**).

(**a**) 2008 c. 29. Parts 1 to 7 were amended by Chapter 6 of Part 6 of the Localism Act 2011 (c. 20).
(**b**) S.I. 2009/2264, amended by S.I. 2010/602, S.I. 2010/602, S.I. 2012/2732, S.I. 2013/522, S.I. 2013/755, S.I. 2015/377, S.I. 2017/572; modified by S.I. 2012/1659.
(**c**) S.I. 2010/103, amended by S.I. 2012/635.

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

The Secretary of State has considered the representations made and not withdrawn, and the recommendation and report of the Examining Authority, and taken into account the environmental information in accordance with regulation 4 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017(**a**) and has had regard to the documents and matters referred to in section 104(2) of the 2008 Act.

The Secretary of State is satisfied that the special category land within the Order limits, when burdened with the rights imposed by this Order, will be no less advantageous than it was before to the persons in whom it is vested, other persons, if any, entitled to rights of common or other rights, and to the public; and that, accordingly, section 132(3) of the 2008 Act applies.

The Secretary of State, having decided the application, has determined to make an Order granting development consent for the development described in the application on the 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, 115, 120, 122, 123 and 140 of the 2008 Act, makes the following Order—

PART 1

PRELIMINARY

Citation and commencement

1.—(1) This Order may be cited as the Byers Gill Solar Order 2025 and comes into force on 14th August 2025.

Interpretation

2.—(1) In this Order except where provided otherwise—

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

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

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

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

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

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

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

(**a**) S.I. 2017/572.
(**b**) 1961 c. 33.
(**c**) 1965 c. 56.
(**d**) 1980 c. 66.
(**e**) 1981 c. 66.
(**f**) 1984 c. 27.
(**g**) 1989 c. 29.
(**h**) 1990 c. 8.

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

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

"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, electrical cables, telecommunications equipment and electricity cabinets;

"arboricultural impact assessment" means the document certified as such by the Secretary of State for the purposes of this Order under article 36 (certification of plans, etc);

"archaeological management strategy" means the document certified as the archaeological management strategy for the purposes of this Order under article 36 (certification of plans, etc);

"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;

"battery energy storage" means equipment used for the storage of electrical energy by battery;

"book of reference" means the book of reference certified by the Secretary of State as the book of reference for the purposes of the Order under article 36 (certification of plans, etc);

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

"carriageway" has the same meaning as in the 1980 Act;

"CCTV" means a closed circuit television security system;

"CEMP" means the construction environmental management plans to be submitted pursuant to requirement 4;

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

"CTMP" means the construction traffic management plan to be submitted pursuant to requirement 6;

"date of final commissioning" means in respect of each phase of the authorised development as approved under requirement 2 the date on which each phase of the authorised development commences operation by generating electricity on a commercial basis but excluding the generation of electricity during commissioning and testing;

"definitive map and statement" has the same meaning as in Part III of the Wildlife and Countryside Act 1981(**c**);

"design approach document" means the document certified by the Secretary of State as the design approach document for the purposes of this Order under article 36 (certification of plans, etc);

"electronic transmission" means a communication transmitted—

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

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

"Environment Agency" means the Environment Agency and any successor in name or function;

"environmental masterplan" means the documents certified by the Secretary of State as such for the purposes of this Order under article 36 (certification of plans, etc);

(**a**) 1991 c. 22. Section 49(3A) was inserted by section 124(2) of the Local Transport Act 2008 (c. 26). Sections 70(6), 74(7B), 74A(aa), and 88(6) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).
(**b**) 2008 c. 29.
(**c**) 1981 c. 69.

"environmental statement" means the document certified by the Secretary of State as the environmental statement for the purposes of this Order under article 36 (certification of plans, etc);

"footpath" and "footway" have the same meaning as in the 1980 Act(**a**);

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

"holding company" has the same meaning as in section 1159 of the Companies Act 2006(**c**);

"inverter" means electrical equipment required to convert direct current power generated by the solar panels to alternating current power;

"land plans" means the plans certified by the Secretary of State as the land plans for the purposes of this Order under article 36 (certification of plans, etc);

"LEMP" means the landscape and ecological plan to be submitted pursuant to requirement 12;

"location plan" means the plan certified by the Secretary of State as the location plan for the purposes of this Order under article 36 (certification of plans, etc);

"maintain" includes inspect, repair, adjust, alter, remove, refurbish, reconstruct, replace and improve any part of, but not remove, reconstruct or replace the whole of, the authorised development, and any derivative of "maintain" must be construed accordingly;

"National Grid" means National Grid Electricity Transmission Plc (Company Number 2366977) whose registered office is at 1-3 Strand, London, WC2N 5EH or any successor as a licence holder within the meaning of Part 1 of the 1989 Act;

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

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

"outline battery fire safety management plan" means the plan certified by the Secretary of State as such for the purposes of this Order under article 36 (certification of plans, etc);

"outline CEMP" means the document certified by the Secretary of State as the outline construction environmental management plan for the purposes of this Order in accordance with article 36 (certification of plans, etc);

"outline CTMP" means the document certified by the Secretary of State as the outline construction traffic management plan for the purposes of the Order in accordance with article 36 (certification of plans, etc);

"outline DEMP" means the document certified by the Secretary of State as the outline decommissioning environmental management plan for the purposes of this Order under article 36 (certification of plans, etc);

"outline LEMP" means the document certified by the Secretary of State as the outline landscape and ecological management plan for the purposes of this Order in accordance with article 36 (certification of plans, etc);

"outline materials management plan" means the document certified as such by the Secretary of State for the purposes of this Order under article 36 (certification of plans, etc);

"outline pollution and spillage response plan" means the document certified as such by the Secretary of State for the purposes of this Order under article 36 (certification of plans, etc);

"outline public rights of way management plan" means the document certified as such by the Secretary of State for the purposes of this Order under article 36 (certification of plans, etc);

"outline site waste management plan" means the document certified as such by the Secretary of State for the purposes of this Order under article 36 (certification of plans, etc);

(**a**) "Footpath" and "footway" are defined in section 329.
(**b**) "Highway" is defined in section 328(1) for "highway authority" see Section 1.
(**c**) 2006 c. 46.

"outline soil resource management plan" means the document certified as such by the Secretary of State for the purposes of this Order under article 36 (certification of plans, etc);

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

"plot" means any plot as may be identified by reference to a number and which is listed in the book of reference and shown on the land plans;

"public right of way" includes any public right of way that is added to the definitive map and statement after the making of the Order;

"relevant highway authority" means the highway authority for the area to which the provision relates;

"relevant planning authority" means the local planning authority for the area to which the provision relates or, where the part falls within the administrative areas of multiple relevant planning authorities, each of the relevant planning authorities;

"requirements" means those matters set out in 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;

"site preparation works" means all or any of—

(a) environmental surveys, geotechnical surveys, intrusive archaeological surveys and other investigations for the purpose of assessing ground conditions, demolition of buildings and removal of plant and machinery;

(b) above ground site preparation for temporary facilities for the use of contractors;

(c) diversion and laying of services;

(d) the provision of temporary means of enclosure and site security for construction;

(e) the temporary display of site notices or advertisements; or

(f) site clearance (including vegetation removal, demolition of existing buildings and structures);

"solar panel" means a solar photovoltaic panel designed to convert solar irradiance to direct current electrical energy fitted to a mounted structure;

"special category land plans" means the plans certified as such by the Secretary of State for the purposes of this Order under article 36 (certification of plans, etc);

"statutory undertaker" means any person falling within section 127(8) (statutory undertakers' land) of the 2008 Act and includes a public communications provider defined by section 151(1) (interpretation of chapter 1) of the Communications Act 2003(**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 or 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, public rights of way and access plan" means the plan certified as such by the Secretary of State for the purposes of this Order under article 36 (certification of plans, etc)

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

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

(**a**) 1981 c. 67
(**b**) 2003 c. 21.
(**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.

"transformer" means a structure containing electrical switch gear serving to transform electricity generated by the solar panels and imported and exported by the batteries to a higher voltage;

"trees and hedgerows to be removed plan" means the plan appended to the arboricultural impact assessment setting out the extent of trees and hedgerows to be removed;

"undertaker" means RWE Renewables UK Solar and Storage Limited (company registration number 14539260) whose registered address is Windmill Hill Business Park, Whitehill Way, Swindon, Wiltshire, SN5 6PB and any other person who for the time being has the benefit of this Order in accordance with article 6 (consent to transfer benefit of 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;

"working day" means any day other than a Saturday, Sunday or English bank or public holiday; and

"works plans" means the plans certified by the Secretary of State as the works plans for the purposes of this Order in accordance with article 36 (certification of plans, etc);

(2) All distances, directions, capacities and lengths referred to in this Order are approximate and distances between points on a numbered work are taken to be measured along that work.

(3) Any reference in this Order to a work identified by the number of the work is to be construed as a reference to the work of that number as described in Schedule 1 (authorised development) and authorised by this Order.

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

(5) References in this Order to any statutory body include that body's successor bodies as from time to time have jurisdiction in relation to the authorised development.

(6) 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.

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

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

Maintenance of authorised development

4.—(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.

Operation of generating stations

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

(2) This article does not relieve the undertaker of any requirement to obtain any permit or licence under any other legislation that may be required from time to time to authorise the operation of an electricity generating station.

Consent to transfer benefit of Order

6.—(1) Except as otherwise provided in this Order, the provisions of this Order have effect solely for the benefit of the undertaker.

(2) Subject to the powers of this Order, the undertaker may with the written consent of the Secretary of State—

(a) transfer to another person ("the transferee") any or all of the benefit of the provisions of this Order 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.

(3) Where a transfer or grant has been made, references in this Order to the undertaker, except in paragraph (9), are to include references to the transferee or lessee.

(4) The consent of the Secretary of State is required for the exercise of the powers of paragraph (2) except where—

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

(b) the transferee or lessee is a holding company or subsidiary of the undertaker; 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.

(d) The transfer or grant is made to Northern Powergrid Holding Company (company registration number 03476201) whose registered office is at Lloyds Court, 78 Grey Street, Newcastle Upon Tyne, NE1 6AF for the purposes of undertaking Work No. 3(b), 4, 5, and 6.

(5) Where the consent of the Secretary of State is not required, the undertaker must notify the Secretary of State in writing before transferring or granting a benefit referred to in paragraph (2).

(6) The notification referred to in paragraph (5) must state—

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

(b) subject to paragraph (7), the date on which the transfer will take effect;

(c) the powers to be transferred or granted;

(d) pursuant to paragraph (9), the restrictions, liabilities and obligations that will apply to the person exercising the powers transferred or granted; and

(e) where relevant, a plan showing the works or areas to which the transfer or grant relates.

(7) The date specified under paragraph (6)(b) must not be earlier than the expiry of ten working days from the date of the receipt of the notification.

(8) 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.

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

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

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

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

Disapplication and modification of legislative provisions

7. The following provisions do not apply in relation to the construction of any work or the carrying out of any operation required for the purpose of, or in connection with, the construction, operation, maintenance or decommissioning of any part of the authorised development—

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

(b) in so far as they relate to the temporary possession of land, the provisions of the Neighbourhood Planning Act 2017(**b**).

Defence to proceedings in respect of statutory nuisance

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

(a) the defendant shows that the nuisance—

(i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction sites), or a consent given under section 61 (prior consent for work on construction sites) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974(**d**); or

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

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

(**a**) 1991 c. 59. Section 23 was amended by paragraph 192(2) of Schedule 22 to the Environment Act 1995 (c. 25), paragraphs 25 and 32 of Schedule 2 to the Flood and Water Management Act 2010 (c. 29) and S.I. 2013/755.
(**b**) 2017 c. 20.
(**c**) 1990 c. 43.
(**d**) 1974 c. 40. Section 61(9) was amended by Section 162 and paragraph 15 of Schedule 3 to the Environmental Protection Act 1990 (c. 25). There are other amendments to the 1974 Act which are not relevant to this Order.

(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 construction maintenance or decommissioning of the authorised development.

PART 3

STREETS

Street works

9.—(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 under the street;

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

(e) repair, replace or otherwise alter the surface or structure of 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 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 1991 Act

10.—(1) Works carried out under this Order in relation to a highway which consists of or includes a carriageway must be treated for the purposes of Part 3 of the 1991 Act (street works in England and Wales) as major highway works if they are of a description mentioned in section 86(3) of the 1991 Act (highway authorities, highways and related matters).

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

(3) The provisions of the 1991 Act mentioned in paragraph (3) that apply in relation to the carrying out of street works under that Act and any regulations made or code of practice issued or approved under those provisions apply (with all necessary modifications) in relation to—

(a) the carrying out of works under article 9 (street works); and

(b) the temporary closure, temporary alteration or temporary diversion of a street by the undertaker under article 13 (temporary closure of public rights of way);

whether or not the carrying out of the works or the closure, alteration or diversion constitutes street works within the meaning of that Act.

(4) The provisions of the 1991 Act(**a**) are—

(a) section 54 (advance notice of certain works);

(b) subject to paragraph (4), section 55 (notice of starting date of works);

(**a**) Sections 55, 57, 60, 68, and 69 were amended by the Traffic Management Act 2004 (c. 18).

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

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

(e) section 65 (safety measures);

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

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

(h) section 71 (materials, workmanship and standard of reinstatement);

(i) section 72 (powers of street authority in relation to reinstatement);

(j) section 73 (reinstatement affected by subsequent works);

(k) section 75 (inspection fees);

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

(m) section 77 (liability for cost of use of alternative route; and

(n) all provisions of that Act that apply for the purposes of the provisions referred to in sub-paragraphs (a) to (g).

(5) Section 54 and 55 of the 1991 Act as applied by paragraph (4) has effect as if references in section 57 of that Act to emergency works included a reference to a temporary closure, stopping up, alteration or diversion (as the case may be) required in a case of emergency.

Power to alter layout, etc., of streets

11.—(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 and maintained by the highway authority) 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 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 constructing, operating, maintaining or decommissioning 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 the carriageway by reducing the width of any kerb, footway, cycle track or verge within the street;

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

(c) reduce the width of the carriageway;

(d) make and maintain passing places; and

(e) alter, remove, replace and relocate any street furniture, including bollards, lighting columns, road signs and chevron signs.

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

(4) The powers conferred by paragraph (2)—

(a) are exercisable on the giving of not less than six weeks' notice to the street authority; and

(b) are not to be exercised without the consent of the street authority.

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

(6) Any application to which this article applies must include a statement that the provisions of paragraph (5) apply to that application.

(7) Paragraphs (4), (5) and (6) do not apply where the undertaker is the street authority for a street in which the works are being carried out.

Construction and maintenance of altered streets

12.—(1) The permanent alterations to each of the streets specified in Part 1 (permanent alteration of layout and maintained by the highway authority) of Schedule 4 (alteration of streets) to this Order must be completed to the reasonable satisfaction of the relevant highway authority and, unless otherwise agreed by the relevant highway authority, the alterations including any culverts, bunding or other structures laid under it or supporting it must be maintained to the same standard by and at the expense of the undertaker for a period of 12 months from their completion and from the expiry of that period, subject to certification by the highway authority that it has been made up to the same satisfactory manner, shall be maintained by and at the expense of the relevant highway authority.

(2) Where a footpath or bridleway is constructed altered or diverted under this Order, the constructed altered or diverted part of that highway must be completed to the reasonable satisfaction of the relevant highway authority and, unless otherwise agreed in writing with the relevant highway authority, that part of the footpath or bridleway including any culverts, bunding or other structures laid under it or supporting it must be maintained to the same standard by and at the expense of the undertaker for a period of 12 months from their completion and from the expiry of that period, subject to certification by the highway authority that it has been made up to the same satisfactory manner, shall be maintained by and at the expense of the relevant highway authority;

(3) Subject to paragraph (4), the temporary alterations to the street specified in Part 2 (temporary alteration of layout) of Schedule 4 must be completed to the reasonable satisfaction of the street authority and the temporary alterations must be maintained by and at the expense of the undertaker.

(4) Those restoration works carried out pursuant to article 11(3) (power to alter layout, etc., of streets) must be completed to the reasonable satisfaction of the street authority and must be maintained to the same standard by the undertaker for a period of 12 months from their completion and from the expiry of that period, subject to certification by the highway authority that it has been made up to the same satisfactory manner, shall be maintained by and at the expense of the street authority.

(5) 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.

(6) For the purposes of a defence under paragraph (5), 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.

(7) Paragraphs (1) to (6) do not apply where the undertaker is the street authority for a street in which the works are being carried out.

Temporary closure of public rights of way

13.—(1) The undertaker, during and for the purposes of constructing or maintaining the authorised development, may temporarily close, alter or divert any public rights of way and may for any reasonable time, subject to paragraph (3), prevent all persons from passing along the public rights of way.

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

(3) Without limiting paragraph (1), the undertaker may use any public rights of way temporarily closed under the powers conferred by this article within the Order limits as a temporary working site subject to the undertaker returning the public right of way to its previous condition after such use ends.

(4) Without limiting paragraph (1), the undertaker may temporarily close, alter or divert the public rights of way specified in column (2) of Part 1 of Schedule 5 (public rights of way to the extent specified, by reference to the letters and numbers shown on the street works, public rights of way and access plan, in column (3) of those Schedules.

(5) The undertaker must not temporarily close, alter, divert or use as a temporary working site—

(a) any public rights of way referred to in paragraph (4) without first consulting the street authority; and

(b) any other public rights of way without the consent of the street authority, which may attach reasonable conditions to the consent.

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

(7) If a street authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent under paragraph (5)(b) that street authority is deemed to have granted consent.

(8) Any application for consent under sub-paragraph (3) or (5)(b) must include a statement that the provisions of paragraph (9) apply to that application.

(9) If an application for consent under sub-paragraph (3) or (5)(b) does not include the statement required under paragraph (10), then the provisions of paragraph (9) will not apply to that application.

Public rights of way

14.—(1) The public rights of way identified in columns (1) to (3) of Part 2 (public rights of way to be permanently stopped up) of Schedule 5 (public rights of way to be stopped up) and shown on the street works, public rights of way and access plan are to be extinguished on the date of the expiry of the notice given under paragraph (2).

(2) No less than 28 days prior to the extinguishment of each of the public rights of way identified in columns (1) to (3) of Part 2 of Schedule 5 and shown on the street works, public rights of way and access plan, the undertaker must erect a site notice at each end of the right of way to be extinguished .

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

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

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

(c) details of any public rights of way being provided in substitution; and

(d) details of the place where a copy of this Order and the documents listed in Schedule 13 (documents to be certified) may be inspected.

(4) No public right of way specified in Part 2 of Schedule 5 being a public right of way which is to be permanently extinguished is to be wholly or partly stopped up under this article unless—

(a) The new public right of way to be constructed and substituted for it, which is specified in column (4) of that Part of that Schedule has been completed to the reasonable satisfaction of the relevant highway authority and is open for use; or

(b) An appropriate temporary alternative route for the passage of such users as could have used the public right of way to be stopped up is first provided and subsequently maintained by the undertaker, to the reasonable satisfaction of the relevant highway authority, between the commencement and termination points for the stopping up of the public right of way until the completion and opening of the new public right of way in accordance with sub-paragraph (a).

Access to works

15.—(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; and

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

(2) 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

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

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

(b) any stopping up, temporary closure, restriction, alteration or diversion of a street authorised by this Order;

(c) the carrying out in the street of any of the works referred to in article 9(1) (street works); or

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

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

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

(2) Such 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

17.—(1) Subject to the provisions of this article, the undertaker may make temporary provision at any time, in the interests of safety and for the purposes of the construction 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 or made, or having effect as if made, under the 1984 Act.

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

(3) Before exercising the power conferred by paragraph (1) 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.

(4) The undertaker must not exercise the powers in paragraph (1) unless it has—

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

(b) not less than 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.

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

(6) Any provision made by the undertaker under paragraphs (1)—

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

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

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

PART 4

SUPPLEMENTAL POWERS

Discharge of water

18.—(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits,

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

make openings into, and connections with, the watercourse, public sewer or drain subject to the obtaining of consent and approval respectively pursuant to paragraphs (3) and (4) below.

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

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

(4) The undertaker must not carry out any works to or make any opening into any public sewer or drain pursuant to paragraph (1) 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.

(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 pursuant to 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 the entry into controlled waters of any matter whose entry or discharge into controlled waters is prohibited by regulation 12 (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016(**b**).

(8) This article does not permit any activity listed in paragraph 3(1) of Schedule 21 to the 2016 Regulations.

(9) In this article—

(a) "public sewer or drain" means a sewer or drain which belongs to a sewerage undertaker, the Environment Agency, an internal drainage board or a local authority; and

(b) other expressions, excluding watercourse, used both in this article and in the Environmental Permitting (England and Wales) Regulations 2016 have the same meaning as in those Regulations.

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

(11) Any application for consent under paragraph (3) or approval under sub-paragraph (4)(a) must include a statement that the provisions of paragraph (10) apply to that application.

(12) If an application for consent under paragraph (3) or approval under sub-paragraph (a) does not include the statement required under paragraph (11), then the provisions of paragraph (10) will not apply to that application.

Protective work to buildings

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

(2) Protective works may be carried out—

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

(**b**) S.I. 2016/1154.

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

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

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

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

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

(5) Before exercising—

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

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

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

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

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

(6) Where a notice is served under paragraph (5)(a), (c), or (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 of whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 40 (arbitration).

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

(8) Where—

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

(b) within the period of five years beginning with the date of final commissioning of the relevant part of the authorised development it appears that the protective works are inadequate to protect the building against damage caused by the construction, operation or maintenance of that part of the authorised development,

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

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

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

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

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

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

Authority to survey and investigate the land

20.—(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 equipment for use in connection with the survey and investigation of land 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) Any person entering land under this article on behalf of the undertaker—

(a) must, if so required on 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 trail holes.

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

(a) in land held by or in right of the Crown without the consent of the Crown;

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

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

but such consent must not be unreasonably withheld.

(5) 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.

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

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

(b) under paragraph (4)(c) in the case of a street authority,

that authority is deemed to have granted consent.

(7) Any application for consent under paragraph (4)(b) or 4(c) must include a statement that the provisions of paragraph (6) apply to that application.

(8) If an application for consent under paragraph (4)(b) or 4(c) does not include the statement required under paragraph (7), then the provisions of paragraph (6) will not apply to that application.

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

PART 5

POWERS OF ACQUISITION

Compulsory acquisition of land

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

(2) use any land so acquired for the purpose authorised by this Order or for any other purposes in connection with or ancillary to the undertaking.

(3) This article is subject to article 22 (time limit for exercise of authority to acquire land compulsorily), paragraph (2) of article 23 (compulsory acquisition of rights), article 25 (acquisition of subsoil only), article 29 (rights under or over streets), article 30 (temporary use of land for carrying out the authorised development) and article 31 (temporary use of land for maintaining the authorised development).

Time limit for exercise of authority to acquire land compulsorily

22.—(1) After the end of the period of five years beginning on the day on which the Order is made—

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

(b) no declaration is to be executed under section 4 (execution of declaration) of the 1981 Act as applied by article 26 (application of the 1981 Act).

(2) The authority conferred by article 30 (temporary use of land for carrying out the authorised development) ceases at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

Compulsory acquisition of rights

23.—(1) Subject to paragraph (2) and article 30 (temporary use of land for carrying out the authorised development), the undertaker may acquire compulsorily such rights or impose restrictive covenants over the Order land as may be required for any purpose for which that land may be acquired under article 21 (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 24 (private rights) and article 32 (statutory undertakers), in the case of the Order land specified in column (1) of 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 such new rights and the imposition of restrictive covenants for the purpose specified in relation to that land in column (3) of that Schedule.

(3) Subject to section 8 (other provisions as to divided land) and Schedule 2A (counter-notice requiring purchase of land) of the 1965 Act (as substituted by paragraph 10 of Schedule 9 (modification of compensation and compulsory purchase enactments for the creation of new rights and imposition of new restrictive covenants)), where the undertaker creates or acquires an existing right over land or the benefit of a restrictive covenant under paragraph (1) or (2), the undertaker is not required to acquire a greater interest in that land.

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

(5) In any case where the acquisition of new rights or imposition of a restriction under paragraph (1) or (2) is required for the purpose of diverting, replacing or protecting apparatus of a statutory

undertaker, the undertaker may, with the consent of the Secretary of State, transfer the power to acquire such rights 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 43 (Crown rights).

Private rights

24.—(1) Subject to the provisions of this article, all private rights or restrictive covenants over land subject to compulsory acquisition under article 21 (compulsory acquisition of land) cease to have effect in so far as their continuance would be inconsistent with the exercise of the powers under article 21—

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

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

whichever is the earliest.

(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 article 23 (compulsory acquisition of rights) cease to have effect in so far as their continuance would be inconsistent with the exercise of the right or compliance with the restrictive covenant—

(a) as from the date of the acquisition of the right or the imposition of the restrictive covenant by the undertaker (whether the right is acquired compulsorily, by agreement or through the grant of lease of the land by agreement); or

(b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act (powers of entry) 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 and unenforceable, in so far as their continuance would be inconsistent with the purpose for which temporary possession is taken, for as long as the undertaker remains in lawful possession of the land.

(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 article 32 (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 specified in the notice; or

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

(7) If 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 affect.

Acquisition of subsoil only

25.—(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 21 (compulsory acquisition of land) or article 23 (compulsory acquisition of rights) 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) Paragraph (1) does not apply in relation to any existing mines or mining activity.

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

(4) 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 (modification of compensation and compulsory purchase enactments for the creation of new rights and imposition of new restrictive covenants);

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

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

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

Application of the 1981 Act

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

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

(6) In section 5B(1) (extension of time limit during challenge) for "section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 5A" substitute "section 118 (legal challenges relating to applications for orders granting development consent) of the 2008 Act, the five year period mentioned in article 22 (time limit for exercise of authority to acquire land compulsorily) of the Byers Gill Solar Order 2025.".

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

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

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

(9) In Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration), for paragraph 1(2) substitute — "(2) But see article 25(3) (acquisition of subsoil only) of the Byers Gill Solar Order 2025, which excludes the acquisition of subsoil only from this Schedule."

(10) References to the 1965 Act in the 1981 Act must be construed as references to the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and as modified by article 28 (modification of Part 1 of the Compulsory Purchase Act 1965) to the compulsory acquisition of land under this Order.

Power to override easements and other rights

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

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

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

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

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

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

(c) the use of any land within the Order limits (including the temporary use of land).

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

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

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

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

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

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

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

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

(b) fails to discharge that liability, the liability is enforceable against the undertaker.

(6) Nothing in this article is to be construed as authorising any act or omission on the part of any person which is actionable at the suit of any person on any grounds other than such an interference or breach as is mentioned in paragraph (1).

Modification of Part 1 of the Compulsory Purchase Act 1965

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

(2) In section 4A(1) (extension of time limit during challenge)—

"(a) for section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 4" substitute "section 117 of the 2008 Act (legal challenges relating to applications for orders granting development consent), the five year period mentioned in article 22 (time limit for exercise of authority to acquire land compulsorily) of the Byers Gills Solar Order 2025".

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

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

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

(4) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for "section 4 of this Act" substitute "article 22 (time limit for exercise of authority to acquire land compulsorily) of the Byers Gill Solar Order 2025".

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

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

"(2) But see article 25(3) (acquisition of subsoil only) of the Byers Gill Solar Order 2025, which excludes the acquisition of subsoil only from this Schedule"; and

(b) after paragraph 29 insert—

"PART 4

INTERPRETATION

30. In this Schedule, references to entering on and taking possession of land do not include doing so under article 19 (protective works to buildings), article 30 (temporary use of land for carrying out the authorised development) or article 31 (temporary use of land for maintaining the authorised development) of the Byers Gill Solar Order 2025.".

Rights under or over streets

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

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

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

(a) any subway or underground building; or

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

(4) Subject to paragraph (5), any person who is an owner or occupier of land appropriated under paragraph (1) without the undertaker acquiring any part of the person's interest in the land, and who suffers loss as a result, is entitled to compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

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

Temporary use of land for carrying out the authorised development

30.—(1) The undertaker may, in connection with the carrying out 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 of 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) remove any buildings, agricultural plant and apparatus, drainage, fences, debris and vegetation from that land;

(c) construct temporary works, haul roads, security fencing, bridges, structures and buildings on that land;

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

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

(f) carry out mitigation works required pursuant to the requirements in 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.

(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 the land referred to in paragraph (1)(a)(i) after the end of the period of one year beginning with the date of final commissioning of the phase of the authorised development for which temporary possession of the land was taken; or

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

(5) Unless the undertaker has served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act or otherwise acquired the land or rights over land subject to temporary possession, the undertaker must before giving up possession of land of which temporary possession has been taken under this article, remove all works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not required to—

(a) replace any building, structure, debris, drain or electric line removed under this article;

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

(c) remove any new road surface or other improvements carried out under this article to any street specified in Schedule 3 (streets subject to street works), Schedule 4 (alteration of streets) or Schedule 6 (access to works); or

(d) restore the land on which any works have been carried out under paragraph (1)(f) insofar as the works relate to mitigation works identified in the environmental statement or required pursuant to the requirements in Schedule 2 (requirements).

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

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

(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 carrying out 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) Nothing in this article precludes the undertaker from—

(a) creating and acquiring new rights or imposing restrictions over any part of the Order land identified in Schedule 8 (land in which only new rights etc. may be acquired); or

(b) acquiring any part of the subsoil of (or rights in the subsoil of) that land under article 25 (acquisition of subsoil only) or any part of the subsoil of or airspace over that land under article 29 (rights under or over streets)

(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.

(12) Nothing in this article prevents the taking of temporary possession more than once in relation to any land that the undertaker takes temporary possession of under this article.

Temporary use of land for maintaining authorised development

31.—(1) Subject to paragraph (2), at any time during the maintenance period (as defined in paragraph (11)) 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 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, must 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 on which a phase of the authorised development first exports electricity to the national electricity transmission network except in relation to landscaping where "the maintenance period" means such period as set out in the landscape and ecological management plan which is approved by the relevant planning authority pursuant to requirement 12, beginning with the date on which that part of the landscaping is completed.

Statutory undertakers

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

(a) acquire compulsorily, or acquire new rights or impose restrictive covenants over, the land belonging to statutory undertakers shown on the land plans (as certified by the Secretary of State in accordance with article 36) within the Order land; 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.

Apparatus and rights of statutory undertakers in temporarily closed streets

33. Where a street is altered or diverted or its use is temporarily prohibited or restricted under article 9 (street works), article 11 (power to alter layout, etc., of streets), article 12 (construction and maintenance of altered streets) or article 13 (temporary closure of public rights of way) any statutory undertaker whose apparatus is under, in, on, along or across the street has the same powers and rights in respect of that apparatus, subject to Schedule 11 (protective provisions), as if this Order had not been made.

Recovery of costs of new connections

34.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 32 (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 32 (statutory undertakers), any person who is—

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

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

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

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

(4) In this article—

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

(b) "public utility undertaker" has the same meaning as in the 1980 Act.

PART 6

GENERAL

Operational land for the purposes of the 1990 Act

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

Certification of plans, etc.

36.—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of each of the plans and documents set out in Schedule 13 (documents to be certified) for certification that they are true copies of the plans and 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.

Service of notices

37.—(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(**b**) 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**) 2003 c. 21.
(**b**) 1978 c. 30.

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

(b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving is 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 either 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 provider such a copy as soon as reasonably practicable.

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

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

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

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

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

Felling or lopping of trees or removal of hedgerows

38.—(1) Subject to Article 39 (trees subject to tree preservation orders) 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 from—

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

(b) constituting a danger to persons using the authorised development; or

(c) obstructing or interfering with the passage of construction vehicles to the extent necessary for the purposes of construction of the authorised development.

(2) In carrying out any activity authorised by paragraph (1) or (4), 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),remove those parts of the hedgerows as are within the Order limits and specified in Schedule 7 (removal of hedgerows) as shown for illustrative purposes on the trees and hedgerows to be removed plan

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

(6) In this article "hedgerow" has the same meaning as in the Hedgerow Regulations 1997(**a**).

Trees subject to tree preservation orders

39.—(1) The undertaker may fell or lop any tree within or overhanging land within the Order limits which is subject to a tree preservation order 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 or operation of the authorised development or any apparatus used in connection with the authorised development.

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

(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.

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

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

Arbitration

40.—(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 12 (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.

(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.

Requirements, appeals, etc.

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

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

Application of landlord and tenant law

42.—(1) This article applies to—

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

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

---

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

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 shall apply in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

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

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

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

Crown rights

43.—(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 transferee, lessee or licensee to take possession of, use, enter upon or in any manner interfere with any land or rights of any description (including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary)—

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

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

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

(2) Paragraph (1) does not apply to the exercise of any right under this Order for the compulsory acquisition of an interest in any Crown land (as defined in the 2008) 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.

Protective provisions

44. Schedule 11 (protective provisions) has effect.

Funding

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

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

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

(2) The provisions are—

(a) article 21 (compulsory acquisition of land);

(b) article 23 (compulsory acquisition of rights);

(c) article 24 (private rights);

(d) article 25 (acquisition of subsoil only);

(e) article 29 (rights under or over streets);

(f) article 30 (temporary use of land for carrying out the authorised development);

(g) article 31 (temporary use of land for maintaining the authorised development); and

(h) article 32 (statutory undertakers).

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

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

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

David Wagstaff
Deputy Director Energy Infrastructure Planning
Department for Energy Security and Net Zero

23rd July 2025

SCHEDULE 1

Article 3

AUTHORISED DEVELOPMENT

1. In this Schedule-

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

(a) solar stations, each 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;

"electrical cables" means—

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

(b) excavations to install trenching, including storage of excavated material;

(c) provision of ducting or alternative means of conducting media including jointing pits hardstanding adjoining the jointing pits, combiner boxes, fibre bays, cable ducts, cable protections, joint protection, manholes, kiosks, marker posts, underground cable marker, tiles and tape, send and receive pits for horizontal directional drilling, trenching, lighting, and a put or container to capture fluids associated with drilling;

"energy storage" means equipment used for the storage of electrical energy;

"National Grid substation" means the existing 132kV substation located near Stockton-On-Tees owned and operated by National Grid;

"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 design 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;

"panel areas" means panel areas A to F shown labelled as Work No. 1 on the works plans;

"permissive paths" means new access tracks providing restricted public access within the Order limits along the routes shown on the street works, public rights of way and access plans;

"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 with welfare facilities, means of access and other associated facilities;;

"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 higher voltage.

2. In the Boroughs of Darlington and Stockton-on-Tees and the County of Durham the construction, operation, maintenance and decommissioning of a nationally significant infrastructure project as defined in sections 14(1)(a) and 15 of the 2008 Act with associated development under section 115(1)(b) of the 2008 Act.

3. The nationally significant infrastructure project authorised by this Order comprises a generating station with a gross electrical output of over 50 megawatts alternating current

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 comprising—

Work No. 1A, 1B, 1C, 1D, 1E, and 1F: being panel areas A to F, comprising—

(a) solar panels fitted to mounting structures;

(b) balance of solar plant,

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

Work No. 2 – a battery energy storage system comprising—

(a) battery energy storage system units co-located with Work No. 1;

(b) auxiliary transformers and associated bunding;

(c) power conversion system units including inverters, switch gear, transformers and ancillary equipment;

(d) containers or enclosures housing all or any of Work Nos. 2(b) and (c) and ancillary equipment sitting on a concrete foundation slab or placed on metal skids;

(e) monitoring and control systems;

(f) heating, ventilation and air conditioning systems;

(g) fire safety infrastructure including water storage in tanks or other containers, and drainage and water containment features and associated infrastructure; and

(h) containers or similar structures to house, control and welfare facilities, and storage.

Work No. 3 – works including—

(a) 33 kilovolt electrical cables connecting Work No. 1 and Work No. 2 to Work No. 4;

(b) 132 kilovolt electrical cables connecting Work No. 4 to Work No. 6 within panel areas;

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

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

(e) laying down of internal access tracks, ramps, means of access, footpaths, permissive paths, roads, including the laying and construction of drainage infrastructure, signage and information boards;

(f) 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;

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

(h) works required for crossing, moving re-routing or over/undergrounding of existing utility assets (including water, gas, sewer pipes, electricity distribution/transmission cabling, telecommunications etc.).

Work No. 4 – works in connection with an onsite substation comprising—

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

(b) power conversion system units including inverters, switch gear, transformers and ancillary equipment;

(c) control building housing offices, storage containers and space, welfare facilities, waste storage within a fenced compound, car parking;

(d) monitoring and control systems for Work Nos. 1, 2 and 4;

(e) 132 kilovolt harmonic filter compound;

(f) electrical cables;

(g) communications mast being not more than 15 metres in height;

(h) deluge system including water tanks and fire suppression, and drainage and water containment features and associated infrastructure; and

(i) access gates and tracks, security palisade fencing and bunding.

Work No. 5 – works including—

(a) 132 kilovolt electrical cables connecting Work No. 4 to Work No. 6 outside of panel areas;

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

(c) laying down of internal access tracks, ramps, means of access, footpaths and roads, including the laying and construction of drainage infrastructure, signage and information boards; and

(d) works required for crossing, moving re-routing or over/undergrounding of existing utility assets (including water, gas, sewer pipes, electricity distribution/transmission cabling, telecommunications etc.)

Work No. 6 – within the National Grid substation construction of electrical substation infrastructure including:

(a) a compound for electrical works necessary for the onwards transmission of electricity containing, but not limited to, cable switchgear and electrical equipment including power transformers, reactive compensation equipment, filters, cooling equipment, control and welfare buildings, lightning rods, internal roads, security fencing, and other associated equipment, structures and buildings including noise-attenuation works;

(b) electrical cables;

(c) 132 kilovolt connection bay located at the Norton 132 kilovolt GIS switch room including all associated electrical equipment and civil works necessary to enable the onward transmission of electricity; and

(d) access gates and tracks.

Work No. 7 – temporary construction and decommissioning of access tracks and compounds comprising—

(a) works to improve existing farm access from public highway, and install temporary traffic lights, banksmen or other measures to manage traffic;

(b) works to excavate and store soil, clear vegetation and obstacles, level, shape and prepare surface for construction track to be installed;

(c) storage of equipment and materials including waste skips;

(d) civil investigations and works to reinforce ground with weight-bearing support infrastructure and maintain integrity of structures beneath road surface;

(e) creation of temporary construction access tracks, laydown and working areas;

(f) works required for crossing, moving, re-routing or over/undergrounding of existing utility assets (including water, gas, sewer pipes, electricity distribution/transmission cabling, telecommunications etc.);

(g) temporary closure of watercourses for installation of culverts, drainage and other features to cross water courses;

(h) areas of hardstanding;

(i) car parking;

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

(k) area for download and turning;

(l) security infrastructure;

(m) site drainage and waste management infrastructure; and

(n) electricity, water, waste-water and telecommunications connections.

Work No. 8 – works to facilitate access for all works, comprising—

(a) creation of accesses from or across the public highway;

(b) visibility splays;

(c) works to widen and surface the public highway; and

(d) installation of temporary traffic lights or facilities for manned traffic management.

Work No. 9 – works for areas of green infrastructure comprising—

(a) soft landscaping and planting, including tree and hedgerow planting;

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

(c) laying down of permissive paths, signage, and information boards.

In connection with the construction of Work Nos. 1-9 above and to the extent that they do not form any part of any such work, further associated development comprising such other works within the Order limits as may be necessary or expedient for the purpose of or in connection with the relevant part of the authorised development and which fall within the scope of work assessed by the environmental statement including—

(a) haul roads, ramps, watercourse and other temporary crossings, vehicular and pedestrian means of access including creation of new tracks and paths, widening upgrades alterations and improvements of existing roads tracks and paths;

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

(c) bunds, embankments, trenching and swales;

(d) provision of temporary and permanent ecological and environmental mitigation and compensation works, including landscaping works and habitat creation;

(e) working sites in connection with the construction of the authorised development including construction lay down areas, compounds, and spoil storage and associated control measures;

(f) works to the existing irrigation system and works to alter the position and extent of such irrigation system;

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

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

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

(j) site establishments and preparation works including site clearance (including vegetation removal, demolition of existing buildings and structure), 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;

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

(l) works of restoration;

(m) tunnelling, boring and drilling works; and

(n) such other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised development.

SCHEDULE 2

Article 42

REQUIREMENTS

PART 1

REQUIREMENTS

Time limits

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

Phases of authorised development and date of final commissioning

2.—(1) The authorised development may not be commenced until a written scheme setting out the proposed phases of construction of the authorised development has been submitted to and approved by the relevant planning authority.

(2) The scheme must be implemented as approved.

(3) Notice of the date of final commissioning in respect of the first phase of Work No. 1 must be given to the relevant planning authority within 15 working days of the date of final commissioning for that phase.

(4) Nothing shall prevent the undertaker and the relevant planning authority agreeing from time to time to amend the written scheme setting out the proposed phases of construction.

(5) The agreed written scheme may contain flexibility and optioneering for different proposed phases of construction provided that the undertaker notifies the relevant planning authority of the final intended phasing prior to commencement.

Detailed design approval

3.—(1) No phase 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) programme for landscaping works;

(j) security measures;

(k) fencing; and

(l) any mitigation measures necessary to address noise impacts

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

(2) The details submitted must accord with—

(a) the location plan and order limits;

(b) the works plans;

(c) the environmental masterplan;

(d) the outline LEMP;

(e) the principles and assessments set out in the environmental statement; and

(f) the design approach document, or such variation thereof as may be approved by the relevant planning authority pursuant to requirement 19.

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

Construction environmental management plans (CEMP)

4.—(1) No phase of the authorised development may commence until a CEMP for that phase has been submitted to and approved by the relevant planning authority, such approval to be in consultation with the Environment Agency and Natural England. Any CEMP submitted for approval must be in accordance with the outline CEMP and any approved CEMP must be adhered to for the duration of the works in the phase of the authorised development to which the CEMP relates.

(2) The CEMP for each phase of the authorised development must provide details of—

(a) community liaison;

(b) complaints procedures;

(c) nuisance management including measures to avoid or minimise the impacts of construction works (covering dust, noise and vibration);

(d) construction dust assessment;

(e) arboricultural impact assessment;

(f) site waste and materials management measures;

(g) pollution control measures to prevent the introduction of any hazardous substances;

(h) security measures and use of artificial lighting;

(i) a protocol requiring consultation with the Environment Agency in the event that unexpected contaminated land is identified during ground investigation or construction; and

(j) details of out of hours working procedures.

Decommissioning and restoration

5.—(1) No later than six months prior to the date the undertaker intends to decommission any part of the solar farm works and grid connection works, the undertaker must submit to the relevant planning authority for that part for approval, in consultation with the Environment Agency, a decommissioning environmental management plan, a decommissioning traffic management plan and site waste management plan. Decommissioning must commence no later than 40 years following the date of final commissioning of the first phase of Work No. 1 as notified by the undertaker pursuant to requirement 2 (phasing of the authorised development and date of final commissioning).

(2) 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.

(3) Pursuant to paragraph (1), the plans submitted and approved must be substantially in accordance with the relevant part of the outline DEMP.

(4) The decommissioning environmental management plan submitted and approved must include a resource management plan that includes details of proposals to minimise the use of natural resources and unnecessary materials.

(5) No decommissioning works must be carried out until the relevant planning authority approves, in consultation with the Environment Agency and the relevant highway authority for the

highway(s) to which the relevant decommissioning traffic management plan relates, the plans submitted in relation to such works. The plans must be implemented as approved.

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

(7) In this Part of this Schedule –

(a) "solar farm works" means that part of the authorised development identified in Work No. 1, Work No.2, Work No.3 (but excluding Work No.3(b)) and Work No.4; and

(b) "grid connection works" means that part of the authorised development identified in Work No.3(b) and Work No.5.

Construction traffic management plan (CTMP)

6.—(1) No phase of the authorised development is to be commenced until a CTMP covering that phase and in accordance with the outline CTMP for that phase has been submitted to and approved by the relevant planning authority in consultation with the relevant highway authority and National Highways for the highway(s) to which the CTMP for that phase relates.

(2) The CTMP must be implemented as approved.

Pollution and Spillage

7.—(1) No phase of the authorised development is to be commenced until a pollution and spillage response plan covering that phase and in accordance with the outline pollution and spillage response plan for that phase has been submitted to and approved by the relevant planning authority to which the pollution and spillage response plan for that phase relates.

(2) The pollution and spillage response plan must be implemented as approved.

Materials Management

8.—(1) No phase of the authorised development is to be commenced until a materials management plan covering that phase and in accordance with the outline materials management plan for that phase has been submitted to and approved by the relevant planning authority in consultation with the Environment Agency.

(2) The materials management plan must be implemented as approved.

Site Waste

9.—(1) No phase of the authorised development is to be commenced until a site waste management plan covering that phase and in accordance with the outline site waste management plan for that phase has been submitted to and approved by the relevant planning authority in consultation with the Environment Agency.

(2) The site waste management plan must be implemented as approved.

Soil Management

10.—(1) No phase of the authorised development may commence until a soil resource management plan (which must be substantially in accordance with the outline soil resource management plan as relevant to construction activities) for that phase has been submitted to and approved by the relevant planning authority in consultation with Natural England.

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

(3) Prior to the date of final commissioning for any phase of the authorised development, a soil resource management plan (which must be substantially in accordance with the outline soil resource management plan as relevant to operational activities) for that phase must be submitted to and approved by the relevant planning authority for that phase.

(4) The operation of the authorised development must be carried out in accordance with the soil resource management plan approved pursuant to 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 phase of the authorised development, a soil resource management plan (which must be substantially in accordance with the outline soil resource management plan as relevant to decommissioning activities) for that phase must be submitted to and approved by the relevant planning authority for that phase.

(6) The decommissioning of the authorised development must be carried out in accordance with the approved soil resource management plan.

Battery safety management

11.—(1) Prior to the commencement of Work No. 2 as notified to the relevant planning authority by the undertaker pursuant to requirement 2 (phases of the authorised development and date of final commissioning) a battery fire safety management plan must be submitted to and approved by the relevant planning authority in consultation with the County Durham and Darlington Fire and Rescue Service and the Environment Agency.

(2) The submitted battery fire safety management plan must either accord with the outline battery fire safety management plan or detail such changes as the undertaker considers are required.

(3) In the event that the submitted battery fire safety management plan proposes changes to the outline battery fire safety management plan the relevant planning authority must consult with the County Durham and Darlington Fire and Rescue Service and Environment Agency for approval of the battery fire safety management plan.

(4) 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 (LEMP)

12.—(1) No phase of the authorised development is to be commenced until a LEMP covering that phase which accords with the outline LEMP has been submitted to and approved by the relevant planning authority.

(2) The LEMP must include details relevant for the phase of works in relation to —

(a) the method of protection of existing landscape features and habitats during the construction, operation and decommissioning stage of the authorised development;

(b) habitat creation, including all new native hedgerow planting, replanting of any breaks (gaps) in excess of one metre in existing native hedgerows within the Order limits adjacent to the footpath and sowing of wildflower seed along the margins between the footpath and the hedgerow/security fence boundaries;

(c) ongoing management including seasonal grazing regime and other measures including the annual review of the need for any additional mitigation planning work, during the lifetime of the authorised development;

(d) how the landscaping and ecology measures will be managed, maintained, and monitored during the operational life of the authorised development to the date on which the decommissioning and restoration plan is implemented pursuant to requirement 5 (decommissioning and restoration);

(e) a timetable for the landscape management of the land within the Order limits during the lifetime of the authorised development;

(f) landscaping details;

(g) how a minimum of 80% biodiversity net gain in habitat units and a minimum of 100% biodiversity net gain in hedgerow units, calculated using a biodiversity metric approved by the local planning authority in consultation with the relevant statutory nature

conservation body, for all of the authorised development during the operation of the authorised development will be achieved; and

(h) adaptive management measures to be taken where landscape features and/or habitats fail to establish or reach their intended condition, with details of the criteria to be used to trigger any alternative and/or adaptive management.

(3) The LEMP must be implemented as approved.

Implementation and maintenance of landscaping

13.—(1) All landscaping works must be carried out in accordance with the LEMP approved under requirement 11 (landscape and ecological management plan), and in accordance with the relevant recommendations of appropriate British Standards.

(2) Any tree or shrub planted or used as part of an approved landscaping management scheme that, within a period of five years after planting, is removed, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased must be replaced in the first available planting season with a specimen of the same species and size as that originally planted.

Public rights of way diversions

14.—(1) No phase of the authorised development is to be commenced and no decommissioning will be undertaken until a public rights of way management plan substantially in accordance with the outline public rights of way management plan for any sections of public rights of way shown to be temporarily closed on the rights of way and access plans for that phase has been submitted to and approved by the relevant planning authority in consultation with the relevant highway authority.

(2) The plan must include details of—

(a) measures to minimise the length of any sections of public rights of way to be temporarily closed; and

(b) advance publicity and signage in respect of any sections of public rights of way to be temporarily closed.

(3) The plan must be implemented as approved unless otherwise agreed with the relevant planning authority in consultation with the relevant highway authority.

Construction hours

15.—(1) Subject to sub-paragraph (2), no construction works are to take place except between the hours of—

(a) 08:00 to 18:00 Monday to Friday; and

(b) 08:00 to 13:00 on Saturday.

(2) With no activity on Sundays or bank holidays.

(3) The following works are permitted outside the hours referred to in sub-paragraph (1)—

(a) emergency works; and

(b) works which do not cause noise that is audible at the boundary of the Order limits.

(4) Any emergency works carried out under sub-paragraph (3)(a) must be notified to the relevant planning authority within 72 hours of their commencement.

Construction noise

16.—(1) The construction noise management scheme referred to in the outline CEMP must include details of measures to control noise as set out in the outline CEMP and must, in addition, include details of—

(a) steps to be taken to ensure compliance with BS 5228;

(b) limitations on the duration of any moderate adverse effects from construction noise, in line with the predicted durations set out in the Environmental Statement; and

(c) construction noise monitoring measures to enable the identification of adverse effects and any appropriate mitigation.

(2) The authorised development must be carried out in accordance with the construction noise management scheme as approved in the CEMP.

Fencing and other means of enclosure

17.—(1) No phase of the authorised development may commence until written details of all proposed permanent and temporary fences, walls or other means of enclosure of the connection works for that phase have been submitted to and approved by the relevant planning authority as part of the detailed design approval required by requirement 3(1) (detailed design approval).

(2) For the purposes of paragraph (1), "commence" includes any site preparation works.

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

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

(5) Any approved permanent fencing must be completed before completion of the authorised development.

Archaeology

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

(2) No phase within the authorised development is to be commenced until a written scheme of investigation, substantially in accordance with the outline archaeological management strategy, within that phase has been submitted to and approved by the relevant planning authority.

(3) For the purposes of paragraph (2), the outline archaeological management strategy must include measures for unexpected archaeological discoveries, areas with no known archaeology and the archaeological watching brief.

(4) For the purposes of paragraph (2), "commence" includes any site preparation works.

(5) Any archaeological works or programme of archaeological investigation carried out under the approved written scheme for investigation must be carried out by an organisation registered with the Chartered Institute for Archaeologists or by a member of that Institute.

(6) Any archaeological works or programme of archaeological investigation must be carried out in accordance with the approved scheme.

Surface and foul water drainage

19.—(1) No phase of the authorised development is to be commenced until written details of the surface and foul water drainage scheme for that phase have been submitted to and approved by the local planning authority in consultation with the Environment Agency.

(2) The details submitted under sub-paragraph (1) must include:

(a) the plans and strategies referred to in Appendix 10.1 flood risk assessment and drainage strategy of the environmental statement (document reference 6.4.10.1 Revision 6); and

(b) details of how flood risk will be managed during construction and operation in areas of increased flood risk, with reference to the Environment Agency's latest Flood Map for Planning.

(3) The surface and foul water drainage system for the relevant part of the authorised development must be constructed in accordance with the approved details.

(4) For the purposes of paragraph (1), "commence" includes any site preparation works.

Requirement for written approval

20. Where the approval, agreement or confirmation of the Secretary of State, relevant planning authority or another person is required under a requirement that approval or confirmation must be given in writing.

Amendments to approved details

21.—(1) With respect to any requirement which requires the authorised development to be carried out in accordance with the details approved by the relevant planning authority, the approved details must be carried out as approved unless an amendment or variation has previously been approved in writing by the relevant planning authority in accordance with sub-paragraph (2).

(2) Any amendments to or variations from the approved details must be in accordance with the principles and assessments set out in the environmental statement. Such agreement may only be given in relation to immaterial changes where it has been demonstrated to the relevant planning authority that the subject matter of the agreement sought is unlikely to give rise to any materially new or materially different environmental effect from those assessed in the environmental statement.

(3) The approved details must be taken to include any amendments that may subsequently be approved in writing by the relevant planning authority.

Consultation

22. Where the relevant planning authority is required by this Order or other statute to consult with another person or body prior to discharging a requirement, the undertaker must consult with such person or body prior to making an application to discharge the requirement.

PART 2

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

Interpretation

23. In this Part of this Schedule, "discharging authority" means—

(a) any body responsible for giving any consent, agreement or approval required by a requirement included in Part 2 of this Schedule, or for giving any consent, agreement or approval further to any document referred to in any such requirement; or

(b) the local authority in the exercise of its functions set out in sections 60 (control of noise on construction sites) and 61 (prior consent for work on construction sites) of the Control of Pollution Act 1974 subsequently referred to as "the 1974 Act"(**a**).

Applications made under requirements

24.—(1) Where an application has been made to the discharging authority for any consent, agreement or approval required by a requirement contained in Part 2 of this Schedule, or for any consent, agreement or approval further to any document referred to in any such requirement, the discharging authority must give notice to the undertaker of its decision on the application within a period of eight weeks beginning with the later of—

(**a**) 1974 c. 40. Section 61 was amended by Schedule 7 to the Building Act 1984 (c. 55), Schedule 15 to the Environmental Protection Act 1990 (c. 43) and Schedule 24 to the Environment Act 1995 (c. 25).

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

(b) where further information is requested under paragraph 24, the day immediately following that on which the further information has been supplied by the undertaker, or such longer period as may be agreed in writing by the undertaker and the discharging authority.

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

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

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

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

(3) Subject to paragraphs (4) and (5), in the event the discharging authority does not determine an application within the period set out in sub-paragraph (1), the discharging authority is to be taken to have granted all parts of the application (without any condition or qualification) at the end of that period.

(4) Any application made to the discharging authority pursuant to paragraph (1) must 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.

(5) Where an application has been made to the discharging authority pursuant to paragraph (1) and the discharging authority does not determine the application within the period set out in paragraph (1) and the application is accompanied by a report pursuant to paragraph (4) 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.

Further information regarding requirements

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

(2) If the discharging authority considers that further information is necessary and the requirement concerned contained in Part 2 of this Schedule does not specify that consultation with a consultee is required, the discharging authority must, within ten business days of receipt of the application, notify the undertaker in writing specifying the further information required.

(3) If the requirement concerned contained in Part 2 of this Schedule specifies that consultation with a consultee is required, the discharging authority must issue the application to the consultee within ten business days of receipt of the application, and notify the undertaker in writing specifying any further information requested by the consultee within ten business days of receipt of such a request.

(4) If the discharging authority does not give the notification within the period specified in sub-paragraph (2) or (3) it (and the consultee, as the case may be) is deemed to have sufficient information to consider the application and is not entitled to request further information without the prior agreement of the undertaker.

Appeals

26.—(1) Where a person ("the applicant") makes an application to a discharging authority, the applicant may appeal to the Secretary of State in the event that—

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

(i) a requirement contained in Part 2 of this Schedule; or

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

(b) the discharging authority grants such an application subject to conditions;

(c) the discharging authority issues a notice further to sections 60 (control of noise on construction sites) or 61 (prior consent for work on construction sites) of the 1974 Act;

(d) on receipt of a request for further information pursuant to paragraph 24 of this Part of this Schedule, the applicant considers that either the whole or part of the specified information requested by the discharging authority is not necessary for consideration of the application; or

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

(2) The appeal process is as follows—

(a) any appeal by the applicant must be made within 42 days of the date of the notice of the decision or determination, or (where no determination has been made) the expiry of the time period set out in paragraph 23(1), giving rise to the appeal referred to in sub-paragraph (1);

(b) the applicant must submit the appeal documentation to the Secretary of State and must on the same day provide copies of the appeal documentation to the discharging authority and any consultee specified under the relevant requirement contained in Part 2 of this Schedule;

(c) as soon as is practicable after receiving the appeal documentation, the Secretary of State must appoint a person to consider the appeal ("the appointed person") and must notify the appeal parties of the identity of the appointed person and the address to which all correspondence for the attention of the appointed person should be sent;

(d) the discharging authority and any consultee (if applicable) must submit their written representations together with any other representations to the appointed person in respect of the appeal within twenty business days of the start date specified by the appointed person and must ensure that copies of their written representations and any other representations as sent to the appointed person are sent to each other and to the applicant on the day on which they are submitted to the appointed person;

(e) the applicant must make any counter-submissions to the appointed person within ten business days of receipt of written representations pursuant to sub-paragraph (d) above; and

(f) the appointed person must make a decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable after the end of the ten day period for counter-submissions under sub-paragraph (e).

(3) The appointment of the appointed person pursuant to paragraph 25(2)(c) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

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

(5) Any further information required pursuant to paragraph 25(4) must be provided by the party from whom the information is sought to the appointed person and to the other appeal parties by the date specified by the appointed person. 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 ten business days of

the date specified by the appointed person, but must otherwise be in accordance with the process and time limits set out in paragraphs 24(2)(c) to (e).

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

(a) allow or dismiss the appeal; or

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

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

(7) The appointed person may proceed to a decision on an appeal taking into account such written representations as have been sent within the relevant time limits, if it appears to them that there is sufficient material to enable a decision to be made on the merits of the case, and in the sole discretion of the appointed person, may take into account such written representations as have been sent outside of the relevant time limits.

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

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

(10) If an approval is given by the appointed person pursuant to this Part of this Schedule, it is deemed to be an approval for the purpose of Part 2 of this Schedule as if it had been given by the discharging authority. The discharging authority may confirm any determination given by the appointed person in identical form in writing, but a failure to give such confirmation (or a failure to give it in identical form) is not to be taken to affect or invalidate the effect of the appointed person's determination.

(11) Save where a direction is given pursuant to paragraph (12) requiring the costs of the appointed person to be paid by the discharging authority, the reasonable costs of the appointed person are to be met by the applicant.

(12) On application by the discharging authority or the applicant, the appointed person may give directions as to the costs of the appeal 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 relevant guidance on the Planning Practice Guidance website or any official 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 written consent, agreement or approval in respect of a requirement, the fee prescribed under regulation 16(1)(b) of the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012(**a**) (as may be amended or replaced from time to time) is to apply and must be paid to the relevant planning authority for each application.

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

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

(b) the relevant planning authority failing to determine the application within ten weeks from the relevant date in paragraph 2(1) unless—

(i) within that period the undertaker agrees, in writing, that the fee is to be retained by the relevant planning authority and credited in respect of a future application; or

(ii) a longer period of time for determining the application has been agreed pursuant to paragraph 2(1) of this Schedule.

(**a**) S.I., amended by S.I. 2013/2153, S.I. 2014/357, S.I. 2014/643, S.I. 2017/1314 and S.I. 2019/1154.

SCHEDULE 3

Article 9

STREETS SUBJECT TO STREET WORKS

Interpretation

1. In this Schedule "cable works" means works to place, retain and maintain underground electrical and communications apparatus

(1) *Area*	*(2)* *Street*	*(3)* *Description of works*
Parish of Brafferton	Unnamed Road	Cable works beneath the width of street comprising a length of 320m as shown between points marked A and B on sheet 3 of the street works, public rights of way and access plans.
Parish of Brafferton	High House Lane	Cable works beneath the width of street comprising a length of 95m as shown between points marked B and C on sheet 3 of the street works, public rights of way and access plans.
Parish of Brafferton	The Green	Cable works beneath the width of street comprising a length of 140m as shown between points marked C and D on sheet 3 of the street works, public rights of way and access plans.
Parish of Brafferton	Aycliffe Lane	Cable works beneath the width of street comprising a length of 600m as shown between points marked D and E on sheets 1 and 3 of the street works, public rights of way and access plans.
Parish of Brafferton	Lime Lane	Cable works beneath the width of street comprising a length of 2420m as shown between points marked E and F on sheets 1 and 2 of the street works, public rights of way and access plans.
Parish of Brafferton	Lodge Lane	Cable works beneath the width of street comprising a length of 935m as shown between points marked F and G on sheets 2 and 5 of the street works, public rights of way and access plans.
Parish of Great Stainton	Elstob Lane	Cable works beneath the width of street comprising a length of 895m as shown between points marked H and I on sheets 7 and 8 of the street works, public rights of way and access plans.
Parish of Great Stainton	Unnamed Road running east – west between Great Stainton and Bishopton	Cable works beneath the width of street comprising a length of 1360m as shown between points marked J and K on sheets 8 and 9 of the street works, public rights of way and access plans.
Parish of Bishopton	Folly Bank	Cable works beneath the width of street as shown with reference CC5 on sheet 9 of the street works, public rights of way and access plans.
Parish of Bishopton	Unnamed Road running north – south to the west of Bishopton Beck	Cable works beneath the width of street comprising a length of 530m as shown between points marked K and L on sheets 9 and 10 of the street works, public rights of way and access plans.
Parish of Bishopton	Redmarshall Road	Cable works beneath the width of street comprising a length of 2110m as shown between points marked N and O on sheets 11 and 12 of the street works, public rights of way and access plans.
Parish of Redmarshall	Redmarshall Road, in the vicinity of Morrington	Cable works beneath the width of street as shown with reference CC6 on sheet 11 of the street works, public rights of way and access plans.

	Bridge	
Parish of Redmarshall	Whitton Road	Cable works beneath the width of street comprising a length of 180m as shown between points marked O and P on sheet 12 of the street works, public rights of way and access plans.
Parish of Redmarshall	Kirk Hill	Cable works beneath the width of street comprising a length of 460m as shown between points marked O and Q on sheet 12 of the Street Works, Public Rights of Way and Access plans.
Parish of Redmarshall	Carlton Vlg	Cable works beneath the width of street comprising a length of 455m as shown between points marked Q and R on sheets 12 and 13 of the street works, public rights of way and access plans.
Parish of Carlton	Letch Lane	Cable works beneath the width of street comprising a length of 1850m as shown between points marked R and S on sheets 12 and 13 of the street works, public rights of way and access plans.
Parish of Brafferton	Footpath No.7	Cable works beneath the width of street, referenced FP-Bfn.7, comprising a length of 320m as shown between points marked 1 and 2 on sheet 1 of the street works, public rights of way and access plans.
Parish of Brafferton	Footpath No. 8	Cable works beneath the width of street comprising a length of 155m as shown between points marked 1 and 3 on sheet 1 of the street works, public rights of way and access plans.
Parish of Brafferton	Footpath No. 9	Cable works beneath the width of street, referenced FP-Bfn.9, comprising a length of 15m as shown between points marked 5 and 6 on sheets 1 and 3 of the street works, public rights of way and access plans.
Parish of Brafferton	Footpath No.10	Cable works beneath the width of street, referenced FP-Bfn.10) comprising a length of 50m as shown between points marked 7 and 8 on sheets 1 and 3 of the street works, public rights of way and access plans.
Parish of Brafferton	Bridleway No.14	Cable works beneath the width of street, referenced BR-Bfn.14, comprising a length of 1635m as shown between points 9 and 10 on sheet 3 of the street works, public rights of way and access plans.
Parish of Brafferton	Footpath No.9	Cable works beneath the width of street, referenced FP-Bfn.9, comprising a length of 135m as shown between points 11 and 12 on sheet 1 of the street works, public rights of way and access plans.
Parish of Brafferton	Footpath No.15	Cable works beneath the width of street, referenced FP-Bfn.15, comprising a length of 140m as shown between points 16 and 17 on sheet 4 of the street works, public rights of way and access plans.
Parish of Brafferton	Bridleway No.11	Cable works beneath the width of street, referenced BR-Bfn.11, comprising a length of 65m as shown between points 19 and 20 on sheet 4 of the street works, public rights of way and access plans.
Parish of Brafferton	Footpath No.12	Cable works beneath the width of street, referenced FP-Bfn.12, comprising a length of 260m as shown between points 21 and 22 on sheet 4 of the street works, public rights of way and access plans.
Parish of Brafferton	Footpath No. 12	Cable works beneath the width of street, referenced FP-Bfn.12, comprising a length of 80m as shown between points 23 and 24 on sheets 2, 5 and 6 of street works, public rights of way and access plans.
Parish of	Bridleway	Cable works beneath the width of street, referenced BR-Bfn.13,

Brafferton	No.13	comprising a length of 55m as shown between points 25 and 26 on sheets 4 and 6 of the street works, public rights of way and access plans.
Parish of Great Stainton	Footpath No.4	Cable works beneath the width of street, referenced FP-GtStn.4 comprising a length of 315m as shown between points 27 and 28 on sheets 2 and 5 of the street works, public rights of way and access plans.
Parish of Great Stainton	Footpath No.6	Cable works beneath the width of street, referenced FP-GtStn.6, comprising a length of 300m as shown between points 29 and 30 on sheet 5 of the street works, public rights of way and access plans.
Parish of Great Stainton	Footpath No. 12	Cable works beneath the width of street, referenced FP-GtStn.12, comprising a length of 30m as shown between points 30 and 31 on sheet 5 of the street works, public rights of way and access plans.
Parish of Little Stainton	Footpath No.2	Cable works beneath the width of street, referenced FP-LtStn.2, comprising a length of 430m as shown between points 32 and 33 on sheet 6 of the street works, public rights of way and access plans.
Parish of Little Stainton	Footpath No.1	Cable works beneath the width of street, referenced FP-LtStn.1, comprising a length of 485m as shown between points 34 and 35 on sheets 6 and 7 of the street works, public rights of way and access plans.
Parish of Little Stainton	Footpath No.1	Cable works beneath the width of street, referenced FP-LtStn.1, comprising a length of 45m as shown between points 37 and 38 on sheet 7 of the street works, public rights of way and access plans.
Parish of Great Stainton	Footpath No.8	Cable works beneath the width of street, referenced FP-GtStn.8, comprising a length of 880m as shown between points 39 and 40 on sheets 7 and 8 of the street works, public rights of way and access plans
Parish of Great Stainton	Footpath No.3	Cable works beneath the width of street, referenced FP-Gt-Stn.3, comprising a length of 375m as shown between points 42 and 43 on sheet 8 of the street works, public rights of way and access plans.
Parish of Bishopton	Footpath No.3	Cable works beneath the width of street, referenced FP-GtStn.3, comprising a length of 430m as shown between points 43 and 44 on sheet 8 of the street works, public rights of way and access plans.
Parish of Bishopton	Footpath No. 4	Cable works beneath the width of street, referenced FP-Btn.4, comprising a length of 610m as shown between points 49 and 50 on sheets 9, 10 and 11 of the street works, public rights of way and access plans.
Parish of Bishopton	Footpath No.7	Cable works beneath the width of street, referenced FP-Btn.7, comprising a length of 40m as shown between points 51 and 52 on sheet 11 of the street works, public rights of way and access plans.
Parish of Redmarshall	Footpath No.1	Cable works beneath the width of street, referenced FP-Rml.1, comprising a length of 40m as shown between points 53 and 54 on sheet 12 of the street works, public rights of way and access plans.
Parish of Redmarshall	Footpath No.2	Cable works beneath the width of street, referenced FP-Rml.2, comprising a length of 30m as shown between points 55 and 56 on sheet 12 of the street works, public rights of way and access plans

Parish of Carlton	Footpath No.7	Cable works beneath the width of street, referenced FP-Ctn.7, comprising a length of 55m as shown between points 57 and 58 on sheets 12 and 13 of the street works, public rights of way and access plans.
Parish of Carlton	Footpath No.6	Cable works beneath the width of street, referenced FP-Ctn.6, comprising a length of 35m as shown between points 59 and 60 on sheets 12 and 13 of the street works, public rights of way and access plans.

SCHEDULE 4

Article 11

ALTERATION OF STREETS

PART 1

PERMANENT ALTERATION OF LAYOUT AND MAINTAINED BY THE HIGHWAY AUTHORITY

(1) *Area*	*(2)* *Street*	*(3)* *Description of permanent alteration*
Parish of Brafferton	High House Lane	Works for the provision of a permanent means of access to the authorised development from High House Lane as shown as point A3 on sheet 3 of the street works, public rights of way and access plans.
Parish of Brafferton	High House Lane	Works for the provision of a permanent means of access to the authorised development from High House Lane as shown as point A2 on sheets 1 and 3 of the street works, public rights of way and access plans.
Parish of Great Stainton	Lodge Lane	Works for the provision of a permanent means of access to the authorised development from Lodge Lane as shown as point B1 on sheets 2 and 5 of the street works, public rights of way and access plans.
Parish of Great Stainton	Bishopton Lane / Elstob Lane	Works for the provision of a permanent means of access to the authorised development from Bishopton Lane / Elstob Lane as shown as point C1 on sheet 7 of the street works public rights of way and access plans.
Parish of Great Stainton	Unnamed road between Great Stainton and Bishopton	Works for the provision of a permanent means of access to the authorised development from an unnamed road between Great Stainton and Bishopton as shown point D2 on sheet 8 of the street works, public rights of way and access plans.
Parish of Great Stainton	Elstob Lane	Works for the provision of a permanent means of access to the authorised development from Elstob Lane as shown as point D1 on sheet 8 of the street works public rights of way and access plans.
Parish of Great Stainton	Unnamed road to the west of The Green, Bishopton	Works for the provision of a permanent means of access to the authorised development from an unnamed road to the west of The Green, Bishopton, as shown as point E1 on sheet 9 of the street works, public rights of way and access plans.
Parish of Great Stainton	Unnamed road adjacent to Bishopton Beck	Works for the provision of a permanent means of access to the authorised development from an unnamed road adjacent to Bishopton Beck, Bishopton, as shown as point F1 on sheet 10 of the street works, public rights of way and access plans.

PART 2

TEMPORARY ALTERATION OF LAYOUT

(1) *Area*	*(2)* *Street*	*(3)* *Description of permanent alteration*
Parish of Brafferton	Brafferton Lane	Works for the provision of a temporary means of access to the authorised development from Brafferton Lane as shown as point A1 on sheet 3 of the street works, public rights of way and access plans.

SCHEDULE 5

Articles 13 and 14

PUBLIC RIGHTS OF WAY TO BE CLOSED

PART 1

PUBLIC RIGHTS OF WAY TO BE TEMPORARILY CLOSED

(1) *Area*	*(2)* *Public right of way to be temporarily closed*	*(3)* *Extent of temporary closure*
Parish of Brafferton	Footpath No.7	Temporary management including temporary closure over the public right of way, referenced FP-Bfn.7, comprising a length of 320m as shown between points marked 1 and 2 on sheet 1 of the street works, public rights of way and access plans.
Parish of Brafferton	Footpath No. 8	Temporary management including temporary closure over the public right of way, referenced FP-Brn.8, comprising a length of 150m between points marked 1 and 3 on Sheet 1 of the street works, public rights of way and access plans.
Parish of Brafferton	Footpath No. 9	Temporary management including temporary closure over the public right of way, referenced FP-Bfn.9, comprising a length of 15m as shown between points marked 5 and 6 on sheet 1 of the street works, public rights of way and access plans.
Parish of Brafferton	Footpath No.10	Temporary management including temporary closure over the public right of way, referenced FP-Bfn.10, comprising a length of 50m as shown between points marked 7 and 8 on sheets 1 and 3 of the street works, public rights of way and access plans.
Parish of Brafferton	Bridleway No.14	Temporary management including temporary closure over the public right of way, referenced BR-Bfn.14, comprising a length of 1635m as shown between points 9 and 10 on sheet 3 of the street works, public rights of way and access plans.
Parish of Brafferton	Footpath No.9	Temporary management including temporary closure over the public right of way, referenced FP-Bfn.9, comprising a length of 613m as shown between points 11 and 11a on sheet 1 of the Street Works, Public Rights of Way and Access plans.
Parish of Brafferton	Footpath No.9	Temporary management including temporary closure over the public right of way, referenced FP-Bfn.9, comprising a length of 135m as shown between points 11 and 12 on sheet 1 of the Street Works, Public Rights of Way and Access plans.
Parish of Brafferton	Footpath No.20	Temporary management including temporary closure over the public right of way, referenced FP-Bfn.20, comprising a length of 50m as shown between points 13 and 14 on sheet 3 of the street

		works, public rights of way and access plans.
Parish of Brafferton	Footpath No.15	Temporary management including temporary closure over the public right of way, referenced FP-Bfn.15, comprising a length of 140m as shown between points 16 and 17 on sheet 4 of the street works, public rights of way and access plans.
Parish of Brafferton	Bridleway No.11	Temporary management including temporary closure over the public right of way, referenced BR-Bfn.11, comprising a length of 65m as shown between points 19 and 20 on sheet 4 of the street works, public rights of way and access plans.
Parish of Brafferton	Footpath No.12	Temporary management including temporary closure over the public right of way, referenced FP-Bfn.12, comprising a length of 260m as shown between points 21 and 22 on sheet 4 of the street works, public rights of way and access plans.
Parish of Brafferton	Footpath No. 12	Temporary management including temporary closure over the public right of way, referenced FP-Bfn.12, comprising a length of 80m as shown between points 23 and 24 on sheet 5 of the street works, public rights of way and access plans.
Parish of Brafferton	Bridleway No.13	Temporary management including temporary closure over the public right of way, referenced BR-Bfn.13, comprising a length of 55m as shown between points 25 and 26 on sheets 4 and 6 of the street works, public rights of way and access plans.
Parish of Great Stainton	Footpath No.4	Temporary management including temporary closure over the public right of way, referenced FP-GtStn.4, comprising a length of 315m as shown between points 27 and 28 on sheets 2 and 5 of the street works, public rights of way and access plans.
Parish of Great Stainton	Footpath No.6	Temporary management including temporary closure over the public right of way, referenced FP-GtStn.6, comprising a length of 300m as shown between points 29 and 30 on sheet 5 of the street works, public rights of way and access plans.
Parish of Great Stainton	Footpath No. 12	Temporary management including temporary closure over the public right of way, referenced FP-GtStn.12, comprising a length of 30m as shown between points 30 and 31 on sheet 5 of the street works, public rights of way and access plans.
Parish of Little Stainton	Footpath No.2	Temporary management including temporary closure over the public right of way, referenced FP-LtStn.2, comprising a length of 430m as shown between points 32 and 33 on sheet 6 of the street works, public rights of way and access plans.
Parish of Little Stainton	Footpath No.1	Temporary management including temporary closure over the public right of way, referenced FP-LtStn.1, comprising a length of 485m as shown between points 34 and 35 on sheets 6 and 7 of the street works, public rights of way and access plans.
Parish of Little Stainton	Footpath No.1	Temporary management including temporary closure over the public right of way, referenced FP-LtStn.1, comprising a length of 45m as shown between points 37 and 38 on sheet 7 of the street works, public rights of way and access plans.
Parish of Great Stainton	Footpath No.8	Temporary management including temporary closure over the public right of way, referenced FP-GtStn.8, comprising a length of 876m as shown between points 39 and 40 on sheets 7 and 8 of the street works, public rights of way and access plans.
Parish of Great Stainton	Footpath No.3	Temporary management including temporary closure over the public right of way, referenced FP-GtStn.3, comprising a length of 805m as shown between points 42 and 44 on sheet 8 of the street works, public rights of way and access plans.
Parish of Bishopton	Footpath No. 2	Temporary management including temporary closure over the public right of way, referenced FP-Btn.2, comprising a length of

		960m as shown between points 45 and 46 on sheet 9 of the street works, public rights of way and access plans.
Parish of Bishopton	Footpath No.3	Temporary management including temporary closure over the public right of way, referenced FP-Btn.3, comprising a length of 60m as shown between points 47 and 48 on sheet 9 of the street works, public rights of way and access plans.
Parish of Bishopton	Footpath No. 4	Temporary management including temporary closure over the public right of way, referenced FP-Btn.4, comprising a length of 610m as shown between points 49 and 50 on sheets 10 and 11 of the street works, public rights of way and access plans.
Parish of Bishopton	Footpath No.7	Temporary management including temporary closure over the public right of way, referenced FP-Btn.7, comprising a length of 40m as shown between points 51 and 52 on sheet 11 of the street works, public rights of way and access plans.
Parish of Redmarshall	Footpath No.1	Temporary management including temporary closure over the public right of way, referenced FP-Rml.1, comprising a length of 40m as shown between points 53 and 54 on sheet 12 of the street works, public rights of way and access plans.
Parish of Redmarshall	Footpath No.2	Temporary management including temporary closure over the public right of way, referenced FP-Rml.2, comprising a length of 30m as shown between points 55 and 56 on sheet 12 of the street works, public rights of way and access plans.
Parish of Carlton	Footpath No.7	Temporary management including temporary closure over the public right of way, referenced FP-Ctn.7, comprising a length of 55m as shown between points 57 and 58 on sheets 12 and 13 of the street works, public rights of way and access plans.
Parish of Carlton	Footpath No.6	Temporary management including temporary closure over the public right of way, referenced FP-Ctn.6, comprising a length of 35m as shown between points 59 and 60 on sheets 12 and 13 of the street works, public rights of way and access plans.
Parish of Carlton	Traffic-free cycle route	Temporary management of the public right of way including temporary closure over a traffic-free cycle route, comprising a length of 15m as shown between points 63 and 64 on sheet 13 of the street works, public rights of way and access plans.

PART 2

PUBLIC RIGHTS OF WAY TO BE PERMANENTLY CLOSED

(1) *Area*	*(2)* *Public right of way to be stopped up*	*(3)* *Extent of stopping up*	*(4)* *Extent of replacement*
Parish of Brafferton	Footpath No.8	The public right of way, referenced FP-Bfn.8, comprising a length of 205m, between points 3 and 4 on sheets 1 and 3 of the street works, public rights of way and access plans.	To be re-provided along Footpath No.7, referenced FP-Bfn.7, from its intersection with Footpath No.9, referenced FP-Bfn.9, and a new footpath comprising a length of 150m between points marked 1 and 3 on sheet 1 of the street works, public rights of way and access plans.

Parish of Brafferton	Footpath No.10	The public right of way, referenced FP-Bfn.10, comprising a length of 460m as shown between points 15 and 18 on sheet 4 of the street works, public rights of way and access plans.	To be re-provided along Footpath No.10, referenced FP-Bfn.10 from point 18 and along Bridleway No. 11, referenced BR-Bfn.11, and Footpath No. 15, referenced FP-Bfn.15 to point 16 with a new length of footpath comprising a length of 235m as shown between points marked 15 and 16 on sheet 4 of the street works, public rights of way and access plans.
Parish of Little Stainton	Footpath No.1	The public right of way, referenced FP-LtStn.1, comprising a length of 185m between points 34 and 36 as shown on sheet 6 of the street works, public rights of way and access plans.	To be re-provided with a new length of footpath comprising a length of 200m as shown between points 34 and 36 on sheet 6 of the street works, public rights of way and access plans.
Parish of Great Stainton	Footpath No.8	The public right of way, referenced FP-GtStn.8, comprising its total length as shown between points 40 and 41 on sheets 8 and 7 of the street works, public rights of way and access plans.	To be re-provided with a new section of footpath comprising a length of 870m as shown between points 39 and 40 on sheets 7 and 8 of the street works, public rights of way and access plans.
Parish of Great Stainton	Footpath No.3	The public right of way, referenced FP-GTStn.3, comprising a length of 290m between points 42 and 43 on sheet 8 of the street works, public rights of way and access plans.	To be re-provided with a new section of footpath comprising a length of 375m as shown between points 42 and 43 on sheet 8 of the street works, public rights of way and access plans.
Parish of Bishopton	Footpath No.2	The public right of way, referenced FP-Btn.2, comprising a length of 490m as shown between points 45 and 46 on sheet 9 of the street works, public rights of way and access plans.	To be re-provided with a new section of footpath comprising a length of 960m, as shown between points 45 and 46 on sheet 9 of the street works, public rights of way and access plans.
Parish of Bishopton	Footpath No.4	The public right of way, referenced FP-Btn.4, comprising a length of 415m as	To be re-provided with a new section of footpath comprising a length of 610m, as

		shown between points 49 and 50 on sheets 10 and 11 of the street works, public rights of way and access plans.	shown between points 49 and 50 on sheets 10 and 11 of the street works, public rights of way and access plans.

SCHEDULE 6

Article 15

ACCESS TO WORKS

PART 1

PERMANENT MEANS OF ACCESS TO WORKS

(1) *Area*	*(2)* *Street*	*(3)* *Description of means of access*
Parish of Brafferton	High House Lane	The provision of a permanent means of access to the authorised development from High House Lane as shown as point A3 on sheet 3 of the street works, public rights of way and access plans.
Parish of Brafferton	High House Lane	The provision of a permanent means of access to the authorised development from High House Lane as shown as point A2 on sheets 1 and 3 of the street works, public rights of way and access plans.
Parish of Great Stainton	Lodge Lane	The provision of a permanent means of access to the authorised development from Lodge Lane as shown as point B1 on sheets 2 and 5 of the street works, public rights of way and access plans.
Parish of Great Stainton	Bishopton Lane / Elstob Lane	The provision of a permanent means of access to the authorised development from Bishopton Lane / Elstob Lane as shown as point C1 on sheet 7 of the street works public rights of way and access plans.
Parish of Great Stainton	Unnamed road between Great Stainton and Bishopton	The provision of a permanent means of access to the authorised development from an unnamed road between Great Stainton and Bishopton as shown point D2 on sheet 8 of the street works, public rights of way and access plans.
Parish of Great Stainton	Elstob Lane	The provision of a permanent means of access to the authorised development from Elstob Lane as shown as point D1 on sheet 8 of the street works public rights of way and access plans.
Parish of Great Stainton	Unnamed road to the west of The Green, Bishopton	The provision of a permanent means of access to the authorised development from an unnamed road to the west of The Green, Bishopton, as shown as point E1 on sheet 9 of the street works, public rights of way and access plans.
Parish of Great Stainton	Unnamed road adjacent to Bishopton Beck	The provision of a permanent means of access to the authorised development from an unnamed road adjacent to Bishopton Beck, Bishopton, as shown as point F1 on sheet 10 of the street works, public rights of way and access plans.

PART 2

TEMPORARY MEANS OF ACCESS TO WORKS

(1)	*(2)*	*(3)*

Area	*Street*	*Description of means of access*
Parish of Brafferton	Brafferton Lane	The provision of a temporary means of access to the authorised development from Brafferton Lane as shown as point A1 on sheet 3 of the street works, public rights of way and access plans.

SCHEDULE 7

Article 39

REMOVAL OF HEDGEROWS

(1) Hedgerow	*(2) Work*
Removal of that part of the trees shown approximately within the area identified by a black dashed line on the trees and hedgerows to be removed or managed plan, reference T1210	Work No. 3, and Work No. 8
Removal of that part of the trees shown approximately within the area identified by a black dashed line on the trees and hedgerows to be removed or managed plan, reference T540	Work No. 3
Removal of that part of the trees shown approximately within the area identified by a black dashed line on the trees and hedgerows to be removed or managed plan, reference T1124	Work No. 3
Removal of that part of the trees shown approximately within the area identified by a black dashed line on the trees and hedgerows to be removed or managed plan, reference T1207	Work No. 9
Removal of that part of the trees shown approximately within the area identified by a black dashed line on the trees and hedgerows to be removed or managed plan, reference T1679	Work No. 3
Removal of that part of the trees shown approximately within the area identified by a black dashed line on the trees and hedgerows to be removed or managed plan, reference T1689	Work No. 3
Removal of that part of the trees shown approximately within the area identified by a black dashed line on the trees and hedgerows to be removed or managed plan, reference T2650	Work No. 3
Removal of that part of the hedgerow shown approximately within the area identified by a black dashed line on the trees and hedgerows to be removed or managed plan, reference G971	Work No. 3

Removal of that part of the hedgerow shown approximately within the area identified by a black dashed line on the trees and hedgerows to be removed or managed plan, reference H1341	Work No. 3
Removal of that part of the hedgerow shown approximately within the area identified by a black dashed line on the trees and hedgerows to be removed or managed plan, reference H1385	Work No. 3
Removal of that part of the hedgerow shown approximately within the area identified by a black dashed line on the trees and hedgerows to be removed or managed plan, reference H1397	Work No. 3
Removal of that part of the hedgerow shown approximately within the area identified by a black dashed line on the trees and hedgerows to be removed or managed plan, reference G154	Work No. 3
Removal of that part of the hedgerow shown approximately within the area identified by a black dashed line on the trees and hedgerows to be removed or managed plan, reference H21	Work No. 3
Removal of that part of the hedgerow shown approximately within the area identified by a black dashed line on the trees and hedgerows to be removed or managed plan, reference H2655	Work No. 3
Removal of that part of the hedgerow shown approximately within the area identified by a black dashed line on the trees and hedgerows to be removed or managed plan, reference H2663	Work No. 3
Removal of that part of the hedgerow shown approximately within the area identified by a black dashed line on the trees and hedgerows to be removed or managed plan, reference G1753	Work No. 3
Removal of that part of the hedgerow shown approximately within the area identified by a black dashed line on the trees and hedgerows to be removed or managed plan, reference H467	Work No. 3
Removal of that part of the hedgerow shown approximately within the area identified by a black dashed line on the trees and hedgerows to be removed or managed plan, reference H547	Work No. 3
Removal of that part of the hedgerow shown approximately within the area identified by a black dashed line on the trees and hedgerows to be removed or managed plan, reference H366	Work No. 3
Removal of that part of the hedgerow shown approximately within the area identified by a	Work Nos. 3, 8

black dashed line on the trees and hedgerows to be removed or managed plan, reference H1206	
Removal of that part of the hedgerow shown approximately within the area identified by a black dashed line on the trees and hedgerows to be removed or managed plan, reference H1209	Work Nos. 3, 8

SCHEDULE 8

Article 23

LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED

(1) *Plot number(s)*	*(2)* *Work No.*	*(3)* *Purpose for which rights may be acquired*
1/1, 1/2, 2/2, 2/4, 2/6, 3/1, 3/6, 4/2, 4/3, 5/2, 5/3, 6/1, 6/2, 6/4, 6/6, 6/7, 8/6, 9/6, 9/8, 9/9, 10/1, 10/2, 11/3	Work No. 3	(a) install, use, support, protect, inspect, alter, remove, replace, refurbish, reconstruct, retain, renew, improve and maintain electrical underground cables, earthing cables, optical fibre cables, data cables, telecommunications cables and other services, works associated with such cables including bays, ducts, protection and safety measures and equipment, and other ancillary apparatus and structures (including but not limited to access chambers, manholes and marker posts) and any other works necessary together with the right to fell, trim or lop trees and bushes which may obstruct or interfere with the said cables, telecommunications and other ancillary apparatus; (b) remain, pass and repass on foot, with or without vehicles, plant and machinery (including rights to lay and use any temporary surface or form a temporary compound) for all purposes in connection with the authorised development; (c) continuous vertical and lateral support for the authorised development; (d) install, use, support, protect, inspect, alter, remove, replace, refurbish, reconstruct, retain, renew, improve and maintain sewers, drains, pipes, ducts, mains, conduits, services, flues and to drain into and manage waterflows in any drains, watercourses and culverts; (e) install, execute, implement, retain, repair, improve, renew, remove, relocate and plant trees, woodlands, shrubs, hedgerows, seeding, landscaping and other ecological measures together with the right to maintain, inspect and replant such trees, shrubs, hedgerows, landscaping and other ecological measures the right to pass and repass on foot, with or without vehicles, plant and machinery for all purposes in connection with the implementation and maintenance of landscaping and ecological mitigation or enhancement works; (f) install, use, support, protect, inspect, alter, remove, replace, refurbish, reconstruct, retain, renew, improve and maintain security fencing, gates, boundary

		treatment, public rights of way and any other ancillary apparatus and any other works as necessary; and (g) restrict and remove the erection of buildings or structures, restrict the altering of ground levels, restrict and remove vegetation and restrict the planting of trees or carrying out operations or actions (including but not limited to blasting and piling) which may obstruct, interrupt or interfere with the exercise of the rights or damage the authorised development.
7/3, 7/4, 7/5, 7/6, 7/8, 8/3, 8/4, 8/5, 9/2, 9/3, 9/4, 9/5	Work No. 3 and Work No. 5	(h) install, use, support, protect, inspect, alter, remove, replace, refurbish, reconstruct, retain, renew, improve and maintain electrical underground cables, earthing cables, optical fibre cables, data cables, telecommunications cables and other services, works associated with such cables including bays, ducts, protection and safety measures and equipment, and other ancillary apparatus and structures (including but not limited to access chambers, manholes and marker posts) and any other works necessary together with the right to fell, trim or lop trees and bushes which may obstruct or interfere with the said cables, telecommunications and other ancillary apparatus; (i) remain, pass and repass on foot, with or without vehicles, plant and machinery (including rights to lay and use any temporary surface or form a temporary compound) for all purposes in connection with the authorised development; (j) continuous vertical and lateral support for the authorised development; (k) install, use, support, protect, inspect, alter, remove, replace, refurbish, reconstruct, retain, renew, improve and maintain sewers, drains, pipes, ducts, mains, conduits, services, flues and to drain into and manage waterflows in any drains, watercourses and culverts; (l) install, execute, implement, retain, repair, improve, renew, remove, relocate and plant trees, woodlands, shrubs, hedgerows, seeding, landscaping and other ecological measures together with the right to maintain, inspect and replant such trees, shrubs, hedgerows, landscaping and other ecological measures the right to pass and repass on foot, with or without vehicles, plant and machinery for all purposes in connection with the implementation and maintenance of landscaping and ecological mitigation or enhancement works; (m) install, use, support, protect, inspect, alter, remove, replace, refurbish, reconstruct, retain, renew, improve and maintain security fencing, gates, boundary treatment, public rights of way and any other ancillary apparatus and any other works as necessary; and (n) restrict and remove the erection of buildings or structures, restrict the altering of ground levels, restrict and remove vegetation and restrict the planting of trees or carrying out operations or actions (including but not

		limited to blasting and piling) which may obstruct, interrupt or interfere with the exercise of the rights or damage the authorised development.
9/15, 9/16, 11/1, 11/5, 11/6, 11/7, 11/9, 11/10, 11/11, 11/12, 11/13, 11/14, 11/15, 11/16, 11/17, 11/18, 12/1, 12/2, 12/3, 12/4, 12/5, 12/6, 12/7, 12/8, 12/9, 12/10, 12/11, 12/12 12/13, 12/14, 12/15, 12/16, 12/17, 12/18, 12/19, 12/20, 12/21, 12/22, 12/23, 12/24, 12/25, 12/26, 12/27, 12/28, 12/29, 12/30, 12/31, 12/32, 13/1, 13/2, 13/3, 13/4, 13/5, 13/6, 13/7, 13/8, 13/9, 13/10, 13/11, 13/12, 13/13, 13/14, 13/15, 13/16, 13/17, 13/18	Work No. 5	(o) install, use, support, protect, inspect, alter, remove, replace, refurbish, reconstruct, retain, renew, improve and maintain electrical underground cables, earthing cables, optical fibre cables, data cables, telecommunications cables and other services, works associated with such cables including bays, ducts, protection and safety measures and equipment, and other ancillary apparatus and structures (including but not limited to access chambers, manholes and marker posts) and any other works necessary together with the right to fell, trim or lop trees and bushes which may obstruct or interfere with the said cables, telecommunications and other ancillary apparatus; (p) remain, pass and repass on foot, with or without vehicles, plant and machinery (including rights to lay and use any temporary surface or form a temporary compound) for all purposes in connection with the authorised development; (q) continuous vertical and lateral support for the authorised development; (r) install, use, support, protect, inspect, alter, remove, replace, refurbish, reconstruct, retain, renew, improve and maintain sewers, drains, pipes, ducts, mains, conduits, services, flues and to drain into and manage waterflows in any drains, watercourses and culverts; (s) install, execute, implement, retain, repair, improve, renew, remove, relocate and plant trees, woodlands, shrubs, hedgerows, seeding, landscaping and other ecological measures together with the right to maintain, inspect and replant such trees, shrubs, hedgerows, landscaping and other ecological measures the right to pass and repass on foot, with or without vehicles, plant and machinery for all purposes in connection with the implementation and maintenance of landscaping and ecological mitigation or enhancement works; (t) install, use, support, protect, inspect, alter, remove, replace, refurbish, reconstruct, retain, renew, improve and maintain security fencing, gates, boundary treatment, public rights of way and any other ancillary apparatus and any other works as necessary; and (u) restrict and remove the erection of buildings or structures, restrict the altering of ground levels, restrict and remove vegetation and restrict the planting of trees or carrying out operations or actions (including but not

		limited to blasting and piling) which may obstruct, interrupt or interfere with the exercise of the rights or damage the authorised development.

SCHEDULE 9

Article 23

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

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

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

(a) for the words "land is acquired or taken from" substitute "a right or restrictive covenant over land is purchased from or imposed on"; and

(b) for the words "acquired or taken from him" substitute "over which the right is exercisable or the restrictive covenant enforceable".

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

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

"(5A) If—

(a) the acquiring authority enters on land for the purpose of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act (as modified by paragraph 8 of Schedule 9 to the Byers Gill Solar Order 2025)

(b) the acquiring authority is subsequently required by a determination under paragraph 13 of Schedule 2A to the 1965 Act (as substituted by paragraph 11 of Schedule 9 the Byers Gill Solar Order 2025) to acquire an interest in the land; and

(c) the acquiring authority enters on and takes possession of that land, the authority is deemed for the purposes of subsection (3)(a) to have entered on that land where it entered on that land for the purpose of exercising that right.".

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

Application of Part 1 of the 1965 Act

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

(2) Without limitation on the scope of sub-paragraph (1), Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act applies in relation to the compulsory acquisition under this Order of a right by the creation of a new right or, in relation to the imposition of a restriction, with the modifications specified in the following provisions of this Schedule.

5. For section 7 (measure of compensation in the case of severance) of the 1965 Act there is substituted the following section—

"**7.** In assessing the compensation to be paid by the acquiring authority under this Act, regard shall 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. For section 8 of the 1965 Act (provisions as to divided land) substitute

"**8.** —(1) Where in consequence of the service on a person under section 5 of this Act of a notice to treat in respect of a right over land consisting of a house, building or manufactory or of a park or garden belonging to a house ("the relevant land")—

(a) a question of disputed compensation in respect of the purchase of the right or the imposition of the restrictive covenant would apart from this section fall to be determined by the tribunal; and

(b) before the tribunal has determined that question the tribunal is satisfied that the person has an interest in the whole of the relevant land and is able and willing to sell that land and—

(i) where that land consists of a house, building or factory, that the right cannot be purchased or the restrictive covenant imposed without material detriment to that land; or

(ii) where that land consists of such a park or garden, that the right cannot be purchased or the restrictive covenant imposed without seriously affecting the amenity or convenience of the house to which that land belongs,

the Byers Gill Solar Order 2025 ("the Order") ceases, in relation to that person, to authorise the purchase of the right or imposition of a restriction and is deemed to authorise the purchase of that person's interest in the whole of the relevant land including, where the land consists of such a park or garden, the house to which it belongs, and the notice is deemed to have been served in respect of that interest on such date as the tribunal directs.

(2) Any question as to the extent of the land in which the Order is deemed to authorise the purchase of an interest by virtue of subsection (1) of this section must be determined by the tribunal.

(3) Where in consequence of a determination of the tribunal that it is satisfied as mentioned in subsection (1) of this section the Order is deemed by virtue of that subsection to authorise the purchase of an interest in land, the acquiring authority may, at any time

within the period of 6 weeks beginning with the date of the determination, withdraw the notice to treat in consequence of which the determination was made; but nothing in this subsection prejudices any other power of the authority to withdraw the notice.".

7. The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

(a) section 9(4) (failure by owners to convey);

(b) paragraph 10(3) of Schedule 1 (owners under incapacity);

(c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and

(d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

8. are so modified as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired or the restrictive covenant which is to be imposed is vested absolutely in the acquiring authority. Section 11 (powers of entry) of the 1965 Act is so modified as to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right or restrictive covenant, as well as the notice of entry required by subsection (1) of that section (as it applies to compulsory acquisition under article 21 (compulsory acquisition of land)), 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 is modified correspondingly.

9. 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.

10. Section 22 (interests omitted from purchase) of the 1965 Act as modified by article 28(4) is so modified as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired or restrictive covenant imposed, subject to compliance with that section as regards compensation.

11. For Schedule 2A (counter notice requiring purchase of land not in notice to treat) to 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 26 (application of the 1981 Act) of the Byers Gill Solar Order 2025 in respect of the land to which the notice to treat relates.

(2) But see article 25(3) (acquisition of subsoil only) of the Byers Gill Solar Order 2025 which excludes the acquisition of subsoil only from this Schedule.

(3) 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 the 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 it 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 30

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

(1) Plot reference number as shown on the land plans	*(2) Purpose for which temporary possession may be taken*	*(3) Relevant part of the authorised development*
3/7	Land required temporarily to facilitate the construction of, provide working space for and facilitate access to Work Nos. 1- 9.	Work Nos. 1 – 9
3/14	Land required temporarily to facilitate the construction of, provide working space for and facilitate access to Work Nos. 1- 9.	Work Nos. 1 – 9
3/15	Land required temporarily to facilitate the construction of, provide working space for and facilitate access to Work Nos. 1- 9.	Work Nos. 1 – 9

SCHEDULE 11

Article 44

PROTECTIVE PROVISIONS

PART 1

PROTECTION FOR ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

Application

1. For the protection of the affected undertakers referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and the affected undertaker concerned.

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 (an "electricity undertaker");

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

(c) a water undertaker within the meaning of Part 1 (preliminary) of the Water Industry Act 1991(**b**) (a "water undertaker"); and

(d) a sewerage undertaker within the meaning of Part 1 (preliminary) of the Water Industry Act 1991 (a "sewerage undertaker"),

for the area of the authorised development but, for the avoidance of doubt, does not include the undertaker specified in Part 2 (National Grid) 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 electrical 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

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

No acquisition etc. except by agreement

4. 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.

(**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.

Removal of apparatus

5.—(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, 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 must not be extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the affected undertaker in question.

(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 (2), 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 all 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 40 (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 40 (arbitration) and after the grant to the affected undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(6) 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

6.—(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 40 (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

7.—(1) Not less than 28 days before starting the execution of any works of the type referred to in paragraph 5(2) that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 5(2), 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 6 apply as if the removal of the apparatus had been required by the undertaker under paragraph 5(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, 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

8.—(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 (including costs or compensation payable in connection with the acquisition of land for that purpose) which may be required in consequence of the execution of any such works as are referred to in paragraph 5(2).

(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 40 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to 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 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.

9.—(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 5(2), 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

10. 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

11. For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the operator.

12. In this Part of this Schedule—

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

"electronic communications apparatus" has the same meaning as in the electronic communications code;

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

"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 electronics communications code) of the 2003 Act; and

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

"electronic communications code operator" means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act;

"infrastructure system" has the same meaning as in the electronic communications code and references to providing an infrastructure system are to be construed in accordance with paragraph 7 of that code; and

"operator" means the operator of an electronic communications code network.

13. The exercise of the powers of article 32 (statutory undertakers) are subject to part 10 of Schedule 3A (the electronic communications code) to the 2003 Act.

14.—(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised development or their construction, or of any subsidence resulting from any of those works—

(a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works, or other property of an operator); or

(b) there is any interruption in the supply of the service provided by an operator, the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and must—

(i) make reasonable compensation to an operator for loss sustained by it; and

(ii) indemnify an operator against claims, demands, proceedings, costs, damages and expenses which may be made or taken against, or recovered from, or incurred by, an operator by reason, or in consequence of, any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.

(3) The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand 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.

(4) Any difference arising between the undertaker and the operator under this paragraph must be referred to and settled by arbitration under article 40 (arbitration).

15. 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

---

(**a**) 2003 c. 21.
(**b**) See section 106.

(b) any damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised development.

16. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 3

FOR THE PROTECTION OF THE DRAINAGE AUTHORITIES

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

18. In this Part—

"commence" has the same meaning as in article 2(1) of this Order and commencement shall be construed to have the same meaning;

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

"drainage authority" means the drainage board concerned within the meaning of section 23 of the Land Drainage Act 1991(**a**);

"drainage work" means any watercourse including any land that provides or is expected to provide flood storage capacity for any watercourse and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage, flood defence, sea defence or tidal monitoring excluding the existing flood defence;

"ordinary watercourse" has the meaning given in section 72 of the Land Drainage Act 1991(**b**);

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

"specified work" means so much of any work or operation authorised by this Order as is in, on, under, over or within 16 metres of a drainage work or is otherwise likely to—

(a) affect any drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work;

(b) affect the flow, purity, or quality of water in any watercourse; or

(c) affect the conservation, distribution or use of water resources.

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

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the drainage authority or determined under paragraph 27.

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

(a) must not be unreasonably withheld or delayed;

(b) is deemed to have been given if it is neither given nor refused within 2 months of the submission of the plans for approval (or submission of further particulars if required by the drainage authority under sub-paragraph (1) or, in the case of a refusal, if it is not accompanied by a statement of the grounds of refusal; and

(c) may be given subject to such reasonable requirements as the drainage authority may make for the protection of any drainage work.

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

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

20. Without limiting paragraph 19, the requirements which the drainage authority may make under that paragraph include conditions requiring the undertaker at its own expense to construct such protective works, whether temporary or permanent, during the construction of the specified work (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

(a) to safeguard any drainage work against damage; or

(b) to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased,

by reason of any specified work.

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

(a) without unreasonable delay in accordance with the plans approved or deemed to have been approved or settled under this Part; and

(b) to the reasonable satisfaction of the drainage authority,

and an officer of the drainage authority is entitled to watch and inspect the construction of such works.

(2) The undertaker must give to the drainage authority—

(a) not less than 14 days' notice in writing of its intention to commence construction of any specified work; and

(b) notice in writing of its completion not later than 7 days after the date on which it is brought into use.

(3) If the drainage authority reasonably requires, the undertaker must construct all or part of the protective works so that they are in place before the construction of the specified work.

(4) If any part of a specified work or any protective work required by the drainage authority is constructed otherwise than in accordance with the requirements of this Part, the drainage authority may by notice in writing require the undertaker at the undertaker's expense to comply with the requirements of this Part or (if the undertaker so elects and the drainage authority in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as the drainage authority reasonably requires.

(5) Subject to sub-paragraph (6), if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (4) is served on the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and subsequently to make reasonably expeditious progress towards their implementation, the drainage authority may execute the works specified in the notice, and any expenditure incurred by it in so doing is recoverable from the undertaker.

(6) In the event of any dispute as to whether sub-paragraph (4) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the drainage authority must not except in emergency exercise the powers conferred by sub-paragraph (4) until the dispute has been finally determined.

22.—(1) Subject to sub-paragraph (5) the undertaker must from the commencement of the construction of any specified work maintain in good repair and condition and free from obstruction any drainage work that is situated within the limits of deviation on land held by the undertaker for the purposes of or in connection with the specified work, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

(2) If any drainage work that the undertaker is liable to maintain is not maintained to the reasonable satisfaction of the drainage authority, the drainage authority may by notice in writing

require the undertaker to repair and restore the work, or any part of such work, or (if the undertaker so elects and the drainage authority in writing consents, such consent not to be unreasonably withheld or delayed), to remove the work and restore the site to its former condition, to such extent and within such limits as the drainage authority reasonably requires.

(3) If, within a reasonable period being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2) on the undertaker, the undertaker has failed to begin taking steps to comply with the reasonable requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the drainage authority may do what is necessary for such compliance and may recover any expenditure reasonably incurred by it in so doing from the undertaker.

(4) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the drainage authority must not except in a case of emergency exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined.

(5) This paragraph does not apply to—

(a) drainage works that are vested in the drainage authority or that the drainage authority or another person is liable to maintain and is not prevented by this Order from so doing; and

(b) any obstruction of a drainage work for the purpose of a work or operation authorised by this Order and carried out in accordance with the provisions of this Part.

23. If by reason of the construction of any specified work or of the failure of any such work the efficiency of any drainage works for flood defence purpose is impaired, or the drainage work is otherwise damaged, the impairment or damage must be made good by the undertaker to the reasonable satisfaction of the drainage authority and, if the undertaker fails to do so, the drainage authority may make good the impairment or damage and recover from the undertaker the expense reasonably incurred by it in doing so.

24. The undertaker must indemnify the drainage authority in respect of all costs, charges and expenses that the drainage authority may reasonably incur, have to pay or may sustain—

(a) in the examination or approval of plans under this Part;

(b) in inspecting the construction of any specified work or any protective works required by the drainage authority under this Part; and

(c) in carrying out of any surveys or tests by the drainage authority that are reasonably required in connection with the construction of the specified work.

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

(a) any damage to any drainage work so as to impair its efficiency for the purposes of flood defence;

(b) any raising or lowering of the water table in land adjoining the authorised development or any sewers, drains and watercourses; or

(c) any flooding or increased flooding of any such land,

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

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

26. The fact that any work or thing has been executed or done by the undertaker in accordance with a plan approved or deemed to be approved by the drainage authority, or to its satisfaction, or in accordance with any directions or award of an arbitrator, does not relieve the undertaker from any liability under this Part.

27. Any dispute between the undertaker and the drainage authority under this Part, if the parties agree, must be determined by arbitration under article 40 (arbitration).

PART 4

FOR THE PROTECTION OF NATIONAL GRID ELECTRICITY TRANSMISSION PLC AS ELECTRICITY UNDERTAKER

Application

28.—(1) For the protection of National Grid Electricity Transmission Plc as referred to in this Part of this Schedule, the following provisions have effect, unless otherwise agreed in writing between the undertaker and National Grid Electricity Transmission Plc.

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and National Grid Electricity Transmission Plc, where the benefit of this Order is transferred or granted to another person under article 6 (consent to transfer benefit of Order)—

(a) any agreement of the type mentioned in subparagraph (1) has effect as if it had been made between National Grid Electricity Transmission Plc and the transferee or grantee (as the case may be); and

(b) written notice of the transfer or grant must be given to National Grid Electricity Transmission Plc on or before the date of that transfer or grant.

(3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to National Grid Electricity Transmission Plc (but without prejudice to paragraph 39(3)(b)).

Interpretation

29. 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) during the construction period of the authorised works; and (b) after the construction period of the authorised works in respect of any use and maintenance of the authorised works by or on behalf of the undertaker which constitute specified works and arranged with an insurer whose security/credit rating meets the same requirements as an "acceptable credit provider", such insurance shall include (without limitation)—

(a) a waiver of subrogation and an indemnity to principal clause in favour of National Grid Electricity Transmission Plc;

(b) pollution liability for third party property damage and third party bodily damage arising from any pollution/contamination event with a (sub)limit of indemnity of not less than £10,000,000.00 (ten million pounds) per occurrence or series of occurrences arising out of one event or £20,000,000.00 (twenty million pounds) in aggregate;

"acceptable security" means either—

(a) a parent company guarantee from a parent company in favour of National Grid Electricity Transmission Plc to cover the undertaker's liability to National Grid Electricity Transmission Plc to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to National Grid Electricity Transmission Plc and where required by National Grid Electricity Transmission Plc, accompanied with a legal opinion confirming the due capacity and authorisation of the parent company to enter into and be bound by the terms of such guarantee); or

(b) a bank bond or letter of credit from an acceptable credit provider in favour of National Grid Electricity Transmission Plc to cover the undertaker's liability to National Grid Electricity Transmission Plc for an amount of not less than £10,000,000.00 (ten million pounds) per asset per event up to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to National Grid Electricity Transmission Plc);

"access works" means any works required to access Work No. 6 described in Schedule 1 of this Order (authorised development);

"alternative apparatus" means appropriate alternative apparatus to the satisfaction of National Grid Electricity Transmission Plc to enable National Grid Electricity Transmission Plc to fulfil its statutory functions in a manner no less efficient than previously;

"apparatus" means—

(a) any electric lines or electrical plant as defined in the 1989 Act, belonging to or maintained by National Grid Electricity Transmission Plc together with any replacement apparatus; and

(b) such other apparatus constructed pursuant to the Order that becomes operational apparatus of National Grid Electricity Transmission Plc for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or must be lodged or which gives or will give access to apparatus; and

(c) any electrical lines or electrical plant as defined in the 1989 Act, any mains, pipes, plant or other apparatus belonging to, operated or maintained by National Grid Electricity Transmission Plc for the purposes of the construction, operation and maintenance of the EGL1 Project, whether temporary or permanent, and includes, where the context so requires, apparatus constructed as part of the authorised works and intended for the beneficial use by National Grid Electricity Transmission Plc ("EGL1 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 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;

"EGL1 Project" means the Eastern Green Link 1 high voltage direct current link to be located between Torness, East Lothian, Scotland and Hawthorn Pit, County Durham, England, overhead line works, utilities and watercourse crossings and associated works to be undertaken by National Grid Electricity Transmission Plc and any temporary construction compounds and laydown areas for such works;

"EGL1 Site" includes—

(a) land on which any EGL1 apparatus is situated; and

(b) land on which EGL1 apparatus is anticipated to be situated which is necessary for the construction, use or maintenance of the EGL1 Project (in so far as the same has been notified by National Grid Electricity Transmission plc in writing to the undertaker);

"functions" includes powers and duties;

"ground mitigation scheme" means a scheme approved by National Grid Electricity Transmission Plc (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

"ground monitoring scheme" means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored,

the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for National Grid Electricity Transmission Plc's approval a ground mitigation scheme;

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

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

"Incentive Deduction" means any incentive deduction National Grid Electricity Transmission Plc 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" includes the ability and right to do any of the following in relation to any apparatus or alternative apparatus of National Grid Electricity Transmission Plc: construct, use, repair, alter, inspect, renew or remove the apparatus;

"National Grid Electricity Transmission Plc" means National Grid Electricity Transmission Plc (Company Number 2366977) whose registered office is at 1-3 Strand, London, WC2N 5EH or any successor as a licence holder within the meaning of Part 1 of the Electricity Act 1989;

"Norton Substation connection works" means any part of Work No. 6 described in Schedule 1 of this Order (authorised development)

"NGESO" 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 Electricity Transmission Plc acting reasonably;

"shared area works" means—

(a) the Norton Substation connection works;

(b) the access works; and

(c) any part of the authorised works taking place on any land associated with the EGL1 Project (in so far as the same has been notified by National Grid Electricity Transmission plc in writing to the undertaker);

"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 35(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 35(2) or otherwise; and/or

(c) includes any of the activities that are referred to in development near overhead lines EN43- 8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".

"STC" means the System Operator Transmission Owner Code prepared by the electricity Transmission Owners and NGESO 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;

"Transmission Owner" means as defined in the STC;

"undertaker" means the undertaker as defined in article 2(1) of this Order;

Interaction with the EGL1 Project

30. Without limiting any other provision of this Part of this Schedule, the undertaker must use reasonable endeavours to avoid any conflict arising between the construction, maintenance and operation of the authorised works and the EGL1 Project. For the purposes of this paragraph, "reasonable endeavours" means—

(a) undertaking consultation on the detailed design and programming of the shared area works and all works associated with or ancillary to the shared area works to ensure that the design and programme for the Norton Substation connection works does not unreasonably impede or interfere with the EGL1 Project;

(b) having regard to the proposed programme of works for the EGL1 Project as may be made available to the undertaker by National Grid Electricity Transmission Plc and facilitating a co-ordinated approach to the programme, land assembly, and the carrying out of the shared area works and the EGL1 Project;

(c) providing a point of contact for continuing liaison and co-ordination throughout the construction and operation of the authorised works; and

(d) keeping National Grid Electricity Transmission Plc informed on the programme of works for the authorised works.

On Street Apparatus

31. Except for paragraphs 32 (Apparatus of National Grid Electricity Transmission Plc in stopped up and temporarily closed streets), 37 (Retained apparatus: protection of National Grid Electricity Transmission Plc as Electricity Undertaker), 38 (Expenses) and 39 (Indemnity) 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 Grid Electricity Transmission Plc, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Grid Electricity Transmission Plc are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus of National Grid Electricity Transmission Plc in stopped up and temporarily closed streets

32.—(1) Where any street is stopped up under article 14 (public rights of way), if National Grid Electricity Transmission Plc has any apparatus in the street or accessed via that street National Grid Electricity Transmission Plc 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 Electricity Transmission Plc, or procure the granting to National Grid Electricity Transmission Plc of, legal easements reasonably satisfactory to National Grid Electricity Transmission Plc 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 Electricity Transmission Plc to require the removal of that apparatus under paragraph 35 (Removal of apparatus) or the power of the undertaker, subject to compliance with this sub-paragraph, to carry out works under paragraph 37 (Retained apparatus: protection of National Grid Electricity Transmission Plc as Electricity Undertaker).

(2) Notwithstanding the temporary closure or diversion of any highway under the powers of article 13 (temporary closure of public rights of way), National Grid Electricity Transmission Plc is at liberty at all times to take all necessary access across any such temporarily closed 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 temporary closure or diversion was in that highway.

Protective works to buildings

33. The undertaker, in the case of the powers conferred by article 19 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus or the EGL1 Site without the prior written consent of National Grid Electricity Transmission Plc which will not be unreasonably withheld.

Acquisition of land

34.—(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 Grid Electricity Transmission Plc otherwise than by agreement (such agreement not to be unreasonably withheld or delayed).

(2) Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not unless otherwise agreed in writing with National Grid Electricity Transmission Plc appropriate, acquire or take temporary possession of any land forming part of the EGL1 Site and/or any access thereto (such agreement not to be unreasonably withheld or delayed).

(3) 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 Electricity Transmission Plc 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 Electricity Transmission Plc or affect the provisions of any enactment or agreement regulating the relations between National Grid Electricity Transmission Plc 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 Electricity Transmission Plc reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Grid Electricity Transmission Plc and the undertaker acting reasonably and which must be no less favourable on the whole to National Grid Electricity Transmission Plc unless otherwise agreed by National Grid Electricity Transmission Plc, 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.

(4) Save where otherwise agreed in writing between National Grid Electricity Transmission Plc and the undertaker the undertaker and National Grid Electricity Transmission Plc 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 Electricity Transmission Plc and/or other enactments relied upon by National Grid Electricity Transmission Plc as of right or other use in relation to the apparatus, then the provisions in this Schedule shall prevail.

(5) Any agreement or consent granted by National Grid Electricity Transmission Plc under paragraph 37 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).

Removal of apparatus

35.—(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 Grid Electricity Transmission Plc to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Grid Electricity Transmission Plc in accordance with sub-paragraph (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 Grid Electricity Transmission Plc a minimum of 56 days' advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid Electricity Transmission Plc reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), secure any necessary consents for the alternative apparatus and afford to National Grid Electricity Transmission Plc to its satisfaction (taking into account paragraph 36(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 Grid Electricity Transmission Plc must, 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 Electricity Transmission Plc to use its compulsory purchase powers to this end unless it elects to so do.

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

(5) National Grid Electricity Transmission Plc must, after the alternative apparatus to be provided or constructed has been agreed, and subject to a written diversion agreement having been entered into between the parties and the grant to National Grid Electricity Transmission Plc of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

36.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for National Grid Electricity Transmission Plc facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and National Grid Electricity Transmission Plc and must be no less favourable on the whole to National Grid Electricity Transmission Plc than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by National Grid Electricity Transmission Plc.

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid Electricity Transmission Plc than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject the matter may be referred to arbitration in accordance with paragraph 43 (Arbitration) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to National Grid Electricity Transmission Plc as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection of National Grid Electricity Transmission Plc as Electricity Undertaker

37.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Grid Electricity Transmission Plc a plan of the works to be executed and seek from National Grid Electricity Transmission Plc details of the underground extent of their electricity assets.

(2) In relation to specified works the plan to be submitted to National Grid Electricity Transmission Plc under sub-paragraph (1) must include a method statement and describe—

(a) the exact position of the works;

(b) the level at which these are proposed to be constructed or renewed;

(c) the manner of their construction or renewal including details of excavation, positioning of plant;

(d) the position of all apparatus;

(e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;

(f) any intended maintenance regimes;

(g) an assessment of risks of rise of earth issues; and

(h) a ground monitoring scheme, where required.

(3) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (1) must, in addition to the matters set out in sub-paragraph (2), include a method statement describing—

(a) details of any cable trench design including route, dimensions, clearance to pylon foundations;

(b) demonstration that pylon foundations will not be affected prior to, during and post construction;

(c) details of load bearing capacities of trenches;

(d) details of any cable installation methodology including access arrangements, jointing bays and backfill methodology;

(e) a written management plan for high voltage hazard during construction and ongoing maintenance of any cable route;

(f) written details of the operations and maintenance regime for any cable, including frequency and method of access;

(g) assessment of earth rise potential if reasonably required by National Grid Electricity Transmission Plc's engineers; and

(h) evidence that trench bearing capacity is to be designed to support overhead line construction traffic of up to and including 26 tonnes in weight.

(4) The undertaker must not commence any works to which sub-paragraphs (2) or (3) apply until National Grid Electricity Transmission Plc has given written approval of the plan so submitted.

(5) Any approval of National Grid Electricity Transmission Plc required under sub-paragraphs (4)—

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (6) or (8); and,

(b) may be given subject to such reasonable requirements as National Grid Electricity Transmission Plc may have in connection with safeguarding National Grid Electricity Transmission Plc's access to the EGL1 Site; and

(c) must not be unreasonably withheld or delayed.

(6) In relation to a work to which sub-paragraph (2) or (3) applies, National Grid Electricity Transmission Plc 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 or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(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 (6), as approved or as amended from time to time by agreement between the undertaker and National Grid Electricity Transmission Plc and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5), (6), (8) or (9) by National Grid Electricity Transmission Plc for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid Electricity Transmission Plc will be entitled to watch and inspect the execution of those works.

(8) Where National Grid Electricity Transmission Plc requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to National Grid Electricity Transmission Plc's satisfaction prior to the commencement of any authorised works (or any relevant part thereof) for which protective works are required and National Grid Electricity Transmission Plc 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 Electricity Transmission Plc in accordance with sub-paragraphs (6) or (8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, sub-paragraphs (1) to (3) and (6) to (8) apply as if the removal of the apparatus had been required by the undertaker under paragraph 35(1).

(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 authorised works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.

(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 Electricity Transmission Plc notice as soon as is reasonably practicable 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 works authorised under the Order, the undertaker must comply with National Grid Electricity Transmission Plc's policies for development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".

Expenses

38.—(1) Save where otherwise agreed in writing between National Grid Electricity Transmission Plc and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to National Grid Electricity Transmission Plc within 30 days of receipt of an itemised invoice or claim from National Grid Electricity Transmission Plc all charges, costs and expenses reasonably anticipated within the following three months or reasonably and properly incurred by National Grid Electricity Transmission Plc in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works including without limitation—

(a) any costs reasonably incurred by or compensation properly paid by National Grid Electricity Transmission Plc in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Grid Electricity Transmission Plc as a consequence of National Grid Electricity Transmission Plc:

(i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 35(3); or

(ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Grid Electricity Transmission Plc;

(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 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 National Grid Electricity Transmission Plc by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(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 Electricity Transmission Plc in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on National Grid Electricity Transmission Plc any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

Indemnity

39.—(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 Grid Electricity Transmission Plc, or there is any interruption in any service provided, or in the supply of any goods, by National Grid Electricity Transmission Plc, or National Grid Electricity Transmission Plc becomes liable to pay any amount to any third party, the undertaker will—

(a) bear and pay on demand accompanied by an invoice or claim from National Grid Electricity Transmission Plc the cost reasonably and properly incurred by National Grid Electricity Transmission Plc in making good such damage or restoring the supply; and

(b) indemnify National Grid Electricity Transmission Plc for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Grid Electricity Transmission Plc, by reason or in consequence of any such damage or interruption or National Grid Electricity Transmission Plc becoming liable to any third party and including STC Claims or an Incentive Deduction other than arising from any default of National Grid Electricity Transmission Plc.

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

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

(a) any damage or interruption to the extent that it is attributable to the neglect or default of National Grid Electricity Transmission Plc, its officers, servants, contractors or agents;

(b) any authorised works and/or any other works authorised by this Part of this Schedule carried out by National Grid Electricity Transmission Plc as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article 6 (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-section 3(b) will be subject to the full terms of this Part of this Schedule including this paragraph in respect of such apparatus;

(c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working, or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable.

(4) National Grid Electricity Transmission Plc must give the undertaker reasonable notice of any such third party claim or demand and, with the exception of any payment required in connection with a statutory compensation scheme, no settlement, admission of liability or compromise must, be made without first consulting with the undertaker and considering their representations.

(5) National Grid Electricity Transmission Plc must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(6) National Grid Electricity Transmission Plc must use all 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 Electricity Transmission Plc'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 Electricity Transmission Plc's control and, if reasonably requested to do so by the undertaker, National Grid Electricity Transmission Plc must provide an explanation of how the claim has been minimised, where relevant.

(7) The undertaker shall not commence construction (and not to permit the commencement of such construction) of the authorised works on any land owned by National Grid Electricity

Transmission Plc or in respect of which National Grid Electricity Transmission Plc has an easement or wayleave for its apparatus or any other interest or to carry out any works within 15 metres of National Grid Electricity Transmission Plc's apparatus until the following conditions are satisfied—

(a) unless and until National Grid Electricity Transmission Plc is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has first provided the acceptable security (and provided evidence that it shall maintain such acceptable security for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and National Grid Electricity Transmission Plc has confirmed the same to the undertaker in writing; and

(b) unless and until National Grid Electricity Transmission Plc is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to National Grid Electricity Transmission Plc that it shall maintain such acceptable insurance for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and National Grid Electricity Transmission Plc has confirmed the same in writing to the undertaker.

(8) In the event that the undertaker fails to comply with paragraph 39(7) of this Part of this Schedule, nothing in this Part of this Schedule shall prevent National Grid Electricity Transmission Plc from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

Enactments and agreements

40. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between National Grid Electricity Transmission Plc and the undertaker, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and National Grid Electricity Transmission Plc in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

41.—(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or National Grid Electricity Transmission Plc requires the removal of apparatus under paragraph 35(2) or National Grid Electricity Transmission Plc makes requirements for the protection or alteration of apparatus under paragraph 37, the undertaker shall use its best endeavours to co- ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of National Grid Electricity Transmission Plc's undertaking and National Grid Electricity Transmission Plc shall use its best endeavours to co-operate with the undertaker for that purpose.

(2) Whenever National Grid Electricity Transmission Plc's consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

Access

42. If in consequence of the agreement reached in accordance with paragraphs 34(1) and 34(2) or the powers granted under this Order the access to any apparatus and/or to the EGL1 Site is materially obstructed, the undertaker must provide such alternative means of access to such apparatus and/or to the EGL1 Site as will enable National Grid Electricity Transmission Plc to access, maintain or use the apparatus and/or the EGL1 Site no less effectively than was possible before such obstruction.

Arbitration

43. Save for differences or disputes arising under paragraphs 34(2), 34(4) and 37 any difference or dispute arising between the undertaker and National Grid Electricity Transmission Plc under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Grid Electricity Transmission Plc, be determined by arbitration in accordance with article 40 (arbitration).

Notices

44. Any plans submitted to National Grid Electricity Transmission Plc by the undertaker pursuant to this Part must be submitted using the LSBUD system (https://lsbud.co.uk/) or to such other address as National Grid Electricity Transmission Plc may from time to time appoint instead for that purpose and notify to the undertaker in writing.

PART 5

FOR THE PROTECTION OF NATIONAL GAS TRANSMISSION PLC AS GAS UNDERTAKER

Application

45.—(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 6 (consent to transfer benefit of Order)—

(a) any agreement of the type mentioned in subparagraph (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 (but without prejudice to paragraph 55(3)(b)).

Interpretation

46. 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) 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 shall 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;

"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 Schedule;

"commence" and "commencement" in this Part of this Schedule shall include 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, shall require the undertaker to submit for National Gas' 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 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' 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 which shall have been approved by National Gas 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 51(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 51(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' policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW/22.

"undertaker" means the undertaker as defined in article 2(1) of this Order.

On Street Apparatus

47. Except for paragraphs 48 (apparatus of National Gas in stopped up and temporarily closed streets), 53 (retained apparatus: protection), 54 (expenses) and 55 (indemnity) 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 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 and temporarily closed streets

48.—(1) Where any street is stopped up under article 14 (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 51 or the power of the undertaker, subject to compliance with this sub-paragraph, to carry out works under paragraph 53.

(2) Notwithstanding the temporary closure or diversion of any highway under the powers of article 13 (temporary closure of public rights of way), National Gas is at liberty at all times to take all necessary access across any such temporarily closed 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 temporary closure or diversion was in that highway.

Protective works to buildings

49. The undertaker, in the case of the powers conferred by article 19 (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

50.—(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 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/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 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 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 Gas and/or other enactments relied upon by National Gas as of right or other use in relation to the apparatus, then the provisions in this Schedule shall prevail.

(4) Any agreement or consent granted by National Gas under paragraph 53 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).

Removal of apparatus

51.—(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 52(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 shall 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

52.—(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 59 (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

53.—(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 (7); and,

(b) must not be unreasonably withheld.

(5) In relation to any work to which sub-paragraphs (1) or (2) apply, National Gas 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) Works executed under sub-paragraphs (1) or (2) must be executed in accordance with 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 in accordance with 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 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' 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 1 to 3 and 6 to 8 apply as if the removal of the apparatus had been required by the undertaker under paragraph 51(2).

(9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the 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' policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22" and HSE's "HS(~G)47 Avoiding Danger from underground services".

(12) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker shall implement an appropriate ground mitigation scheme

save that 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 54.

Expenses

54.—(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 51(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; 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 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 15 (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

55.—(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 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 this 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) shall impose any liability on the undertaker in respect of—

(a) any damage or interruption to the extent that it is attributable to the neglect or default of National Gas, its officers, servants, contractors or agents;

(b) any authorised works and/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 6 (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 55; or

(c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable;

(4) National 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' 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' 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) The undertaker must not commence construction (and not to permit the commencement of such construction) of the authorised 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' 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 shall maintain such acceptable security for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and National 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 shall maintain such acceptable insurance for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and National Gas has confirmed the same in writing to the undertaker.

(8) In the event that the undertaker fails to comply with paragraph 55(7) of this Part of this Schedule, nothing in this Part of this Schedule shall prevent National Gas from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

Enactments and agreements

56. 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

57.—(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 51(2) or National Gas makes requirements for the protection or alteration of apparatus under paragraph 53, the undertaker shall use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of National Gas' undertaking and National Gas shall use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever National Gas' 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

58. If in consequence of the agreement reached in accordance with paragraph 50(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

59. Save for differences or disputes arising under paragraph 51(2), 51(4), 51(1) and 53 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 40 (arbitration).

Notices

60. Notwithstanding article 37 (service of notices), any plans submitted to National Gas by the undertaker pursuant to paragraph 53 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 6

FOR THE PROTECTION OF NORTHERN POWERGRID

61. For the protection of Northern Powergrid the following provisions have effect, unless otherwise agreed in writing between the undertaker and Northern Powergrid.

62. In this Part of this Schedule—

"alternative apparatus" means alternative apparatus adequate to enable Northern Powergrid to fulfil its statutory functions in a manner not less efficient than previously;

"apparatus" means electric lines or electrical plant (as defined in section 64 (Interpretation) of the Electricity Act 1989),

belonging to or maintained by Northern Powergrid and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

"authorised works" means so much of the works authorised by this Order which affect existing Northern Powergrid's apparatus within the Order limits;

"functions" includes powers and duties;

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

"plan" includes all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed and must include measures proposed by the undertaker to ensure the grant of sufficient land or rights in land necessary to mitigate the impacts of the works on Northern Powergrid's undertaking; and

"Northern Powergrid" means Northern Powergrid (Northeast) PLC (Company Number 02906593) whose registered address is Lloyds Court, 78 Grey Street, Newcastle upon Tyne, NE1 6AF

63. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and Northern Powergrid are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

64. Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 13 (Temporary closure of public rights of way), Northern Powergrid 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.

65. Regardless of any provision in this Order or anything shown on the land plans, or contained in the book of reference, the undertaker must not acquire any apparatus, or override any easement or other interest of Northern Powergrid or create any new rights over the same otherwise than by agreement with Northern Powergrid such agreement not to be unreasonably withheld or delayed (having regard to Northern Powergrid's existing and known future requirements for such land and interests).

66. Regardless of any provision in the Order or anything shown on the land plans or contained in the book of reference, the undertaker must not interfere with any communications cables or equipment used by Northern Powergrid in relation to its apparatus or acquire or interfere with rights or interests supporting the use, maintenance or renewal of such equipment including any easements other than by agreement of Northern Powergrid (such agreement not to be unreasonably withheld or delayed) and having regard to Northern Powergrid's existing and known future requirements for such land or interests.

67.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that Northern Powergrid's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of Northern Powergrid to maintain that apparatus in that land and 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 pursuant to a completed easement which must include rights to retain and subsequently maintain the apparatus being replaced or diverted for the lifetime of that alterative apparatus, all to the reasonable satisfaction of Northern Powergrid in accordance with sub-paragraphs (2) to (5).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to Northern Powergrid 56 days' advance written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order Northern Powergrid reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to Northern Powergrid the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed—

(i) the undertaker must in the first instance use reasonable endeavours to acquire all necessary land interests or rights as Northern Powergrid may reasonably require for the relocation and construction of alternative apparatus and must use reasonable endeavours to procure all necessary rights to access and maintain Northern Powergrid's apparatus and alternative apparatus thereafter the terms of such access and maintenance to be agreed by Northern Powergrid (acting reasonably); and

(ii) In the event that the undertaker is not able to procure the necessary land interest or rights referred to in the sub-paragraph (3)(i), Northern Powergrid must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably practicable and at the cost of the undertaker (subject to prior approval by the undertaker of its estimate of costs of doing so) use reasonable endeavours to procure 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 Northern Powergrid to use its compulsory purchase powers to this end.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between Northern Powergrid and the undertaker or in default of agreement settled by arbitration in accordance with article 40 (arbitration).

(5) Northern Powergrid must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 40, and after the grant to Northern Powergrid 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.

68.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to Northern Powergrid facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and Northern Powergrid or in default of agreement settled by arbitration in accordance with article 40 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to Northern Powergrid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to Northern Powergrid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

69.—(1) Not less than 56 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to (including conducting any activities whether intentionally or unintentionally, through for example ground or machinery collapse, which may affect Northern Powergrid's apparatus or encroach on safety distances to live equipment) or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 67(2), the undertaker must submit to Northern Powergrid a plan, section and description of the works to be executed and any such information as Northern Powergrid reasonably requires relating to those works.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by Northern Powergrid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and Northern Powergrid is entitled to watch and inspect the execution of those works.

(3) Any requirements made by Northern Powergrid under sub-paragraph (2) must be made within a period of 35 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If Northern Powergrid in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 61 to 68 apply as if the removal of the apparatus had been required by the undertaker under paragraph 7(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 35 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 Northern Powergrid notice as soon as is reasonably practicable and a

plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

70.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to Northern Powergrid within fifty (50) days of receipt of an itemised invoice or claim all reasonable and proper expenses costs or charges incurred by Northern Powergrid—

(a) in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any alternative apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 67(2) including without limitation—

(i) any costs reasonably incurred or compensation properly paid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation in the event that it is agreed Northern Powergrid elects to use compulsory purchase powers to acquire any necessary rights under paragraph 67(3) all costs reasonably incurred as a result of such action;

(ii) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;

(iii) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;

(iv) the approval of plans;

(v) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;

(vi) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule); and

(b) in assessing and preparing a design for its apparatus to address and accommodate the proposals of the undertaker whether or not the undertaker proceeds to implement those proposals or alternative or none at all, provided that if it so prefers Northern Powergrid may abandon apparatus that the undertaker does not seek to remove in accordance with paragraph 7(1) having first decommissioned such apparatus.

(2) Where any payment falls due pursuant to paragraph 70(1), Northern Powergrid shall—

(i) provide an itemised invoice or reasonable expenses claim to the undertaker.

(ii) provide ‘reminder letters’ to the undertaker for payment to be made within the fifty days on the following days after the invoice or reasonable expenses claim to the undertaker—

15 days (‘reminder letter 1’)

29 days (‘reminder letter 2’)

43 days (‘reminder letter 3’); and

(iii) provided that sub-paragraphs (i) and (ii) have been complied with and the invoice or expenses have not been referred to arbitration, be entitled to commence debt proceedings to recover any unpaid itemised invoice or reasonable expenses claim after fifty one days of receipt of the same where payment has not been made.

(3) There is to be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule, that value being calculated after removal and for the avoidance of doubt, if the apparatus removed under the provisions of this Part of this Schedule has nil value, no sum will be deducted from the amount payable under sub-paragraph (1).

(4) If in accordance with the provisions of this Part of this Schedule—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was

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 40 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to Northern Powergrid by virtue of sub-paragraph (1) is to be reduced by the amount of that excess save where it is not possible on account of project time limits and/or supply issues to obtain the existing type of operations, capacity, dimensions or place at the existing depth in which case full costs shall be borne by the undertaker.

(5) 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 where such extension is required in consequence of the execution of any such works as are referred to in paragraph 67(2); and

(b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

71.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in in paragraph 67(2), or in consequence of the, maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by it) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Schedule or any subsidence resulting from any of these works any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of Northern Powergrid, or there is any interruption in any service provided by Northern Powergrid, or Northern Powergrid becomes liable to pay any amount to a third party as a consequence of any default, negligence or omission by the undertaker in carrying out the authorised works, the undertaker must—

(a) bear and pay the cost reasonably incurred by Northern Powergrid in making good such damage or restoring the supply; and

(b) indemnify Northern Powergrid for any other expenses, loss, damages, penalty, proceedings, claims or costs incurred by or recovered from Northern Powergrid by reason or in consequence of any such damage or interruption or Northern Powergrid becoming liable to any third party.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of Northern Powergrid, its officers, employees, servants, contractors or agents.

(3) Northern Powergrid must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Northern Powergrid must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 71 applies. If requested to do so by the undertaker, Northern Powergrid must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1). The undertaker shall only be liable under this paragraph 71 for claims reasonably incurred by Northern Powergrid.

(5) Subject to sub-paragraphs (3) and (4), the fact that any act or thing may have been done by Northern Powergrid on behalf of the undertaker or in accordance with a plan approved by

Northern Powergrid or in accordance with any requirement of Northern Powergrid as a consequence of the authorised development or under its supervision will not (unless sub-paragraph (2) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (5) where the undertaker 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 materially accord with the approved plan or as otherwise agreed between the undertaker and the Northern Powergrid.

72. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Northern Powergrid in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

73. Any difference under the provisions of this Part of the Schedule, unless otherwise agreed is to be referred to and settled by arbitration in accordance with article 40 (Arbitration).

74. Where in consequence of the proposed construction of any of the authorised development, the undertaker or Northern Powergrid requires the removal of apparatus under paragraph 67 or otherwise or Northern Powergrid makes requirements for the protection or alteration of apparatus under paragraph 69, the undertaker shall use its reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the need to ensure the safe and efficient operation of Northern Powergrid's undertaking taking into account the undertaker's desire for the efficient and economic execution of the authorised development and the undertaker and Northern Powergrid shall use reasonable endeavours to co-operate with each other for those purposes.

75. If in consequence of an agreement reached in accordance with paragraph 65 or paragraph 66 or the powers granted under this Order the access to any apparatus or alternative apparatus is materially obstructed, the undertaker shall provide such alternative means of access to such apparatus or alternative apparatus as will enable Northern Powergrid to maintain or use the said apparatus no less effectively than was possible before such obstruction.

76. The plans submitted to Northern Powergrid by the undertaker pursuant to this Part of the Schedule must be sent to Northern Powergrid at property@northernpowergrid.com or such other address as Northern Powergrid may from time to time appoint instead for that purpose and notify to the undertaker in writing

77. Prior to carrying out any works within the Order Limits (as defined in the Order) NPG must give written notice of the proposed works to the undertaker, such notice to include full details of the location of the proposed works, their anticipated duration, access arrangements, depths of the works, and any other information that may impact upon the works consented by the Order.

78. Where practicable, the Undertaker and Northern Powergrid will make reasonable efforts to liaise and co-operate in respect of information that is relevant to the safe and efficient construction operation and maintenance of the authorised development. Such liaison shall be carried out where any works are—

(a) within 15m of any above ground apparatus and / or

(b) are to a depth of between 0 – 4m below ground level under any apparatus.

PART 7

FOR THE PROTECTION OF NORTHUMBRIAN WATER LIMITED

79. For the protection of NWL, the following provisions of this Part of this Schedule, unless otherwise agreed in writing between the undertaker and NWL, have effect.

80. In this Part of this Schedule—

"alternative apparatus" means alternative apparatus adequate to enable NWL to fulfil its statutory functions in no less efficient a manner than previously;

"apparatus" means the following items belonging to or maintained by NWL within the Order limits—

(a) in the case of NWL's water undertaking—

(i) mains, pipes, wells, boreholes, tanks, service reservoirs, pumping stations or other apparatus, structure, tunnel, shaft or treatment works or "accessories" (as defined in section 219(1) of the Water Industry Act 1991) belonging to or maintained or used by NWL for the purposes of water supply; and

(ii) any water mains or service pipes which are the subject of a notice of intention to adopt under section 51A of the Water Industry Act 1991; and

(b) in the case of NWL's sewerage undertaking—

(i) any sewer, drain or disposal works vested in NWL under the Water Industry Act 1991; and

(ii) any sewer, drain or disposal works 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, and includes a sludge main, "disposal main" (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories (as defined in section 219(1) of the Water Industry Act 1991) forming part of any such sewer, drain or works, and any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

"functions" includes powers and duties;

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

"NWL" means Northumbrian Water Limited, company number 02366703, whose registered office is at Northumbria House, Abbey Road, Pity Me, Durham, DH1 5FJ;

"plan" includes sections, drawings, specifications and method statements; and

"the standard protection strips" means strips of land falling within the following distances to either side of the medial line of any relevant pipe or apparatus—

(a) 2.25 metres where the diameter of the pipe is less than 150 millimetres;

(b) 3 metres where the diameter of the pipe is between 150 and 450 millimetres;

(c) 4.5 metres where the diameter of the pipe is between 450 and 750 millimetres;

(d) 6 metres where the diameter of the pipe exceeds 750 millimetres; and

(e) 6.5 metres where it is a sewer.

On street apparatus

81. Except for paragraph 89 (apparatus in stopped up and temporarily closed streets), the provisions of this Part of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and NWL are regulated by the provision of Part 3 of the 1991 Act.

Compulsory acquisition

82.—(1) The undertaker must not without express written agreement of NWL (such agreement not to be unreasonably withheld or delayed) exercise any power conferred by article 21 (compulsory acquisition of land) or article 23 (compulsory acquisition of rights) in respect of NWL's interests.

(2) In the situation, where in exercise of the powers conferred by the Order, the undertaker acquires any interest in any land in which any apparatus is placed and such apparatus is to be relocated, extended, removed or altered in any way, no alteration or extension shall take place until NWL has established to its reasonable satisfaction, without unnecessary delay, contingency arrangements in order to conduct its functions for the duration of the works to relocate, extend, remove or alter the apparatus.

(3) Regardless of any provision in this Order or anything shown on any plan, the undertaker must not acquire any apparatus otherwise than by agreement, and before extinguishing any existing rights for NWL to use, keep, inspect, renew and maintain its apparatus in the Order land, the undertaker must, with the agreement of NWL, create a new right to use, keep, inspect, renew and maintain the apparatus that is reasonably convenient for NWL, such agreement not to be unreasonably withheld or delayed.

Protection Strips

83. The undertaker must not within the standard protection strips interfere with or build over any apparatus within the Order limits or 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 the standard protection strips unless otherwise agreed in writing with NWL, such agreement not to be unreasonably withheld or delayed, and this provision must be brought to the attention of any contractor responsible for carrying out any part of the authorised development on behalf of the undertaker.

Alteration of NWL Apparatus

84.—(1) Without prejudice to the generality of the foregoing, the alteration, extension, removal or re-location of any apparatus shall not be implemented until:

(2) any requirement for any permits under the Environmental Permitting (England and Wales) Regulations 2016 or other replacement legislation and any other associated consents are obtained;

(3) if applicable, the undertaker has made the appropriate application under sections 106 (right to communicate with public sewers), 112 (requirement that proposed drain or sewer be constructed so as to form part of the general system) or 185 (duty to move pipes, etc. in certain cases) of the Water Industry Act 1991 as may be required by those provisions and has provided a plan of the works proposed to NWL and NWL has given the necessary consent or approval under the relevant provision, such agreement not to be unreasonably withheld or delayed; and

(4) in the event that such works are to be executed by the undertaker, they are to be executed only in accordance with the plan, section and description submitted and in accordance with such reasonable requirements as may be made by NWL for the alteration or otherwise for the protection of the apparatus, or for securing access to it.

Access

85. If in consequence of the exercise of the powers conferred by the Order the access to any apparatus is materially obstructed the undertaker shall provide such alternative means of access to such apparatus as will enable NWL to maintain or use the apparatus no less effectively than was possible before such obstruction.

Protective Works to Buildings

86. The undertaker, in the case of the powers conferred by the Order for the protective work to buildings, must exercise those powers so as not to obstruct or render less convenient the access to any apparatus belonging to NWL without the written consent of NWL.

Removal of Apparatus

87.—(1) Without prejudice to paragraph 82(2) hereof if, in the exercise of the powers conferred by the Order, the undertaker acquires any interest in any land in which any apparatus is placed or requires that NWL's apparatus is relocated or diverted, that apparatus must not be removed, and any right of NWL 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 NWL; and

(b) facilities and rights have been secured for that alternative apparatus in accordance with paragraph 88.

(2) Without prejudice to the generality of the foregoing and subject always to the provisions of paragraph 84(1), if, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under the Order, the undertaker requires the removal of any of NWL's apparatus placed in that land, the undertaker must give to NWL 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 NWL reasonably needs to remove any of its apparatus) the undertaker must afford to NWL 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) NWL must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 40 (arbitration), and after the grant to NWL of any such facilities and rights as are referred to in sub-paragraphs 87(2), proceed 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.

(4) Any alternative apparatus to be constructed in land of the undertaker pursuant to the terms hereof must be constructed in such manner and in such line or situation as may be agreed between NWL and the undertaker both acting reasonably with a view to securing the efficient implementation of the necessary work, the avoidance of unnecessary delay and the continued fulfilment by both parties of their service obligations or in default of agreement settled by arbitration in accordance with article 40 (arbitration).

(5) If NWL notifies the undertaker in writing 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, that work instead of being executed by NWL must be executed by the undertaker without unnecessary delay under the superintendence and to the reasonable satisfaction of NWL.

(6) If the undertaker gives notice in writing to NWL that the undertaker intends to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker, that work, instead of being executed by NWL, may, subject to the written consent of NWL (which must not be unreasonably withheld) and in accordance with NWL's requirements and specifications, be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of, NWL.

(7) 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 NWL's reasonable requests for a reasonable period of time to enable NWL to—

(a) make network contingency arrangements; or

(b) bring such matters as it may consider reasonably necessary to the attention of end users of the utility in question.

Facilities and rights for alternative apparatus

88.—(1) Where, in accordance with the terms of the Order, the undertaker affords to NWL 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 reasonable terms and conditions as may be agreed between the undertaker and NWL or in default of agreement settled by arbitration in accordance with article 40 (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 NWL 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 NWL as appears to the arbitrator to be reasonable having regard to all the circumstances

(3) Such facilities and rights as are set out in the preceding paragraph are deemed to include any statutory permits granted to the undertaker in respect of the apparatus in question, whether under the Environmental Permitting Regulations (England and Wales) Regulations 2016 or other legislation.

Apparatus in stopped up and temporarily closed streets

89.—(1) Where in pursuance of the powers conferred by the Order any street is stopped up (permanent stopping up and restriction of use of streets and private means of access), where NWL 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 stopping up and the undertaker must grant to NWL legal easements reasonably satisfactory to NWL in respect of such apparatus and access to it, subject to any right of the undertaker or NWL to require the removal of that apparatus under paragraph 87.

(2) Regardless of the temporary closure or diversion of any highway under the powers conferred by the Order (temporary alteration, diversion, prohibition and restriction of the use of streets), NWL is at liberty at all times to take all necessary access across any such temporarily closed 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 temporary closure or diversion was in that highway subject to provision of reasonable prior notice to the undertaker (except in the case of emergency) and compliance at all times with the undertaker's reasonable site safety rules and health and safety law.

Unmapped sewers/other apparatus

90. Where the undertaker identifies any sewers, lateral drains or other apparatus which may belong to or be maintainable by NWL but which does not appear on any statutory map kept for the purpose by NWL, it shall inform NWL of the existence and location of the apparatus as soon as reasonably practicable and the apparatus shall be afforded the same protection as other NWL assets.

Expenses and costs

91.—(1) Subject to the following provisions of this paragraph and save where otherwise agreed in writing between NWL and the undertaker, the undertaker must repay to NWL all costs, charges and expenses which NWL may reasonably incur or have to pay or which it may sustain in, or in connection with—

(a) the inspection, removal, alteration or protection of any apparatus which may be reasonably required in consequence of any works to construct the authorised development; and/or

(b) the construction of any alternative apparatus which may be required in consequence of the execution of any such works as are referred to in paragraphs 87(2) or 87(3).

(2) The value of any apparatus removed under the provisions of this Part of this Schedule is to 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—

(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 except where this has been solely due to using the nearest currently available type; 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

except where the placing of apparatus at a different depth is required solely to achieve an equivalent capability and function to the existing apparatus,

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 93 (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 NWL in question by virtue of sub-paragraph (1) is to 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;

(b) the provision of additional manholes, valves or wash-out pipes, where required to comply with design standards, must not be treated as a placing of apparatus of better type, of greater capacity or of greater dimensions than those of the existing apparatus; and

(c) 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.

Indemnity

92.—(1) Subject to sub-paragraphs 92(3) and 92(5), if for any reason or in consequence of the construction of any of the works by or at the direction of the undertaker that is consequential to the terms hereof 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 NWL, or there is any interruption in any service provided, or in the supply of any goods, by NWL, the undertaker must indemnify and keep indemnified NWL against—

(a) any cost reasonably incurred by NWL in making good any damage or restoring the supply;

(b) any other expenses, loss, damages, penalty or costs incurred by NWL, by reason or in consequence of any such damage or interruption.

(2) NWL must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies. If requested to do so by the undertaker, NWL must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to paragraph 92(1). The undertaker shall only be liable under this paragraph for claims reasonably incurred by NWL.

(3) The fact that any act or thing may have been done by NWL on behalf of the undertaker or in accordance with a plan approved by NWL or in accordance with any requirement of NWL or under its supervision does not, subject to paragraph 92(5), excuse the undertaker from liability under the provisions of sub-paragraph 92(1) unless NWL 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.

(4) NWL must give the undertaker reasonable notice of any third party claim or demand and no settlement or compromise is to be made without the consent of the undertaker who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(5) Nothing in paragraph 92(1) imposes any liability on the undertaker with respect to—

(a) any damage or interruption to the extent that it is attributable to the unlawful or unreasonable act, neglect or default of NWL, its officers, servants, contractors or agents; or

(b) any indirect or consequential loss of any third party (including but not limited to indirect 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.

Arbitration

93. Any dispute arising between the undertaker and NWL under this Part of this Schedule must be referred to and settled by arbitration under article 40 (arbitration).

Duty to cooperate

94. Where in consequence of the proposed construction of any of the authorised development, the undertaker or NWL requires the removal of apparatus or NWL makes requirements for the protection or alteration of apparatus, 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 NWL's undertaking and NWL must use all reasonable endeavours to co-operate with the undertaker for that purpose.

Enactments and agreements

95. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and NWL in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 8

FOR THE PROTECTION OF NORTHERN GAS NETWORK'S APPARATUS

Application

96. For the protection of the statutory undertaker the following provisions, unless otherwise agreed in writing between the Undertaker and the Statutory undertaker, have effect.

Interpretation

97. In this Schedule—

"alternative apparatus" means appropriate alternative apparatus to the reasonable satisfaction of the Statutory undertaker to enable the Statutory undertaker to fulfil its statutory functions in a manner no less efficient than previously;

"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 Schedule;

"commence" has the same meaning as in article 2 (interpretation) of the Order;

"functions" includes powers and duties;

"in" in a context referring to works, apparatus or alternative apparatus in land includes a reference to such works, 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: construct, use, repair, alter, inspect, renew or remove;

"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 the works to be executed;

"statutory undertaker" means Northern Gas Networks Limited (Company Number 05167070) whose registered office is at 1100 Century Way, Thorpe Park Business Park Colton, Leeds, LS15 8TU;

98. Except for paragraphs 99 (apparatus of Statutory undertaker in stopped up and temporarily closed streets), 103 (retained apparatus: protection), 104 (expenses) and 105 (indemnity), this Schedule does not apply to apparatus in respect of which the relations between the Undertaker and the Statutory undertaker are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus of Statutory undertaker in stopped up and temporarily closed streets

99.—(1) Where any street is stopped up under article 14 (Public rights of way), if the Statutory undertaker has apparatus in such street or accesses it via such street then the statutory undertaker shall be entitled to the same rights in respect of such apparatus in the stopped up street as it enjoyed immediately before the stopping up and the undertaker will grant to the statutory undertaker legal easements reasonably satisfactory to the statutory undertaker in respect of such apparatus and access to it prior to the stopping up of any such street or highway.

(2) Notwithstanding the temporary closure or diversion of any highway under the powers of article 13 (temporary closure of public rights of way), the statutory undertaker shall be at liberty at all times to take all necessary access across any such temporarily closed highway and/or 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 temporary closure or diversion was in that highway, subject always to the undertaker's unimpeded ability to carry out the authorised works.

Acquisition of land

100. Regardless of any provision in the Order or anything shown on the land plans or contained in the book of reference, the undertaker must not acquire any apparatus or override any easement or other interest of the Statutory undertaker otherwise than by agreement (such agreement not to be unreasonably withheld or delayed by the statutory undertaker).

Removal or diversion of apparatus

101.—(1) If the undertaker acquires any interest in land in which the statutory undertaker's apparatus is placed, that apparatus shall not be removed and any right of a statutory undertaker to maintain that apparatus in that land shall not be extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the statutory undertaker, provided that the statutory undertaker shall use all reasonable endeavours to construct and install such alternative apparatus as soon as reasonably practicable.

(2) If, for the purpose of executing any authorised works, the undertaker requires the removal or diversion of any apparatus, it must give to the statutory undertaker written notice of that requirement, together with a plan of the authorised works and the removal or diversion works proposed, the proposed position of the alternative apparatus, and the proposed timeline for the works. The statutory undertaker shall reasonably approve these details within 28 days of receipt of such plan. The undertaker must afford to the statutory undertaker to their reasonable satisfaction the necessary facilities and rights for

(a) the construction of alternative apparatus in other land; and

(b) the maintenance of that apparatus,

and the statutory undertaker must complete the works using its reasonable endeavours to meet the undertaker's proposed timeline, and in any event without undue delay, in accordance with the

details provided by the undertaker under this sub-paragraph or as otherwise reasonably agreed by the undertaker.

(3) If, in consequence of the authorised works carried out by the undertaker, the statutory undertaker reasonably needs to remove or divert any of its apparatus, it shall without undue delay give the undertaker written notice of that requirement, together with a plan of the work proposed, the proposed position of the alternative apparatus and the proposed timeline for the works. The undertaker must reasonably approve these details and must afford to the statutory undertaker to their reasonable satisfaction the necessary facilities and rights for

(a) the construction of alternative apparatus; and

(b) the maintenance of that apparatus

and the statutory undertaker must complete the works without undue delay and in accordance with the approved details.

(4) 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-paragraphs (2) and (3), the statutory undertaker 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, but this obligation shall not require the statutory undertaker to use its compulsory purchase powers unless it elects to so do.

(5) Paragraphs 104 (Expenses) and 105 (Indemnity) of this Schedule apply to removal or diversions works under this paragraph 101, but the statutory undertaker must provide to the undertaker a reasonable cost estimate for works that it proposes to carry out for the undertaker's approval.

Facilities and rights for alternative apparatus

102.—(1) Where, in accordance with the provisions of this Schedule, the undertaker affords to the statutory undertaker facilities and rights for the construction and maintenance in the undertaker's land 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 statutory undertaker and shall be no less favourable on the whole to the Statutory undertaker than the facilities and rights enjoyed by it in respect of the apparatus to be removed, unless otherwise reasonably agreed.

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus in the undertaker's land are less favourable on the whole to the statutory undertaker than the facilities and rights enjoyed by it in respect of the apparatus to be removed, then the undertaker and the statutory undertaker must agree appropriate compensation for the extent to which the new facilities and rights render the statutory undertaker less able to effectively carry out its undertaking or require it to do so at greater cost. If the amount of compensation cannot be agreed, then either the undertaker or the statutory undertaker may refer the matter to arbitration in accordance with paragraph 14, and the arbitrator shall make such provision for the payment of compensation by the undertaker to the statutory undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection

103.—(1) Not less than 56 days before commencing the execution of any authorised works that will or may affect any apparatus, the removal or diversion of which has not been required by the undertaker under paragraph 101(2) or otherwise or by the statutory undertaker under paragraph 6(3), the undertaker must submit to the statutory undertaker in question a plan showing the authorised works and the apparatus.

(2) In relation to works which will or may be situated on, over, under or within 15 metres measured in any direction of any apparatus, or (wherever situated) impose any load directly upon any apparatus or involve embankment works within 15 metres of any apparatus, the plan to be

submitted to the statutory undertaker under sub-paragraph (1) shall be detailed including a method statement and describing—

(a) the exact position of the authorised 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; and

(e) by way of detailed drawings, every alteration proposed to be made to or close to any apparatus.

(3) The Undertaker must not commence the construction or renewal of any authorised works to which sub-paragraphs (1) or (2) apply until the statutory undertaker has given written approval of the plan so submitted.

(4) Any approval of the statutory undertaker required under sub-paragraph (3)—

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5) or (7); and

(b) shall not be unreasonably withheld or delayed.

(5) In relation to works to which sub-paragraph (2) applies, the statutory undertaker may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its system 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 executed under the Order to which this paragraph 8 applies shall be executed only in accordance with the relevant plan, notified under sub-paragraph (1) and approved (with conditions, if applicable) under sub-paragraph (4), as amended from time to time by agreement between the undertaker and the statutory undertaker. The statutory undertaker shall be entitled to watch and inspect the execution of those works.

(7) Where the statutory undertaker requires any protective works or subsidence monitoring to be carried out either by itself or by the undertaker (whether of a temporary or permanent nature), the statutory undertaker must give the undertaker reasonable notice of such requirement in its approval under sub-paragraph (3), and

(a) such protective works must be carried out to the statutory undertakers' reasonable satisfaction prior to the carrying out of the relevant part of the authorised works;

(b) ground subsidence monitoring shall be carried out in accordance with a scheme approved by the statutory undertaker (such approval not to be unreasonably withheld or delayed), which must set out:

(i) the apparatus which is to be subject to such monitoring;

(ii) the extent of land to be monitored;

(iii) the manner in which ground levels are to be monitored;

(iv) the timescales of any monitoring activities; and

(v) the extent of ground subsidence which, if exceeded, requires the undertaker to submit for the statutory undertaker's approval a ground subsidence mitigation scheme in respect of such subsidence;

(c) if a subsidence mitigation scheme is required, it must be carried out as approved by the statutory undertaker (such approval not to be unreasonably withheld or delayed).

(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 relevant authorised works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.

(9) The undertaker must not be required to comply with sub-paragraphs (1) or (2) where it needs to carry out emergency works as defined in the 1991 Act, but in that case it must give to the statutory undertaker notice as soon as is reasonably practicable and a plan of those works shall

comply with the other requirements in this paragraph insofar as is reasonably practicable in the circumstances, provided that it always complies with sub-paragraph (11).

(10) At all times when carrying out any works authorised under the Order that may or will affect the apparatus, the undertaker must comply with the statutory undertaker's policies for safe working in proximity to gas apparatus including the "Specification for safe working in the vicinity of Northern Gas Networks, Gas pipelines and associated installation requirements for third parties "NGN/SPSSW22" and the Health and Safety Executive guidance document "HS(G)47 Avoiding Danger from underground services".

Expenses

104.—(1) Subject to the following provisions of this paragraph, the Undertaker shall repay to the Statutory undertaker as soon as reasonably practicable on receipt of an itemised invoice or claim from the Statutory undertaker all charges, costs and expenses reasonably incurred by the statutory undertaker in, or in connection with, the inspection, removal or diversion, relaying or replacing, alteration or protection of any apparatus or the construction of any new apparatus which may be reasonably required and necessary in consequence of the execution of the authorised works, including without limitation—

(a) any costs reasonably incurred or compensation properly paid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus, including without limitation in the event that the statutory undertaker elects to use compulsory purchase powers to acquire any necessary rights under paragraph 101(4);

(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;

(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 works carried out pursuant to this Schedule; and

(g) any statutory loss of supply payments under the 'Guaranteed Standards of Service' regime that the statutory undertaker may incur in consequence of the works, but in the event that such payments are likely to become payable, the statutory undertaker shall give the undertaker notice as soon as reasonably practicable of the payments and the likely amount.

(2) The statutory undertaker must use its reasonable endeavours to mitigate in whole or in part, and in any event to minimise, any expenses capable of being claimed under sub-paragraph (1). If requested to do so by the undertaker, the statutory undertaker shall provide an explanation of how the claimed expenses have been minimised. The undertaker shall only be liable to pay expenses that have been reasonably incurred.

(3) There is to 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 and not including the costs (if any) of disposing that apparatus.

(4) If in accordance with the provisions of this part of this Schedule—

(a) apparatus of greater capacity or of greater dimensions is placed in substitution for existing apparatus; 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,

then, if this incurs greater expense than would have been incurred by a like-for-like (or as close as practicable to like-for like) replacement at the same depth, the undertaker is not liable for this additional expense.

(5) For the purposes of sub-paragraph (4)—

(a) an extension of apparatus to a length greater than the length of existing apparatus shall not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus.

(6) An amount which apart from this sub-paragraph would be payable to the statutory undertaker in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of alternative apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the statutory undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

Indemnity

105.—(1) Subject to sub-paragraphs (2),(3) and (4), and without detracting from paragraph 104 above, if by reason or in consequence of the construction of any works carried out under 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 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 those works) or property of the statutory undertaker, or there is any interruption in any service provided, or in the supply of any goods, by the statutory undertaker, or the statutory undertaker becomes liable to pay any amount to any third party, the undertaker must—

(a) indemnify the statutory undertaker any costs reasonably incurred by the statutory undertaker in making good such damage or restoring the supply; and

(b) indemnify the statutory undertaker for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs (save to the extent that the same arises due to the sole, or complete act, neglect or default of the statutory undertaker) incurred by or recovered from the statutory undertaker.

(2) The fact that any act or thing may have been done by the statutory undertaker on behalf of the undertaker or in accordance with a plan approved by the statutory undertaker or in accordance with any requirement of the statutory undertaker or under its supervision shall not (subject to sub-paragraph (4)), excuse the undertaker from liability under the provisions of sub-paragraph (1).

(3) The statutory undertaker must use its reasonable endeavours to mitigate in whole or in part, and in any event to minimise, any costs, expenses, loss, demands, penalties etc. capable of being claimed under sub-paragraph (1). If requested to do so by the undertaker, the statutory undertaker shall provide an explanation of how the claimed expenses have been minimised. The undertaker shall only be liable to pay expenses that have been reasonably incurred.

(4) Nothing in sub-paragraph (1) shall impose any liability on the undertaker with respect to:

(a) any damage or interruption to the extent that it is attributable to the neglect or default of the statutory undertaker, 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.

(5) The statutory undertaker shall give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker, which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

Enactments and agreements

106. Nothing in this Part affects the provisions of any enactment or agreement regulating the relations between the undertaker and the statutory undertaker in respect of any apparatus laid or erected in land belonging to the Undertaker.

Co-operation

107.—(1) Where in consequence of the proposed construction of any of the authorised works the undertaker or the statutory undertaker requires the removal of apparatus in accordance with the provisions of this Part of this Schedule or the Statutory undertaker requires reasonable conditions in respect of the undertaker's proposed works under paragraph 103, each party shall use all reasonable endeavours to co-ordinate the execution of such works in the interests of safety and the efficient and economic execution of the authorised development, taking into account the absolute need to ensure the safe and efficient operation of the statutory undertaker's undertaking and its apparatus.

(2) Whenever the statutory undertaker's consent or approval is required under the provisions of this Part, such approval must not be unreasonably withheld or delayed, and any action, decision, cost or expense which may be claimed by the statutory undertaker under paragraphs 104 and 105 is subject to this requirement to act reasonably.

Access

108. If in consequence of the powers granted under the Order, the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable the statutory undertaker to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

109. Any difference or dispute arising between the undertaker and the statutory undertaker under this Schedule shall, unless otherwise agreed in writing between the undertaker and the statutory undertaker, be determined by arbitration in accordance with article 40 (Arbitration) of the Order.

Works falling outside of development authorised by the Order

110. Nothing in this Part requires the undertaker to carry out works, or requires the undertaker to enable the statutory undertaker to carry out works, that are not authorised by the Order. The statutory undertaker must not request any alteration, diversion, protective work or any other work which is not authorised to be carried out under the Order (but for the avoidance of doubt, it may elect to carry out such works itself under any other planning permission, permitted development rights or statutory powers (including those of compulsory acquisition) available to it).

Cathodic protection testing

111. Where in the reasonable opinion of either party:

(a) the authorised development might interfere with the existing cathodic protection forming part of the apparatus; or

(b) the apparatus might interfere with the proposed or existing cathodic protection forming part of the authorised development;

the parties shall co-operate in undertaking the tests which they consider reasonably necessary for ascertaining the nature and extent of such interference and measures for providing or preserving cathodic protection.

SCHEDULE 12

Article 41

ARBITRATION RULES

Primary objective

1.—(1) The primary objective of these arbitration rules is to achieve a fair, impartial, final and binding award on the substantive difference between the parties to the dispute (save as to costs) within four months from the date the arbitrator is appointed pursuant to article 40 of this Order.

(2) The parties will 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 20 working days of the dispute arising, or such longer period as agreed in writing by the parties, shall be subject to arbitration in accordance with the terms of this Schedule.

(3) The arbitration will be deemed to have commenced when a party ("the Claimant") serves a written notice of arbitration on the other party ("the Respondent").

Time periods

2.—(1) All time periods in these arbitration rules will be measured in days and this will include weekends, but not bank or public holidays.

(2) Time periods will be calculated from the day after the arbitrator is appointed which is either—

(a) the date the arbitrator notifies the parties in writing of his/her acceptance of an appointment by agreement of the parties; or

(b) the date the arbitrator is appointed by the Secretary of State.

Timetable

3.—(1) The timetable for the arbitration will be that set out in sub-paragraphs (2) to (4) below unless amended in accordance with paragraph 5(3).

(2) Within 14 days of the arbitrator being appointed, the Claimant will provide both the Respondent and the arbitrator with—

(a) a written statement of claim which describes the nature of the difference between the parties, the legal and factual issues, the Claimant's contentions as to those issues, the amount of its claim and/or the remedy it is seeking;

(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 will provide the Claimant and the arbitrator with—

(a) a written statement of defence responding to the Claimant's Statement of Claim, its statement in respect of the nature of the difference, the legal and factual issues in the Claimant's claim, its acceptance of any 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;

(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 of the objections.

(4) Within seven 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;

(e) its written submissions in response to the legal and factual issues involved.

Procedure

4.—(1) The parties' pleadings, witness statements and expert reports (if any) will be concise. No single pleading will exceed 30 single sided A4 pages using 10pt Arial font.

(2) The arbitrator will 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 two days of delivery of the last submission, request a hearing giving specific reasons why it considers a hearing is required.

(4) Within seven days of receiving the last submission, the arbitrator will notify the parties whether a hearing is to be held and the length of that hearing.

(5) Within ten days of the arbitrator advising the parties that he/she will hold a hearing, the date and venue for the hearing will be fixed by agreement with the parties, save that if there is no agreement the arbitrator is to 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 must 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 seven days before the hearing.

(8) Within 14 days of a hearing or a decision by the arbitrator that no hearing is to be held, the parties may by way of exchange provide the arbitrator with a final submission in connection with the matters in dispute and any submissions on costs. The arbitrator must take these submissions into account in the award.

(9) The arbitrator may make other directions or rulings as considered appropriate in order to ensure that the parties comply with the timetable and procedures to achieve an award on the substantive difference within four months of the date on which the arbitrator is appointed, unless both parties otherwise agree to an extension to the date for the award.

(10) If a party fails to comply with the timetable, procedure or any other direction then the arbitrator may continue in the absence of a party or submission or document, and may make a

decision on the information before him/her 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 must accept that the extent to which reasons are given must be proportionate to the issues in dispute and the time available to the arbitrator to deliver the award.

Arbitrator's powers

5.—(1) The arbitrator has all the powers of the Arbitration Act 1996(**a**), including the non-mandatory sections, save where modified by this Schedule.

(2) There must be no discovery or disclosure, except that the arbitrator is to have the power to order the parties to produce such documents as are reasonably requested by another party no later than the statement of reply, or by the arbitrator, where the documents are manifestly relevant, specifically identified and the burden of production is not excessive. Any application and orders should be made by way of a Redfern Schedule without any hearing.

(3) Any time limits fixed in accordance with this procedure or by the arbitrator may be varied by agreement between the parties, subject to any such variation being acceptable to and approved by the arbitrator. In the absence of agreement, the arbitrator may vary the timescales 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 then;

(b) only for such a period that is necessary to achieve fairness between the parties.

(4) On the date the award is made, the arbitrator will notify the parties that the award is completed, signed and dated, and that it will be issued to the parties on receipt of cleared funds for the arbitrator's fees and expenses.

Costs

6.—(1) The costs of the arbitration must include the fees and expenses of the arbitrator, the reasonable fees and expenses of any experts and the reasonable legal and other costs incurred by the parties for the arbitration.

(2) Where the difference involves connected or interrelated issues, the arbitrator will consider the relevant costs collectively.

(3) The final award must fix the costs of the arbitration and decide which of the parties are to bear them or in what proportion they are to be borne by the parties.

(4) The arbitrator 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

7.—(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

SCHEDULE 13

Article 36

DOCUMENTS TO BE CERTIFIED

(1) Document	*(2) Application Document Reference*	*(3) Revision number*
arboricultural impact assessment	Volume 6, document reference 6.4.7.7	C01
archaeological management strategy	Volume 6, document reference 6.4.8.5	C01
book of reference	Volume 4, document reference 4.2	7
design approach document	Volume 7, document reference 7.2	4
environmental masterplan	Volume 2, document reference 2.5	5
environmental statement	Volume 6, document reference 6.1	C01
	Volume 6, document reference 6.2 (excluding chapters 7 and 13)	C01
	Volume 6, document reference 6.2.7 (chapter 7)	2
	Volume 6, document reference 6.2.13 (chapter 13)	2
	Volume 6, document reference 6.3 (excluding figures 2.2, 2.3, 2.4, 2.5, 2.6, 2.7, 2.8, 2.13, 11.1, 12.1, and 13.2)	C01
	Volume 6, document reference 6.3.2.2 to and including 6.3.2.8 (figures 2.2 to and including 2.8)	2
	Volume 6, document reference 6.3.2.13 (figure 2.13)	3
	Volume 6, document reference 6.3.11.1 (figure 11.1)	B
	Volume 6, document reference 6.3.12.1 (figure 12.1)	3
	Volume 6, document reference 6.3.13.3 (figure 13.2)	2
	Volume 6, document reference 6.4 (excluding appendices 7.6, 10.1, 10.2, 11.4, 12.1 and 13.3)	C01
	Volume 6, document reference 6.4.7.6 (appendix 7.6)	2
	Volume 6, document reference 6.4.10.1 (appendix 10.1)	6

	Volume 6, document reference 6.4.10.2 (appendix 10.2)	3
	Volume 6, document reference 6.4.11.4 (appendix 11.4)	2
	Volume 6, document reference 6.4.12.1 (appendix 12.1)	2
	Volume 6, document reference 6.4.13.3 (appendix 13.3)	2
land plans	Volume 2, document reference 2.4	4
location plan	Volume 2, document reference 2.1	4
outline battery fire safety management plan	Volume 6, document reference 6.4.2.13	C01
outline construction environmental management plan	Volume 6, document reference 6.4.2.6	3
outline construction traffic management plan	Volume 6, document reference 6.4.2.8	3
outline decommissioning environmental management plan	Volume 6, document reference 6.4.2.7	2
outline landscape and ecological management plan	Volume 6, document reference 6.4.2.14	3
outline materials management plan	Volume 6, document reference 6.4.2.10	C01
outline pollution and spillage response plan	Volume 6, document reference 6.4.2.9	C01
outline public rights of way management plan	Volume 6, document reference 6.4.2.15	5
outline site waste management plan	Volume 6, document reference 6.4.2.11	C01
outline soil resource management plan	Volume 6, document reference 6.4.2.12	C01
special category land plans	Volume 2, document reference 2.6	1
street works, public rights of way and access plan	Volume 2, document reference 2.3	8
works plans	Volume 2, document reference 2.2	4

EXPLANATORY NOTE

(This note is not part of the Order)

This Order grants development consent for, and authorises the construction, operation and maintenance of a solar generating station and battery energy storage facility on land within the Order limits together with associated development. This Order imposes requirements in connection with the development and authorises the compulsory purchase of land (including rights in land) and the right to use land and to override easements and other rights.

A copy of the plans and book of reference referred to in this Order and certified in accordance with article 37 (certification of plans and documents, etc.) may be inspected free of charge during working hours at the offices of: Darlington Borough Council, Town Hall, Feethams, Darlington DL1 5QT; Stockton-on-Tees Borough Council's main address is Dunedin House, Columbia Drive, Thornaby, Stockton-on-Tees TS17 6BJ; and Durham County Council, County Hall, Durham DH1 5UL.

© Crown copyright 2025

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Saul Nassé, Controller of His Majesty's Stationery Office and King's Printer of Acts of Parliament.