STATUTORY INSTRUMENTS

2025 No. 85

INFRASTRUCTURE PLANNING

The Heckington Fen Solar Park Order 2025

Made - - - -	*24th January 2025*
Coming into force	*17th February 2025*

CONTENTS

PART 1
PRELIMINARY

1. Citation and commencement
2. Interpretation

PART 2
PRINCIPAL POWERS

3. Development consent etc. granted by this Order
4. Operation of generating station
5. Power to maintain authorised development
6. Application and modification of legislative provisions
7. Defence to proceedings in respect of statutory nuisance

PART 3
STREETS

8. Street Works
9. Power to alter layout, etc., of streets
10. Construction and maintenance of altered streets
11. Temporary closure of public rights of way
12. Access to works
13. Agreement with street authorities

PART 4
SUPPLEMENTAL POWERS

14. Discharge of water
15. Protective works to buildings
16. Authority to survey and investigate the land

PART 5
POWERS OF ACQUISITION

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

PART 6
MISCELLANEOUS AND GENERAL

31. Benefit of the Order
32. Consent to transfer the benefit of the Order
33. Application of landlord and tenant law
34. Operational land for purposes of the 1990 Act
35. Felling or lopping of trees and removal of hedgerows
36. Trees subject to tree preservation orders
37. Certification of plans and documents, etc.
38. Arbitration
39. Protective Provisions
40. Service of notices
41. Procedure in relation to certain approvals etc.
42. Guarantees in respect of payment of compensation
43. Crown Rights
44. NGET extension works

SCHEDULE 1 — AUTHORISED DEVELOPMENT
SCHEDULE 2 — REQUIREMENTS
SCHEDULE 3 — LEGISLATION TO BE DISAPPLIED
SCHEDULE 4 — STREETS SUBJECT TO STREET WORKS
SCHEDULE 5 — ALTERATION OF LAYOUT OF STREETS
PART 1 — PERMANENT ALTERATION OF LAYOUT OF STREETS
PART 2 — TEMPORARY ALTERATION OF LAYOUT OF STREETS
SCHEDULE 6 — PUBLIC RIGHTS OF WAY TO BE TEMPORARILY CLOSED
SCHEDULE 7 — ACCESS TO WORKS
PART 1 — PERMANENT MEANS OF ACCESS TO WORKS

PART 2 — TEMPORARY MEANS OF ACCESS TO WORKS
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 RESTRICTIVE COVENANTS
SCHEDULE 10 — HEDGEROWS TO BE REMOVED
SCHEDULE 11 — DOCUMENTS AND PLANS TO BE CERTIFIED
SCHEDULE 12 — ARBITRATION RULES
SCHEDULE 13 — PROTECTIVE PROVISIONS
PART 1 — FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS
PART 2 — FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS
PART 3 — FOR THE PROTECTION OF ANGLIAN WATER
PART 4 — FOR THE PROTECTION OF NATIONAL GAS TRANSMISSION PLC AS GAS UNDERTAKER
PART 5 — FOR THE PROTECTION OF THE ENVIRONMENT AGENCY
PART 6 — FOR THE PROTECTION OF NATIONAL GRID ELECTRICITY TRANSMISSION PLC AS ELECTRICITY UNDERTAKER
PART 7 — FOR THE PROTECTION OF DRAINAGE AUTHORITIES
PART 8 — FOR THE PROTECTION OF RAILWAY INTERESTS
PART 9 — FOR THE PROTECTION OF LINCOLNSHIRE FIRE AND RESCUE
PART 10 — FOR THE PROTECTION OF NATIONAL GRID VIKING LINK LIMITED
PART 11 — FOR THE PROTECTION OF BEACON FEN ENERGY PARK LIMITED
PART 12 — FOR THE PROTECTION OF TRITON KNOLL OFTO LIMITED
SCHEDULE 14 — PROCEDURE FOR DISCHARGE OF REQUIREMENTS

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

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**).

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

(**a**) 2008 c. 29. Section 37 was amended by section 137(5) of, and paragraph 5 of Schedule 13 to the Localism Act 2011 (c. 20).
(**b**) S.I. 2009/2264, amended by S.I 2010/439, S.I. 2010/602, S.I. 2012/635, S.I. 2012/2654, S.I. 2012/2732, S.I. 2013/522, S.I. 2013/755, S.I. 2014/469, S.I. 2014/2381, S.I. 2015/377, S.I. 2015/1682, S.I. 2017/524, S.I. 2017/572 and S.I. 2018/378.
(**c**) S.I. 2010/103.
(**d**) As amended by paragraph 29(1) and (3) of Part 1 of Schedule 13 to the Localism Act 2011.

The Secretary of State has considered the report and recommendation of the Examining Authority, has 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 105(2)(**b**) of the 2008 Act.

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(**c**), 115(**d**), 120(**e**), 122(**f**), 123(**g**) and 140 of the 2008 Act, makes the following Order.

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Heckington Fen Solar Park Order 2025 and comes into force on 17th February 2025.

Interpretation

2.—(1) In this Order—

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

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

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

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

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

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

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

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

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

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

(**a**) S.I. 2017/572.
(**b**) Section 105(2) was amended by paragraph 50 of Schedule 13 to the Localism Act 2011.
(**c**) As amended by paragraph 55 of Part 1 of Schedule 13 to the Localism Act 2011.
(**d**) As amended by section 160 of the Housing and Planning Act 2016 (c. 22) and section 43 of the Wales Act 2017 (c. 4).
(**e**) As amended by section 140 and paragraph 60 of Part 1 of Schedule 13 to the Localism Act 2011.
(**f**) As amended by paragraph 62 of Part 1 of Schedule 13 to the Localism Act 2011.
(**g**) Ibid.
(**h**) 1961 c. 33.
(**i**) 1965 c. 56.
(**j**) 1980 c. 66.
(**k**) 1981 c. 66.
(**l**) 1989 c. 29.
(**m**) 1990 c. 8.
(**n**) 1991 c. 22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c. 26). Sections 78(4), 80(4), and 83(4) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).
(**o**) 2003 c. 21.
(**p**) 2008 c. 29.
(**q**) S.I. 2015/ 596.

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

"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 authorised by this Order;

"book of reference" means the document of that name identified in the table at Schedule 11 (documents and plans to be certified) and which is certified by the Secretary of State as the book of reference for the purposes of this Order;

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

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

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

"commissioning" means the process of testing all systems and components in order to ensure that, they and the authorised development as a whole, function in accordance with plant design specifications and the undertaker's operational and safety requirements;

"county authority" means Lincolnshire County Council;

"date of final commissioning" means in respect of each phase of the authorised development as notified under requirement 3 of Schedule 2 (requirements) that contains part or all of Work No. 1 each such phase commences operation by generating electricity on a commercial basis but excluding the generation of electricity during commissioning;

"electronic transmission" means a communication transmitted—

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

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

"environmental statement" means the document of that name identified in the table at Schedule 11 (documents and plans to be certified) and which is certified by the Secretary of State as the environmental statement for the purposes of this Order;

"flood risk assessment" means the document of that name identified in the table at Schedule 11 (documents and plans to be certified) and which is certified by the Secretary of State as the flood risk assessment for the purposes of this Order;

"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**);

"important hedgerows plan" means the plan of that name identified in the table at Schedule 11 (documents and plans to be certified) and which is certified by the Secretary of State as the important hedgerows plan for the purposes of this Order;

"interface area plan" means the plan of that name identified in the table at Schedule 11 (documents and plans to be certified) and which is certified by the Secretary of State as the interface area plan for the purposes of this Order;

"land and crown land plans" means the plans of that name identified in the table at Schedule 11 (documents and plans to be certified) and which are certified by the Secretary of State as the land and crown land plans for the purposes of this Order;

(**a**) "footpath" and "footway" are defined in section 329(1).
(**b**) "highway" is defined in section 328(1). For "highway authority" see section 1.
(**c**) 2006 c. 46.

"limits of deviation" means the limits of deviation shown for each numbered work on the works plans;

"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 to the extent that such works do not give rise to any materially new or materially different environmental effects than those identified in the environmental statement and "maintenance" and "maintaining" are to be construed accordingly;

"NGET" means National Grid Electricity Transmission Plc (company number 2366977) whose registered office is at 1 to 3 Strand, London WC2N 5EH;

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

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

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

"outline energy storage safety management plan" means the plan of that name identified in the table at Schedule 11 (documents and plans to be certified) and which is certified by the Secretary of State as the outline energy storage safety management plan for the purposes of this Order;

"outline construction environmental management plan" means the document of that name identified in the table at Schedule 11 (documents and plans to be certified) and which is certified by the Secretary of State as the outline construction environmental management plan for the purposes of this Order;

"outline construction traffic management plan" means the document of that name identified in the table at Schedule 11 (documents and plans to be certified) and which is certified by the Secretary of State as the outline construction traffic management plan for the purposes of this Order;

"outline decommissioning and restoration plan" means the plan of that name identified in the table at Schedule 11 (documents and plans to be certified) and which is certified by the Secretary of State as the outline decommissioning and restoration plan for the purposes of this Order;

"outline design principles" means the document of that name identified in the table at Schedule 11 (documents and plans to be certified) and which is certified by the Secretary of State as the outline design principles for the purposes of this Order;

"outline landscape ecological management plan" means the document of that name identified in the table at Schedule 11 (documents and plans to be certified) and which is certified by the Secretary of State as the outline landscape ecological management plan for the purposes of this Order;

"outline operational environmental management plan" means the plan of that name identified in the table at Schedule 11 (documents and plans to be certified) and which is certified by the Secretary of State as the outline operational environmental management plan for the purposes of this Order;

"outline soil management plan" means the plan of that name identified in the table at Schedule 11 (documents and plans to be certified) and which is certified by the Secretary of State as the outline soil management plan for the purposes of this Order;

"outline supply chain, employment and skills plan" means the plan of that name identified in the table at Schedule 11 (documents and plans to be certified) and which is certified by the Secretary of State as the outline supply chain, employment, and skills plan for the purposes of this Order;

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

"permissive path" means a new access path providing public access with permission within the Order limits along the route shown on the works plan;

"permitted preliminary 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) remedial work in respect of any contamination or other adverse ground conditions;

(d) diversion of existing services and the laying of temporary services;

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

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

(g) site clearance (including vegetation removal, demolition of existing buildings and structures).

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

"requirements" means those matters set out in Schedule 2 (requirements) and "requirement" means any one of the requirements;

"rights of way plan" means the plan of that name identified in the table at Schedule 11 (documents and plans to be certified) and which is certified by the Secretary of State as the rights of way plan for the purposes of this Order;

"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 2003 Act;

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

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

"streets and access plans" means the plans of that name identified in the table at Schedule 11 (documents and plans to be certified) and which are certified by the Secretary of State as the streets and access plans for the purposes of this Order;

"street works" means the works listed in article 8(1) (street works);

"subsidiary" has the same meaning as in section 1159 of the Companies Act 2006;

"undertaker" means Ecotricity (Heck Fen Solar) Limited (company number 13225224);

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

"watercourse" includes every river, stream, creek, ditch, drain, canal, cut, culvert, dyke, sluice, sewer and passage through which water flows except a public sewer or drain; and

"works plans" means the plans of that name identified in the table at Schedule 11 (documents and plans to be certified) and which is certified by the Secretary of State as the works plans for the purposes of this Order.

(2) References in this Order to rights over land include references to rights to do or restrain or to place and maintain anything in, on or under land or in the airspace above its surface and to any trusts or incidents (including restrictive covenants) to which the land is subject and references in

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

(**b**) "street authority" is defined in section 49, which was amended by paragraph 117 of Schedule 1 to the Infrastructure Act 2015 (c. 7).

this Order to the imposition of restrictive covenants are references to the creation of rights over land which interfere with the interests or rights of another and are for the benefit of land which is acquired under this Order or over which rights are created and acquired under this Order or is otherwise comprised in this Order.

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

(4) References in this Order to numbered works are references to the works comprising the authorised development as numbered in Schedule 1 (authorised development) and shown on the works plans.

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

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

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

PART 2

PRINCIPAL POWERS

Development consent etc. granted by this Order

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

(2) Each numbered work must be situated within the corresponding numbered area shown on the works plans and within the limits of deviation.

Operation of generating station

4.—(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.

Power to maintain authorised development

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

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

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

Application and modification of legislative provisions

6.—(1) The following provisions do not apply in relation to the construction of any work or the carrying out of any operation required for the purposes of, or in connection with, the construction, operation or maintenance of any part of the authorised development—

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

(b) section 32 (variation of awards)(**b**) of the Land Drainage Act 1991;

(c) the provisions of any byelaws made under section 66 (powers to make byelaws)(**c**) of the Land Drainage Act 1991 that require consent or approval for the carrying out of the authorised development;

(d) the provisions of any byelaws made under, or having effect as if made under, paragraphs 5, 6 or 6A of Schedule 25 (byelaw-making powers of the authority) to the Water Resources Act 1991(**d**) that require consent or approval for the carrying out of the authorised development;

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

(f) the legislation listed in Schedule 3 (legislation to be disapplied) in so far as the provisions still in force are incompatible with the powers contained within this Order; and

(g) the provisions of the Neighbourhood Planning Act 2017(**f**) insofar as they relate to temporary possession of land under articles 26 (temporary use of land for carrying out the authorised development) and 27 (temporary use of land for maintaining the authorised development) of this Order.

(2) For the purposes of section 9 (requirement of licence for felling) of the Forestry Act 1967(**g**), any felling comprised in the carrying out of any work or operation required for the purposes of the authorised development, or in connection with, the construction of the authorised development is deemed to be felling immediately required for the purposes of carrying out development authorised by planning permission granted under the 1990 Act under sub–paragraph (4) of that section.

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

> "or (k) for carrying out development which has been authorised by an order granting development consent pursuant to the Planning Act 2008.".

Defence to proceedings in respect of statutory nuisance

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

(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, maintenance or decommissioning of the authorised development

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(**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**) Section 32 was amended by S.I. 2013/755.
(**c**) Section 66 was amended by paragraphs 25 and 38 of Schedule 2 to the Flood and Water Management Act 2010 and section 86 of the Water Act 2014 (c. 21).
(**d**) 1991 c. 57. Paragraph 5 was amended by section 100 of the Natural Environment and Rural Communities Act 2006 (c. 16), section 84 of, and paragraph 3 of Schedule 11 to the Marine and Coastal Access Act 2009 (c. 23) and S.I. 2013/755. Paragraph 6 was amended by section 105 of, and paragraph 26 of Schedule 15 to, the Environment Act 1995, sections 224, 233 and 321 of and paragraphs 20 and 24 of Schedule 16 and Part 5(B) of Schedule 22 to the Marine and Coastal Access Act 2009 and S.I. 2013/755. Paragraph 6A was inserted by section 103(3) of the Environment Act 1995.
(**e**) S.I. 2016/1154. Regulation 12 was amended by S.I. 2018/110.
(**f**) 2017 c. 20.
(**g**) 1967 c. 10. Section 9 was amended by section 4 of, and paragraph 14(1) of, Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11) and S.I. 2013/755. There are other amendments to section 9 that are not relevant to this Order.
(**h**) S.I. 1997/1160.
(**i**) 1990 c. 43.

and that the nuisance is attributable to the construction, maintenance or decommissioning of the authorised development in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) or section 65 (noise exceeding registered level) of the Control of Pollution Act 1974(**a**); or

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

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

(2) Section 61(9) of the Control of Pollution Act 1974 (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) and section 65(8) of the Control of Pollution Act 1974 (corresponding provision in relation to consent for registered noise level to be exceeded), do not apply where the consent relates to the use of the premises by the undertaker for purposes of, or in connection with, the construction or maintenance of the authorised development.

PART 3

STREETS

Street Works

8.—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets specified in Schedule 4 (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 or under 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 or licence for the purposes of sections 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the 1991 Act.

(3) In this article "apparatus" has the same meaning as in Part 3 (street works in England and Wales) of the 1991 Act.

(4) 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).

Power to alter layout, etc., of streets

9.—(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 Part 1 of Schedule 5 (permanent alteration of layout of streets) permanently in the manner specified in relation to that street in column 3; and

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(**a**) 1974 c. 40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990 (c. 25). There are other amendments to the 1974 Act which are not relevant to the Order.

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

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

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

(b) make and maintain passing places.

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

(4) The powers conferred by paragraph (2) may not be exercised without the prior consent of the street authority, such consent to be in a form reasonably required by the street authority.

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

(6) Paragraph (4) does not apply if the street authority has already provided detailed design approval pursuant to paragraph 6(1)(f) of Schedule 2 (requirements) in relation to a street in which the undertaker seeks to use the powers given by paragraph (2).

Construction and maintenance of altered streets

10.—(1) The permanent alterations to each of the streets specified in Part 1 of Schedule 5 (permanent alteration of layout of streets) must be completed to the reasonable satisfaction of the street authority and, unless otherwise agreed by the street authority, the alterations must be maintained by and at the expense of the undertaker for a period of 12 months from their completion and from the expiry of that period by and at the expense of the street authority.

(2) Subject to paragraph (3), the temporary alterations to each of the streets specified in Part 2 of Schedule 5 (temporary alteration of layout of streets) must be completed to the reasonable satisfaction of the street authority and the temporary alterations must be maintained by and at the expense of the undertaker for the duration that the temporary alterations are used by the undertaker for the purposes of construction or decommissioning of the authorised development.

(3) Those restoration works carried out pursuant to article 9(3) (power to alter layout, etc., of streets) must be completed to the reasonable satisfaction of the street authority and must be maintained by the undertaker for a period of 12 months from their completion and from the expiry of that period by and at the expense of the street authority.

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

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

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

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

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

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

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

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

Temporary closure of public rights of way

11.—(1) The undertaker may, in connection with the carrying out of the authorised development, temporarily close each of the public rights of way specified in column (2) of Schedule 6 (public rights of way to be temporarily closed) to the extent specified in column (3), by reference to the letters shown on the rights of way plan.

(2) Prior to temporarily closing the public rights of way referred to under paragraph (1), the undertaker must notify the relevant planning authority and the county authority.

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

Access to works

12. —(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 7 (access to works);

(b) form and lay out the temporary means of access, or improve existing means of access, in the location specified in Part 2 (temporary means of access to works) of Schedule 7 (access to works); and

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

(2) If the relevant planning authority fails to notify the undertaker of its decision within 28 days of receiving an application for approval under paragraph (1)(c) that relevant planning authority is deemed to have granted approval.

(3) Unless otherwise agreed with the relevant planning authority, the undertaker must restore any access that has been temporarily created under this Order to the reasonable satisfaction of the relevant planning authority.

(4) Sub-paragraph (1)(c) does not apply if the relevant planning authority has already provided detailed design approval pursuant to paragraph 6(1)(f) of Schedule 2 (requirements) for that access.

Agreement with street authorities

13.—(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 closure, prohibition, restriction, alteration or diversion of a street authorised by this Order;

(c) the undertaking in the street of any of the works referred to in article 8 (street works), article 9 (power to alter layout, etc., of streets) and article 10(1) (construction and maintenance of altered streets); or

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

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

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

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

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

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

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

PART 4

SUPPLEMENTAL POWERS

Discharge of water

14.—(1) Subject to paragraphs (3), (4) and (8), the undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the construction or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

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

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

(4) The undertaker must not make any opening into any public sewer or drain 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) Where the undertaker discharges water into, or makes any opening into, a watercourse, public sewer or drain belonging to or under the control of the Black Sluice Internal Drainage Board, the provisions of Part 7 of Schedule 13 (protective provisions) apply in substitution for the provisions of paragraphs (3) and (4).

(6) 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.

(7) 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.

(8) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters requires a licence pursuant to the Environmental Permitting (England and Wales) Regulations 2016(**b**).

(9) In this article—

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

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

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

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

(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.

Protective works to buildings

15.—(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) 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.

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

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

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

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

(5) Before exercising—

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

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

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

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

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

(6) Where a notice is served under paragraphs (5)(a), (5)(c) or (5)(d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 38 (arbitration).

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

(8) Where—

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

(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 it appears protective works are inadequate to protect the building against damage caused by the construction or use of that part of the authorised development,

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

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

(10) Any compensation payable under paragraphs (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 which may be caused to the building by the construction, maintenance or use of the authorised development; and

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

(12) In this article "building" includes any structure or erection or any part of a building, structure or erection.

Authority to survey and investigate the land

16.—(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 or upon which entry is required in order to carry out monitoring or surveys in respect of the authorised development and—

(a) survey or investigate the land;

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

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

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

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days' notice has been served on every owner and occupier of the land. If the undertaker proposes to do any of the following, the notice must include details of what is proposed—

(a) searching, boring or excavating;

(b) leaving apparatus on the land; and

(c) taking samples.

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

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

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

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

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

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

but such consent must not be unreasonably withheld.

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

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

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

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

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

that authority is deemed to have granted consent.

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

PART 5

POWERS OF ACQUISITION

Compulsory acquisition of land

17.—(1) The undertaker may—

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

(b) 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.

(2) This article is subject to—

(a) article 18 (time limit for exercise of authority to acquire land compulsorily);

(b) article 19 (compulsory acquisition of rights);

(c) article 20 (private rights);

(d) article 22 (acquisition of subsoil only);

(e) article 25 (rights under or over streets);

(f) article 26 (temporary use of land for carrying out the authorised development);

(g) article 43 (Crown rights); and

(h) Schedule 13 (protective provisions).

Time limit for exercise of authority to acquire land compulsorily

18.—(1) After the end of the period of five years beginning on the start date—

(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 21 (application of the 1981 Act).

(2) The authority conferred by article 26 (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.

(3) In this article "start date" means the later of—

(a) the day after the period for legal challenge in section 118 of the 2008 Act expires; or

(b) the final determination of any legal challenge under that section,

whichever is later.

Compulsory acquisition of rights

19.—(1) Subject to paragraph (2), the undertaker may acquire compulsorily such rights over the Order land or impose such restrictive covenants over the Order land, including rights and restrictive covenants for the benefit of NGET, as may be required for any purpose for which that land may be acquired under article 17 (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 20 (private rights) and article 28 (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 2 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 5(8) 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 paragraphs (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 paragraphs (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

20.—(1) Subject to the provisions of this article, all private rights or restrictive covenants over land subject to compulsory acquisition under article 17 (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 17 (compulsory acquisition of land)—

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

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

whichever is the 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 19 (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 imposition of the restrictive covenant by the undertaker (whether the right is acquired compulsorily, by agreement or through the grant of a lease of the land by agreement); or

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

(c) on commencement of any activity authorised by the Order which interferes with or breaches those rights, 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 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 28 (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 that title was derived before or after the making of the agreement.

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

Application of the 1981 Act

21.—(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 the 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 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 18 (time limit for exercise of authority to acquire land compulsorily) of the Heckington Fen Solar Park Order 2025".

(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 22(3) (acquisition of subsoil only) of the Heckington Fen Solar Park 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 24 (modification of Part 1 of the 1965 Act)) to the compulsory acquisition of land under this Order.

Acquisition of subsoil only

22.—(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 17 (compulsory acquisition of land) or article 19 (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) Where the undertaker acquires any part of, or rights in, the subsoil of land under paragraph (1), the undertaker is not required to acquire an interest in any other part of the land.

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

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

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

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

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

Power to override easements and other rights

23.—(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.

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

(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 sections 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 1965 Act

24.—(1) Part 1 of the 1965 Act (compulsory acquisition under Acquisition of Land Act 1946), 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) 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 118 (legal challenges relating to applications for orders granting development consent) of the 2008 Act, the five year period mentioned in article 18 (time limit for exercise of authority to acquire land compulsorily) of the Heckington Fen Solar Park 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 18 (time limit for exercise of authority to acquire land compulsorily) of the Heckington Fen Solar Park 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 22(3) (acquisition of subsoil only) of the Heckington Fen Solar Park 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 15 (protective works to buildings), article 26 (temporary use of land for carrying out the authorised development) or article 27 (temporary use of land for maintaining the authorised development) of the Heckington Fen Solar Park Order 2025.”.

Rights under or over streets

25.—(1) The undertaker may enter on, appropriate and use so much of the subsoil of or airspace over any street within the Order limits as may be required for the purposes of the authorised development and may use the subsoil or airspace 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 that 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

26.—(1) The undertaker may, in connection with the construction of the authorised development, enter on and take temporary possession of 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 in order to—

(a) remove any buildings, agricultural plant and apparatus, drainage, fences, debris and vegetation from that land;

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

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

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

(e) carry out mitigation works required under 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 after the end of the period of one year beginning with the date of final commissioning of the part of the authorised development for which temporary possession of the land was taken unless the undertaker has, before the end of that period, served 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, 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 4 (streets subject to street works); or

(d) restore the land on which any works have been carried out under paragraph (1)(e) 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) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use 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.

(11) 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 the authorised development

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

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

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

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

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

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

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

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

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

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

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

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, 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 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.

(11) In this article "the maintenance period" means the period of five years beginning with the date of final commissioning of the part of the authorised development for which temporary possession is required under this article except in relation to landscaping where "the maintenance period" means such period as set out in the landscape ecological management plan which is approved by the relevant planning authority pursuant to requirement 8 beginning with the date on which that part of the landscaping is completed.

Statutory undertakers

28. Subject to the provisions of Schedule 13 (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 and Crown land plans 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 stopped up streets

29. Where a street is altered or diverted or its use is temporarily prohibited or restricted under article 8 (street works), article 9 (power to alter layout, etc., of streets), article 10 (construction and maintenance of altered streets) or article 11 (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 13 (protective provisions), as if this Order had not been made.

Recovery of costs of new connections

30.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 28 (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 28 (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—

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

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

PART 6

MISCELLANEOUS AND GENERAL

Benefit of the Order

31. Subject to article 32 (consent to transfer the benefit of the Order), the provisions of this Order have effect solely for the benefit of the undertaker save for Work No. 6B, Work No. 6C, Work No. 7 and Work No. 10 (to the extent that Work No. 10 is to facilitate access to Works No. 6B, 6C and 7) in relation to which the provisions of this Order have effect for the benefit of the undertaker and NGET.

Consent to transfer the benefit of the Order

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

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

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

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

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

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

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

(i) no such claims have been made;

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

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

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

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

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

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

(a) state—

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

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

(iii) the powers to be transferred or granted;

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

(b) be accompanied by—

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

(ii) a copy of the document effecting the transfer or grant signed by the undertaker and the persons to whom the benefit of the powers will be transferred or granted.

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

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

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

Application of landlord and tenant law

33.—(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,

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

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

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

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

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

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

Operational land for purposes of the 1990 Act

34. 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.

Felling or lopping of trees and removal of hedgerows

35.—(1) Subject to paragraph (2) and article 36 (trees subject to 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 or operation 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) 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, is to be determined under Part 1 of the 1961 Act.

(4) The undertaker may, for the purposes of the authorised development and subject to paragraph (2), remove the hedgerows specified in column 2 in the table at Schedule 10 (hedgerows to be removed) for the purpose specified in relation to the relevant hedgerow in column 3 of that table.

(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 Hedgerows Regulations 1997(**a**).

Trees subject to tree preservation orders

36.—(1) Subject to paragraph (2) the undertaker may fell or lop any tree within or overhanging land within the Order limits 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**) S.I. 1997/1160.

(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, is to be determined under Part 1 of the 1961 Act.

(5) In this article "tree preservation order" has the same meaning as in section 198 (power to make tree preservation orders) of the 1990 Act.

Certification of plans and documents, etc.

37.—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of all documents and plans listed in the table at Schedule 11 (documents and plans to be certified) for certification that they are true copies of the documents referred to in this Order.

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

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

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

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

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

Arbitration

38.—(1) Any difference under any provision of this Order, unless otherwise provided for, is to be referred to and settled in arbitration in accordance with the rules set out in 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.

Protective Provisions

39. Schedule 13 (protective provisions) has effect.

Service of notices

40.—(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 (6) to (8), by electronic transmission.

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

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

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

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

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

(a) addressing it to that person by 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 the person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

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

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

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

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

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

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

(7) Any consent to the use of an electronic transmission 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.

Procedure in relation to certain approvals etc.

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

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

(2) Subject to paragraph (3), Schedule 14 (procedure for discharge of requirements) has effect in relation to all consents, agreements or approvals granted, refused or withheld in relation to any provision of this Order.

(3) Schedule 14 (procedure for discharge of requirements) does not apply in respect of any consents, agreements or approvals contemplated by the provisions of Schedule 13 (protective provisions) or any dispute under article 15(6) (protective works to buildings).

Guarantees in respect of payment of compensation

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

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

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

(2) The provisions are—

(a) article 17 (compulsory acquisition of land);

(b) article 19 (compulsory acquisition of rights);

(c) article 20 (private rights);

(d) article 22 (acquisition of subsoil only);

(e) article 25 (rights under or over streets);

(f) article 26 (temporary use of land for carrying out the authorised development);

(g) article 27 (temporary use of land for maintaining the authorised development); and

(h) article 28 (statutory undertakers).

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

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

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 licensee to take, use, enter upon or in any manner interfere with any land or rights of any description—

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

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

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

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

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

NGET extension works

44. —(1) If NGET elects to undertake any elements of the works described in Works No. 6B or 6C pursuant to planning permission granted under Part 3 of the 1990 Act or Article 3 of the 2015 Order then the requirements contained in Schedule 2 will not have effect in so far as they relate to those works and NGET will serve written notice of the same on the relevant planning authority.

(2) As from the date on which Works No. 6A, 6B, or 6C is commenced any conditions of the NGET 2005 Permission that relate to the land at plot 99G and 99H cease to have effect to the extent they are inconsistent with the authorised development or with anything done or approved under the requirements in Schedule 2 (requirements).

Signatory by authority of the Secretary of State

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

24th January 2025

SCHEDULE 1

Article 2

AUTHORISED DEVELOPMENT

1. In this Schedule—

"community orchard" means a new orchard within the Order limits in the area shown on the works plan;

"energy storage station" means a station comprising transformers, switchgear, power conversion system (PCS) or inverter, and other ancillary equipment with each component either—

(a) located outside, sitting on either ground bearing or piled reinforced concrete foundation slabs; or

(b) housed together within a container sitting on either a ground bearing or piled reinforced concrete foundation slab;

"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, control cables, security cables, communication cables, and optical fibre cables; and

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

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

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

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

"mounting structure" means a frame or rack or table made of galvanised steel or other material designed to support the solar modules and mounted on piles driven into the ground by one of the following methods—

(a) piles rammed into a hole;

(b) a pillar attaching to a steel ground screw; or

(c) a pillar set in concrete in a pre-made hole in the ground (micro piled);

"solar module" means a solar photovoltaic panel designed to convert solar irradiance to electrical energy fitted to mounting structures;

"solar station" means a station comprising inverters, transformers, switchgear and associated ancillary and control equipment with each component either—

(a) located outside, sitting on either ground bearing or piled reinforced concrete foundation slabs; or

(b) housed together within a container sitting on either a ground bearing or piled reinforced concrete foundation slab;

"substation" means a compound, containing electrical equipment required to switch, transform, convert electricity and provide reactive power compensation mounted on a reinforced foundation slab or piling;

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

"transformer" means a structure containing an electrical device to transform electricity by increasing or reducing the voltage.

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

The nationally significant infrastructure project comprises the following works——

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

(a) Work No. 1A—

(i) solar modules;

(ii) solar stations;

(iii) inverters;

(iv) solar module mounting structures; and

(v) a network of electrical cables; and

(b) Work No. 1B— electrical cables between solar stations and solar modules within Work No. 1A and connecting Work No. 1A to Work No. 2 and Work No. 4.

Associated Development

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

Work No. 2— an energy storage facility comprising—

(a) energy storage cells;

(b) a network of electrical cable circuits;

(c) electrical cables connecting to Work No. 1A and Work No. 1B and Work No. 4;

(d) a structure protecting the energy storage cells and ancillary equipment, being either one container or multiple containers, mounted on a reinforced concrete foundation slab or concrete piling;

(e) heating, ventilation and air conditioning (HVAC) or liquid cooling systems;

(f) energy storage stations comprising—

(i) inverters and transformers; and

(ii) switchgear and ancillary equipment;

(g) monitoring and control systems;

(h) fire safety infrastructure comprising fire suppression system; and

(i) storage structures for the purposes of firefighting comprising containment tanks or a concrete water storage basin or lagoon for the purpose of firefighting.

Work No. 3— reception areas, temporary cabins, construction compounds and parking, gatehouses, and service areas in connection with Work No. 1A, Work No. 1B, Work No. 2, Work No. 4, and Work No. 5.

Work No. 4— an onsite substation and works in connection with the onsite substation including—

(a) transformers, including associated cooling equipment, bunding and blast walls;

(b) switchgear, including circuit breakers, disconnectors and earth switches;

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

(d) harmonic filtering reactive power compensation equipment;

(e) substation buildings;

(f) control buildings or containers;

(g) welfare facilities and hardstanding areas;

(h) a network of cable circuits;

(i) electrical cables connecting to Work No. 1A, Work No. 1B, and Work No. 2; and

(j) flood protection measures.

Work No. 5— works to lay electrical cables between Work No. 4 and Work No. 6A.

Work No. 5A— works to lay electrical cables from Work No. 5 at approximately 52° 56′ 14.1″ N, 0° 13′ 12.0″ W, and 52° 56′ 09.9″ N, 0° 13′ 11.3″ E, running in a southerly and south easterly direction to Work No. 5 at approximately 52° 55′ 51.1″ N, 0° 13′ 19.0″ W, and 52° 55′ 48.7″ N, 0° 13′ 21.2″ W.

Work No. 5B— works to lay electrical cables from Work No. 5 at approximately 52° 56′ 15.5″ N, 0° 13′ 07.7″ W, and 52° 56′ 09.9″ N, 0° 13′ 11.3″ W running in a south east and south westerly direction to Work No. 5 at approximately 52° 55′ 51.1″ N, 0° 13′ 19.0″ E, and 52° 55′ 50.0″ N, 0° 13′ 17.9″ W.

Work No. 6A— creation of a new generation bay and associated works at the existing substation, including—

(a) an electrical bay to connect into the existing network at Work No. 6B, including associated outdoor air insulated switchgear (AIS) or indoor gas insulated switchgear (GIS) and electrical apparatus, circuit breakers, disconnectors and earth switches;

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

(c) control building; and

(d) underground and above ground electrical cables and electrical connectors, including cables for power, control and communication with electrical bays and to connect into Work No. 6B, including associated outdoor AIS or indoor GIS and electrical apparatus.

Work No. 6B— an extension to the existing substation, including—

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

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

(c) underground and above ground electrical cables and electrical conductors, including cables for power, control and communication with electrical bays and to connect into Work No. 6A and the existing network within the existing substation, including associated outdoor AIS or indoor GIS and electrical apparatus.

Work No. 6C— works in connection with the extension to the existing substation, including—

(a) a cable sealing end compound and construction of a new circuit bay connecting into the existing substation; and

(b) underground and above ground electrical cables and electrical conductors, connecting the existing 400kV transmission tower and the new feeder bay.

Work No. 7— two temporary laydown areas in connection with Work No. 5 and Work No. 6A, 6B, and 6C including—

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

(b) car parking and access;

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

(d) site and welfare offices and cabins;

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

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

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

Work No. 8— works to create and maintain a permanent means of access from the A17 to Work No. 1A, Work No. 1B, Work No. 2, Work No. 3 and Work No. 4.

Work No. 9A— works to create, enhance and maintain green infrastructure and create biodiversity net gain areas, including—

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

(b) landscape and biodiversity enhancement measures;

(c) earth works;

(d) hard standing and hard landscaping;

(e) drainage and irrigation infrastructure and improvements or extensions to existing irrigation systems;

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

(g) improvement, maintenance and use of existing private tracks.

Work No. 9B— works to create a permissive path, including installing up to two footbridges, fencing, gates, boundary treatment and other means of enclosure.

Work No. 9C— works to create a community orchard.

Work No. 10— works to existing streets to facilitate access to Work Nos. 1 to 9B.

Further Associated Development

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

(a) works within highways, including—

(i) alteration of the layout of any street permanently or temporarily, including increasing or reducing the width of the carriageway of any street by increasing or reducing the width of any kerb, footway, cycleway, or verge within the street including removal of any vegetation; and altering the level or increasing the width of any such kerb, footway, cycleway or verge within the street including removal of any vegetation; and works for the strengthening, improvement, repair, maintenance or reconstruction of any street;

(ii) street works, including breaking up or opening a street, or any sewer, drain or tunnel under it, and tunnelling or boring under a street;

(iii) relocation, removal or provision of new road traffic signs, signals, street lighting, road restraints and carriageway lane markings;

(iv) works to place, alter, remove or maintain street furniture or apparatus (including statutory undertakers' apparatus) in, under or above a street, including mains, sewers, drains, pipes, cables, cofferdams, lights, fencing and other boundary treatments; and

(v) works to facilitate traffic management and to deliver information relating to the authorised development; and

(b) other works and development, including—

(i) works for the provision of fencing and security measures such as CCTV, lighting, communication boxes and access control booths;

(ii) laying down of internal access tracks, ramps, means of access, footpaths, and roads;

(iii) bunds, embankments, trenching and swales;

(iv) boundary treatments, including means of enclosure;

(v) laying out and surfacing of permissive paths, including the laying and construction of drainage infrastructure, signage and information boards;

(vi) foundations for structures of buildings being reinforced concrete pad foundations with piled foundations employed in locations where the ground is not sufficiently stiff to allow for pad foundations;

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

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

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

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

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

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

(xiii) tunnelling, boring and drilling works,

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

SCHEDULE 2

Article 2

REQUIREMENTS

Interpretation

1. In this Schedule—

"county authority" means Lincolnshire County Council;

"both relevant planning authorities" means North Kesteven District Council and Boston Borough Council each being the relevant planning authority for part of the authorised development.

Commencement of the authorised development

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

Phasing the authorised development and date of final commissioning

3.—(1) No part of the authorised development may commence until a written scheme setting out the phase or phases of construction of the authorised development has been submitted to both relevant planning authorities and the county authority.

(2) The scheme submitted pursuant to paragraph (1) must include—

(a) a timetable for the construction of the phase or phases of the authorised development;

(b) a plan identifying the phasing area(s); and

(c) a statement that the phasing is in line with the assumptions in the environmental statement and is unlikely to give rise to any materially new or materially different environmental effects compared to those assessed in the environmental statement.

(3) The phasing scheme must be implemented as notified under paragraph (1).

(4) The written scheme referred to in paragraph (1) must include notification of whether the undertaker will proceed with Work No. 5A or Work No. 5B.

(5) In respect of the phase or phases, the undertaker must give notice to both relevant planning authorities within 21 days of the date of final commissioning that final commissioning of the phase or, where there is more than one phase, each phase has taken place.

Requirement for written approval

4. Where under any of the requirements the approval, agreement or confirmation of both relevant planning authorities or the county authority or relevant planning authority (as applicable) or another person is required, that approval, agreement or confirmation must be provided in writing.

Approved details and amendments to them

5.—(1) With respect to the documents certified under article 37 (certification of plans and documents, etc.) and any plans, details or schemes which have been approved pursuant to any requirement (together the "Approved Documents, Plans, Details or Schemes"), the undertaker may submit to the county authority or relevant planning authority or both relevant planning authorities (as applicable) for approval any amendments to any of the Approved Documents, Plans, Details or Schemes and, following approval by the county authority or relevant planning authority or both relevant planning authorities (as applicable), the relevant Approved Documents, Plans, Details or Schemes is to be taken to include the amendments as so approved pursuant to this paragraph.

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

Detailed design approval

6.—(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, junction improvements and passing places;

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

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

(i) programme for landscaping works,

relating to that phase have been submitted and approved in writing by the relevant planning authority for that phase or, where the phase falls within the administrative areas of both the District of North Kesteven and the Borough of Boston, both relevant planning authorities in consultation with the county authority.

(2) The details submitted must accord with the outline design principles and the flood risk assessment and, where relevant, demonstrate how they have taken account of relevant results of any archaeological investigations or archaeological evaluations carried out pursuant to requirement 12.

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

(4) Sub-paragraph (1) does not apply to the matters listed under sub-paragraph (1)(f) if consent has already been given to the details of those works pursuant to articles 9, 10, or 12.

Fire safety management

7.—(1) Work No. 2 must not commence until an energy storage safety management plan (ESSMP), substantially in accordance with the outline energy storage safety management plan, has been submitted to and approved by the county authority in consultation with North Kesteven District Council, Boston Borough Council, and the Lincolnshire Fire and Rescue Service.

(2) The ESSMP must prescribe measures to facilitate safety during the construction, operation and decommissioning of Work No. 2 including the transportation of new, used and replacement energy storage cells both to and from the authorised development.

(3) The ESSMP must be implemented as approved.

Landscape ecological management plan

8.—(1) No phase of the authorised development may commence until a written landscape ecological management plan (which is substantially in accordance with the outline landscape ecological management plan) has been submitted to and approved by the relevant planning authority for that phase or, where the phase falls within the administrative areas of both the District of North Kesteven and the Borough of Boston, both relevant planning authorities.

(2) The landscape ecological management plan must include details relevant for the phase of works in relation to—

(a) the location, number, species, size and planting density of any proposed planting including details of any proposed tree and hedgerow planting and the proposed times of such planting;

(b) an implementation timetable, including whether any further survey work is to be carried out;

(c) how a minimum of 65% biodiversity net gain in habitat units, calculated using The Statutory Biodiversity Metric published by the Department for Environment, Food and Rural Affairs on 29 November 2023 (or such other biodiversity metric approved by the relevant planning authority in consultation with the relevant statutory nature conservation body), will be secured during the operation of the whole of the authorised development; and

(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 18 (decommissioning and restoration).

(3) Any hedgerow, shrub or tree planted as part of the approved plan that, within a period of seven 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 seasons with a specimen of the same species and size as that originally planted (unless a different species is otherwise approved by the relevant planning authority).

(4) The landscape ecological management plan must be implemented as approved.

Implementation and maintenance of landscaping

9. All landscaping works must be carried out in accordance with the landscape ecological management plan approved under requirement 8 (landscape ecological management plan) as relevant to that phase.

Fencing and other means of enclosure

10.—(1) No phase of the authorised development may commence until written details of all proposed temporary fences, walls or other means of enclosure, including those set out in the construction environmental management plan, for that phase have been submitted to and approved by the relevant planning authority or, where the phase falls within the administrative areas of both the District of North Kesteven and the Borough of Boston, both relevant planning authorities.

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

(3) Any construction site must remain securely fenced in accordance with the approved details under paragraph (1) 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) In the event that temporary fences, walls or other means of enclosure are required for the permitted preliminary works, no permitted preliminary works may take place until written details of all proposed temporary fences, walls or other means of enclosure required for such works have been submitted to and approved by the relevant planning authority or, where the permitted preliminary works fall within the administrative areas of both the District of North Kesteven and the Borough of Boston, both relevant planning authorities.

Surface and foul water drainage

11.—(1) No phase of the authorised development may commence until details of the surface water drainage strategy and (if any) foul water drainage system (including means of pollution control) (which must be substantially in accordance with the outline drainage strategy in the flood risk assessment) for that phase have been submitted to and approved by the county authority, such approval to be in consultation with the Black Sluice Internal Drainage Board and Anglian Water (in respect of its sewerage undertaker functions).

(2) Any scheme approved pursuant to sub-paragraph (1) must be implemented as approved and maintained throughout the construction and operation of the authorised development.

Archaeology

12.—(1) Any part of Work No. 5, Work No. 5A, and Work No. 5B that has not already been subject to archaeological evaluation must not commence until a written scheme of archaeological investigation (which must accord with the outline written scheme of investigation – evaluation) has been submitted to and approved by the county authority, in consultation with the relevant planning authority.

(2) No phase of the authorised development may commence until a written scheme of archaeological investigation (which must accord with the outline written scheme of investigation – mitigation) for that phase has been submitted to and approved by the county authority, in consultation with the relevant planning authority.

(3) In the event that archaeological site investigation is required, the scheme(s) must include details of the following—

(a) an overview of the previous archaeological site investigations and their results;

(b) the programme and methodology of the forthcoming site investigation, analysis, and recording (including reference to regional research frameworks as applicable);

(c) the programme and methodology of the post site investigation assessment (with additional method statements needing to be prepared and approved once the archaeological resource is better known from the site investigation);

(d) provision for archive deposition, publication, and dissemination of the analysis and records of the site investigation; and

(e) nomination of a competent person, persons or organisation to undertake the works set out within the written scheme of investigation.

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

(5) No pre-commencement intrusive archaeological surveys, site preparation works and archaeological investigations may take place until a specific scheme(s) of investigations which is in accordance with the relevant details set out in the outline written scheme of investigations has been submitted to and approved by the county authority, in consultation with the relevant planning authority.

Construction environmental management plan

13.—(1) No phase of the authorised development may commence until a construction environmental management plan (which must be substantially in accordance with the outline construction environmental management plan) for that phase has been submitted to and approved by the relevant planning authority for that phase or, where the phase falls within the administrative areas of both the District of North Kesteven and the Borough of Boston, both relevant planning authorities, such approval to be in consultation with the county authority and the Environment Agency.

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

Construction traffic management plan

14.—(1) No phase of the authorised development may commence until a construction traffic management plan (which must be substantially in accordance with the outline construction traffic management plan) for that phase has been submitted to and approved by the county authority, such approval to be in consultation with the relevant planning authority for that phase or, where the phase falls within the administrative areas of both the District of North Kesteven and the Borough of Boston, both relevant planning authorities.

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

Operational noise

15.—(1) Work No. 1A, Work No. 2, and Work No. 4 must not begin operating until an operational noise assessment containing details of how the design of Work No. 1A, Work No. 2 and Work No. 4 ensures the operational noise rating levels set out in Table 12.8 of Chapter 12 of the environmental statement are to be complied with has been submitted to and approved by both relevant planning authorities.

(2) The measures as described in the operational noise assessment must be implemented and maintained as approved throughout the operation of the authorised development.

Supply chain, employment and skills

16.—(1) No part of Works No. 1, 2, 3, 4, 5, 5A and 5B may commence until a supply chain, employment, and skills plan (which must be substantially in accordance with the outline supply chain, employment, and skills plan) has been submitted to and approved by both relevant planning authorities, such approval to be in consultation with the county authority.

(2) The supply chain, employment, and skills plan must identify opportunities for individuals and businesses to access employment and supply chain opportunities associated with the construction, operation and maintenance of the authorised development (excluding Work No. 6B and 6C), and the means for publicising such opportunities.

(3) The supply chain, employment, and skills plan must be implemented as approved.

Permissive path

17.—(1) Prior to the construction of the permissive path, the undertaker must submit details of the permissive path to the county authority for approval, such approval to be in consultation with North Kesteven District Council, such details to cover—

(a) final routing of the permissive path to be provided, such routing to be substantially in accordance with the routing as shown on the plans contained within the outline landscape ecological management plan;

(b) the specification of the permissive path; and

(c) the maintenance regime for the permissive path.

(2) The permissive path must be provided and open to the public prior to the date of final commissioning in respect of the phase which includes the permissive path.

(3) The permissive path must be provided and maintained in accordance with the permissive path details and retained until the part of the authorised development in which the permissive path is located is decommissioned pursuant to requirement 18 (decommissioning and restoration).

Decommissioning and restoration

18.—(1) No later than 12 months prior to the date the undertaker intends to decommission any part of the authorised development, the undertaker must notify the relevant planning authority and county authority of the intended date of decommissioning.

(2) Within 12 months of the date notified pursuant to paragraph (1) but no later than 6 months prior to the 40 year period referred to in paragraph (3), the undertaker must submit to the relevant planning authority for that part (or both relevant planning authorities where that part falls within the administrative areas of both the District of North Kesteven and the Borough of Boston) for approval a decommissioning and restoration plan for that part, such approval to be in consultation with the county authority and the Environment Agency.

(3) Save for Work No. 6B, 6C and Work No. 9C, decommissioning must commence no later than 40 years following the date of final commissioning that is the subject of the last notice given by the undertaker pursuant to requirement 3(5) (phasing of the authorised development and date of final commissioning).

(4) The plan submitted and approved pursuant to paragraph (2) must be substantially in accordance with the relevant part of the outline decommissioning and restoration plan.

(5) No decommissioning works must be carried out until the relevant planning authority or both relevant planning authorities (as applicable) has or have approved the plan submitted under paragraph (2) in relation to such works.

(6) The plan submitted and approved pursuant to paragraph (2) must be implemented as approved.

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

Operational Environmental Management Plan

19.—(1) Prior to the date of final commissioning for any phase of the authorised development, an operational environmental management plan (which must be substantially in accordance with the outline operational environmental management plan) for that phase must be submitted to and approved by the relevant planning authority for that phase or, where the phase falls within the administrative areas of both the District of North Kesteven and the Borough of Boston, both relevant planning authorities.

(2) The relevant plan submitted pursuant to paragraph (1) must include details of how sheep grazing will be managed and maintained within the fenced areas of the solar park at Work No. 1 throughout the operation of the authorised development.

(3) The operation of any phase of the authorised development must be carried out and maintained in accordance with the approved operational environmental management plan for that phase.

Soil Management Plan

20.—(1) No phase of the authorised development may commence until a soil management plan (which must be substantially in accordance with the relevant part of the outline soil management plan) for that phase has been submitted to and approved by the relevant planning authority for that phase or, where the phase falls within the administrative areas of both the District of North Kesteven and the Borough of Boston, both relevant planning authorities.

(2) The construction of any phase of the authorised development must be carried out in accordance with the approved soil management plan for that phase.

Community Orchard

21.—(1) Prior to the construction of the community orchard, the undertaker must submit the community orchard details to North Kesteven District Council for approval, such details to cover—

(a) location and layout, the number, species, size and planting density of any proposed planting including details of any proposed tree planting and the proposed times of such planting of the community orchard, to be substantially in accordance with the plans contained within the outline landscape ecological management plan; and

(b) the maintenance regime for the community orchard.

(2) The community orchard must be provided within six months of the date of final commissioning of the last phase of Work No. 1.

(3) The community orchard must be provided and maintained in accordance with the approved maintenance regime.

SCHEDULE 3

Article 6

LEGISLATION TO BE DISAPPLIED

1. The following provisions do not apply in so far as they relate to the construction of any numbered work or the carrying out of any operation required for the purpose of, or in connection with, the construction, operation, maintenance or decommissioning of the authorised development—

(a) Witham Drainage Act 1762(**a**);

(b) Witham Navigation and Drainage Act 1812(**b**);

(c) River Witham Outfall Improvement Act 1880(**c**);

(d) Land Drainage (Black Sluice) Provisional Order Confirmation Act 1925(**d**);

(e) Black Sluice Drainage Act 1846(**e**);

(f) Black Sluice Internal Drainage Board Complete Land Drainage Byelaws 1988(**f**);

(g) Great Northern Railway (Spalding to Lincoln) Act 1878(**g**);

(h) Great Northern and Great Eastern Railway Companies Act 1879(**h**);

(i) Boston, Sleaford and Midland Counties Railway Act 1853(**i**);

(j) Anglian Water Authority Act 1977(**j**); and

(k) Lincoln Waterworks Act 1846(**k**).

(**a**) 1762. c. 32.
(**b**) 1812 c.108.
(**c**) 1880 c. cliii.
(**d**) 1925 c. lxxi.
(**e**) 1846 c. ccxcvii.
(**f**) 1988.
(**g**) 1878 c. xcviii.
(**h**) 1879 c. civ.
(**i**) 1853 c. ccxxiii.
(**j**) 1977 c. i.
(**k**) 1846 c. cxi.

SCHEDULE 4

Article 8

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) *District in which street is located*	*(2)* *Street*	*(3)* *Description of the street works*
Boston Borough Council	A17	Cable works beneath the width of the highway between the points marked G to H shown in blue on sheet 7 of the streets and access plan, (document reference 2.7).
Boston Borough Council	Public Right of Way Swhd/14/1	Cable works beneath the width of the highway between the points marked C to D shown in blue on sheet 7 of the rights of way plan, (document reference 2.3).
Boston Borough Council	Royalty Lane	Cable works beneath the width of the highway between the points marked I to J shown in blue on sheet 7 of the streets and access plan, (document reference 2.7).
Boston Borough Council	Timms Drove	Cable works beneath the width of the highway between the points marked S to T shown in blue on sheet 9 of the streets and access plan, (document reference 2.7).
Boston Borough Council	North Drove	Cable works beneath the width of the highway between the points marked U to V shown in blue on sheet 10 of the streets and access plan, (document reference 2.7).
Boston Borough Council	Private Track leading from Timms Drove	Cable works beneath the width of the highway between the points marked Y to Z shown in blue on sheet 11 of the streets and access plan, (document reference 2.7).
Boston Borough Council	Bicker Drove	Cable works beneath the width of the highway between the points marked AA to AB shown in blue on sheet 12 of the streets and access plan, (document reference 2.7).

SCHEDULE 5 Article 9 and Article 10

ALTERATION OF LAYOUT OF STREETS

PART 1

PERMANENT ALTERATION OF LAYOUT OF STREETS

(1) *District in which street is located*	*(2)* *Street*	*(3)* *Description of alteration*
North Kesteven District Council	A17	Works for the provision of a permanent means of access to the authorised development from the north side of the A17, at point EP/B and within the area shown hatched in pink on sheet 5 of the streets and access plan, (document reference 2.7).
Boston Borough Council	A17	Works for the provision of a permanent means of access to the authorised development from the south side of the A17, at point CR/B and the area shown hatched in pink on sheet 7 of the streets and access plan (document reference 2.7).
Boston Borough Council	A17	Works for the provision of a permanent means of access to the authorised development from the north side of the A17, at point CR/C and the area shown hatched in pink on sheet 7 of the streets and access plan (document reference 2.7).
Boston Borough Council	Private Track	Works for the provision of a permanent means of access to the authorised development from the Triton Knoll access track and Timms Drove, at point CR/F and the area shown hatched in pink on sheet 9 of the streets and access plan (document reference 2.7).
Boston Borough Council	Timms Drove	Works for the provision of a permanent means of access to the authorised development from the south side of Timms Drove, at point CR/G and the area shown hatched in pink on sheet 9 of the streets and

		access plan (document reference 2.7).
Boston Borough Council	North Drove	Works for the provision of a permanent means of access to the authorised development from the north side of North Drove, at point CR/H and the area shown hatched in pink on sheet 10 of the streets and access plan (document reference 2.7).
Boston Borough Council	North Drove	Works for the provision of a permanent means of access to the authorised development from the south side of North Drove, at point CR/I and the area shown hatched in pink on sheet 10 of the streets and access plan (document reference 2.7).
Boston Borough Council	Private Track	Works for the provision of a permanent means of access to the authorised development from the north of the private track to the east of Timms Drove, at point CR/J and the area shown hatched in pink on sheet 11 of the streets and access plan (document reference 2.7).
Boston Borough Council	Private Track	Works for the provision of a permanent means of access to the authorised development from the south of the private track to the east of Timms Drove, at point CR/K and the area shown hatched in pink on sheet 11 of the streets and access plan (document reference 2.7).
Boston Borough Council	Private Track	Works for the provision of a permanent means of access to the authorised development from the private track to the east of Timms Drove, at point CR/L and the area shown hatched in pink on sheet 11 of the streets and access plan (document reference 2.7).
Boston Borough Council	Bicker Drove	Works for the provision of a permanent means of access to the authorised development from the south side of Bicker Drove, at point CR/M and the area shown hatched in pink on sheet 12 of the streets and

		access plan (document reference 2.7).
Boston Borough Council	Bicker Drove	Works for the provision of a permanent means of access to the authorised development from the north side of Bicker Drove, at point CR/N and the area shown hatched in pink on sheet 12 of the streets and access plan (document reference 2.7).
Boston Borough Council	Bicker Drove	Works for the provision of a permanent means of access to the authorised development from the south side of Bicker Drove, at point CR/O and the area shown hatched in pink on sheet 12 of the streets and access plan (document reference 2.7).
Boston Borough Council	Vicarage Drove	Works for the provision of a permanent means of access to the authorised development from the west side of Vicarage Drove, at point CR/P and the area shown hatched in pink on sheet 12 of the streets and access plan (document reference 2.7).
Boston Borough Council	Vicarage Drove/Private Track	Works for the provision of a permanent means of access to the authorised development from the north side of Vicarage Drove, at point CR/Q and the area shown hatched in pink on sheet 12 of the streets and access plan (document reference 2.7).

PART 2

TEMPORARY ALTERATION OF LAYOUT OF STREETS

(1) *District in which street is located*	*(2)* *Street*	*(3)* *Description of alteration*
North Kesteven District Council	A17	Works to enable the construction of the authorised development, including the temporary widening of the carriageway between the points marked C and D shown cross hatched on sheet 5 of the streets and access plan (document reference 2.7).

North Kesteven District Council	A17	Works for the provision of a temporary means of access to the authorised development from the north side of the A17, at point EP/A and the area hatched purple on sheet 5 of the streets and access plan (document reference 2.7).
Boston Borough Council	A17/Royalty Lane	Works for the provision of a temporary means of access to the authorised development from the west side of the A17, at point CR/D and the area hatched purple on sheet 7 of the streets and access plan (document reference 2.7).

SCHEDULE 6

Article 11

PUBLIC RIGHTS OF WAY TO BE TEMPORARILY CLOSED

(1) *District in which public right of way is located*	*(2)* *Public right of way to be temporarily closed*	*(3)* *Extent of temporary closure*
North Kesteven District Council	Footpath Heck 15/1	Between the points marked A to B as shown on sheets 1 to 3 of the rights of way plan.

SCHEDULE 7

Article 12

ACCESS TO WORKS

PART 1

PERMANENT MEANS OF ACCESS TO WORKS

(1) *District in which access is located*	*(2)* *Street*	*(3)* *Description of means of access*
North Kesteven District Council	A17	The provision of a permanent means of access to the authorised development from the north side of the A17, at point EP/B and the area coloured pink on sheet 5 of the streets and access plan (document reference 2.7).
Boston Borough Council	A17	The provision of a permanent means of access to the authorised development from the south side of the A17, at point CR/B and the area coloured pink on sheet 7 of the streets and access plan (document reference 2.7).
Boston Borough Council	A17	The provision of a permanent means of access to the authorised development from the north side of the A17, at point CR/C and the area coloured pink on sheet 7 of the streets and access plan (document reference 2.7).
Boston Borough Council	A17/Triton Knoll Private Track	The provision of a permanent means of access to the authorised development from the west side of the A17, at point CR/E and the area coloured pink on sheet 8 of the streets and access plan (document reference 2.7).
Boston Borough Council	Private Track	The provision of a permanent means of access to the authorised development from the Triton Knoll access track and Timms Drove, at point CR/F and the area coloured pink on sheet 9 of the streets and access plan (document reference 2.7).
Boston Borough Council	Timms Drove	The provision of a permanent means of access to the

		authorised development from the south side of Timms Drove, at point CR/G and the area coloured pink on sheet 9 of the streets and access plan (document reference 2.7).
Boston Borough Council	North Drove	The provision of a permanent means of access to the authorised development from the north side of North Drove, at point CR/H and the area coloured pink on sheet 10 of the streets and access plan (document reference 2.7).
Boston Borough Council	North Drove	The provision of a permanent means of access to the authorised development from the south side of North Drove, at point CR/I and the area coloured pink on sheet 10 of the streets and access plan (document reference 2.7).
Boston Borough Council	Private Track	The provision of a permanent means of access to the authorised development from the north of the private track to the east of Timms Drove, at point CR/J and the area coloured pink on sheet 11 of the streets and access plan (document reference 2.7).
Boston Borough Council	Private Track	The provision of a permanent means of access to the authorised development from the south of the private track to the east of Timms Drove, at point CR/K and the area coloured pink on sheet 11 of the streets and access plan (document reference 2.7).
Boston Borough Council	Private Track	The provision of a permanent means of access to the authorised development from the private track to the east of Timms Drove, at point CR/L and the area coloured pink on sheet 11 of the streets and access plan (document reference 2.7).
Boston Borough Council	Bicker Drove	The provision of a permanent means of access to the authorised development from the south side of Bicker Drove, at point CR/M and the area coloured pink on sheet 12 of the streets and access plan

		(document reference 2.7).
Boston Borough Council	Bicker Drove	The provision of a permanent means of access to the authorised development from the north side of Bicker Drove, at point CR/N and the area coloured pink on sheet 12 of the streets and access plan (document reference 2.7).
Boston Borough Council	Bicker Drove	The provision of a permanent means of access to the authorised development from the south side of Bicker Drove, at point CR/O and the area coloured pink on sheet 12 of the streets and access plan (document reference 2.7).
Boston Borough Council	Vicarage Drove	The provision of a permanent means of access to the authorised development from the west side of Vicarage Drove, at point CR/P and the area coloured pink on sheet 12 of the streets and access plan (document reference 2.7).
Boston Borough Council	Vicarage Drove/Private Track	The provision of a permanent means of access to the authorised development from the north side of Vicarage Drove, at point CR/Q and the area coloured pink on sheet 12 of the streets and access plan (document reference 2.7).

PART 2

TEMPORARY MEANS OF ACCESS TO WORKS

(1) *District in which access is located*	*(2)* *Street*	*(3)* *Description of means of access*
North Kesteven District Council	A17	The provision of a temporary means of access to the authorised development from the north side of the A17, at point EP/A and the area coloured purple on sheet 5 of the streets and access plan (document reference 2.7).
Boston Borough Council	A17/Royalty Lane	The provision of a temporary means of access to the authorised development from the west side of the A17, at point CR/D and the area coloured purple on sheet 7 of the streets and access plan

		(document reference 2.7).

SCHEDULE 8

Article 19

LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED

Interpretation

1. In this Schedule—

"access rights" means rights over land to, for the purposes of the authorised development and in connection with the authorised development—

(a) alter, improve, form, maintain, retain, use (with or without vehicles, plant and machinery), remove, reinstate means of access to the authorised development including visibility splays and to remove impediments to such access;

(b) pass and repass on foot, with or without vehicles, plant and machinery (including rights to lay and use any temporary surface) for all purposes in connection with the authorised development; and

(c) restrict the erection of buildings or structures, restrict the altering of ground levels, restrict the planting of trees or carrying out operations or actions which may obstruct, interrupt or interfere with the exercise of the access rights.

"cable rights" means rights over land to—

(a) install, use, support, protect, inspect, alter, remove, replace, 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 apparatus and structures;

(b) alter, improve, form, maintain, retain, use (with or without vehicles, plant and machinery), remove, reinstate means of access to the authorised development including visibility splays and to remove impediments to such access;

(c) install, use, support, protect, inspect, alter, remove, replace retain, renew, improve and maintain watercourses, public sewers and drains and drainage apparatus and equipment;

(d) 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;

(e) restrict and remove the erection of buildings or structures, restrict the altering of ground levels, restrict and remove 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; and

(f) install, use, support, protect, inspect, alter, remove, replace, retain, renew, improve and maintain soft landscaping and biodiversity measures.

"substation connection rights" means rights over land to—

(a) in connection with and for the purposes of facilitating Work No. 6A, install, use, support, protect, inspect, alter, remove, replace, retain, renew, improve and maintain electrical 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 apparatus and structures and to connect such cables and services to the National Grid Bicker Fen substation;

(b) in connection with and for the purposes of facilitating Work No. 6A, install, use, support, protect, inspect, alter, remove, replace, retain, renew, improve and maintain watercourses, public sewers and drains and drainage apparatus and equipment;

(c) remain, pass and repass on foot, with or without vehicles, plant and machinery (including rights to lay and use any temporary surface) for all purposes in connection with Work No. 6A;

(d) in connection with and for the purposes of facilitating Work No. 6A restrict and remove the erection of buildings or structures, restrict the altering of ground levels, restrict and remove 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; and

(e) remove landscaping measures.

(1) *Plot reference number shown on the land plans*	*(2)* *Purposes for which rights over land may be acquired and restrictive covenants imposed*
12	Access rights and cable rights
60A	Access rights and cable rights
60B	Access rights and cable rights
60C	Access rights and cable rights
63A	Access rights and cable rights
63B	Access rights and cable rights
63C	Access rights
63D	Access rights
64	Access rights
66A	Access rights
66B	Access rights and cable rights
67A	Access rights
67B	Access rights and cable rights
67C	Access rights
67D	Access rights
68A	Access rights
68B	Access rights
68C	Access rights and cable rights
68D	Access rights
68E	Access rights
68F	Access rights
69	Access rights and cable rights
72	Access rights and cable rights
73A	Access rights
73B	Access rights
75A	Access rights
75B	Access rights
75C	Access rights
75D	Access rights and cable rights
75E	Access rights
75F	Access rights
75G	Access rights
75H	Access rights
75I	Access rights and cable rights
75J	Access rights
76A	Access rights
76B	Access rights and cable rights
89	Access rights
90	Access rights
94	Access rights

97	Access rights
99B	Access rights and cable rights
99C	Access rights and cable rights
99D	Access rights and cable rights
99E	Access rights
99F	Access rights
99G	Substation connection rights
99H	Substation connection rights
100A	Access rights and cable rights
100B	Access rights and cable rights
101A	Access rights and cable rights
101B	Access rights and cable rights
101C	Access rights and cable rights
104A	Access rights and cable rights
104B	Access rights
104C	Access rights
104D	Access rights and cable rights
104E	Access rights and cable rights
107A	Access rights
107B	Access rights
108A	Access rights and cable rights
108B	Access rights and cable rights
108C	Access rights and cable rights
109A	Access rights
109B	Access rights
124	Access rights and cable rights
173	Access rights
184	Access rights and cable rights
190	Access rights and cable rights
245	Access rights and cable rights
248	Access rights and cable rights
255	Access rights and cable rights
265	Access rights
266A	Access rights and cable rights
266B	Access rights and cable rights
269	Access rights and cable rights
273	Access rights
274	Access rights
279	Access rights
284	Access rights and cable rights
285	Access rights and cable rights
286	Access rights and cable rights
287	Access rights
288	Access rights and cable rights
289	Access rights
290	Access rights
293A	Access rights and cable rights
293B	Access rights and cable rights
294	Access rights
295	Access rights and cable rights
296	Access rights
297	Access rights
298	Access rights

301	Access rights
302A	Access rights and cable rights
302B	Access rights
303	Access rights and cable rights
304	Access rights and cable rights
307	Access rights
312	Access rights
313	Access rights
316	Access rights and cable rights
317	Access rights
322	Access rights
323	Access rights and cable rights
324	Access rights
325	Access rights
326	Access rights
329	Access rights and cable rights
333	Access rights and cable rights
334	Access rights and cable rights
335	Access rights
337	Access rights
338	Access rights
339	Access rights
341	Access rights
346	Access rights and cable rights
347	Access rights and cable rights
348	Access rights and cable rights
349	Access rights

SCHEDULE 9

Article 19

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

Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right or 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 on the scope of paragraph 1, the Land Compensation Act 1973(**a**) has effect subject to the modifications set out in sub-paragraph (2).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 (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) In section 5A(5A) (relevant valuation date), omit the words after "if—" and substitute—

"(a) the acquiring authority enters on land for the purpose of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act (as modified by paragraph 5(5) of Schedule 9 to the Heckington Fen Solar Park Order 2025);

(b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A to the 1965 Act (as substituted by paragraph 5(8) of Schedule 9 to the Heckington Fen Solar Park 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.".

Application of Part 1 of the 1965 Act

4. Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act, as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act to the acquisition of land under article 17 (compulsory acquisition of land) and as modified by article 24 (modification of Part 1 of the 1965 Act), applies to the compulsory acquisition of a right by the creation of a new right under article 19 (compulsory acquisition of rights)—

(a) with the modifications specified in paragraph 5; and

(b) with such other modifications as may be necessary.

5.—(1) The modifications referred to in paragraph 4(a) are as follows—

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

(2) References in the 1965 Act to land are, in the appropriate contexts, to be read (according to the requirements of the particular context) as referring to, or as including references to—

(a) the right acquired or to be acquired, or 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.

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

"**7.** In assessing the compensation to be paid by the acquiring authority under this Act, regard must be had not only to the extent (if any) to which the value of the land over which the right is to be acquired 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.".

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

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

(b) paragraph 10(3) of Schedule 1 (persons without power to sell their interests);

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

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

are modified to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired or the restrictive covenant which is to be imposed is vested absolutely in the acquiring authority.

(5) Section 11 (powers of entry)(**a**) of the 1965 Act is modified to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right or restrictive covenant, as well as the notice of entry required by subsection (1) of that section (as it applies to compulsory acquisition under article 17 (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)(**b**), 11B (counter-notice requiring possession to be taken on specified date)(**c**), 12 (penalty for unauthorised entry)(**d**) and 13 (refusal to give possession to acquiring authority)(**e**) of the 1965 Act are modified correspondingly.

(6) Section 20 (tenants at will, etc.)(**f**) 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.

(7) Section 22 (interests omitted from purchase) of the 1965 Act as modified by article 24(4) (modification of Part 1 of the Compulsory Purchase Act 1965) is so modified as to enable the

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(**a**) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1), sections 186(2), 187(2) and 188 of, and paragraph 6 of Schedule 14 and paragraph 3 of Schedule 16 to, the Housing and Planning Act 2016 (c. 22) and S.I. 2009/1307.

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

(**c**) Section 11B was inserted by section 187(3) of the Housing and Planning Act 2016.

(**d**) Section 12 was amended by section 56(2) of, and Part 1 of Schedule 9 to, the Courts Act 1971 (c. 23) and paragraphs (2) and (4) of Schedule 16 to the Housing and Planning Act 2016.

(**e**) Section 13 was amended by sections 62(3), 139(4) to (9) and 146 of, and paragraphs 27 and 28 of Schedule 13 and Part 3 of Schedule 23 to the Tribunals, Courts and Enforcement Act 2007 (c. 15).

(**f**) Section 20 was amended by paragraph 4 of Schedule 15 to the Planning and Compensation Act 1991 (c. 34) and S.I. 2009/1307.

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 respects compensation.

(8) 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 LAND

1.—(1) This Schedule applies where an acquiring authority serves a notice to treat in respect of a right over, or restrictive covenant affecting, the whole or part of a house, building or factory and have not executed a general vesting declaration under section 4 of the 1981 Act as applied by article 21 (application of the 1981 Act) of the Heckington Fen Solar Park Order 2025 in respect of the land to which the notice to treat relates.

(2) But see article 22(3) (acquisition of subsoil only) of the Heckington Fen Solar Park Order 2025 which excludes the acquisition of subsoil only from this Schedule.

2. In this Schedule, "house" includes any park or garden belonging to a house.

Counter-notice requiring purchase of land

3. A person who is able to sell the house, building or factory ("the owner") may serve a counter-notice requiring the authority to purchase the owner's interest in the house, building or factory.

4. A counter-notice under paragraph 3 must be served within the period of 28 days beginning with the day on which the notice to treat was served.

Response to counter-notice

5. On receiving a counter-notice, the acquiring authority must decide whether to—

(a) withdraw the notice to treat,

(b) accept the counter-notice, or

(c) refer the counter-notice to the Upper Tribunal.

6. The authority must serve notice of their decision on the owner within the period of three 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 six weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.

(2) If the acquiring authority withdraws the notice to treat under this paragraph they must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawal of the notice.

(3) Any dispute as to the compensation is to be determined by the Upper Tribunal.".

SCHEDULE 10

Article 35

HEDGEROWS TO BE REMOVED

(1) *Area*	*(2)* *Number of hedgerow and extent of removal*	*(3)* *Purpose of removal*
North Kesteven District Council / Boston Borough Council (border)	Removal of that part of the hedgerow (including four goat willows and one Lombardy poplar) shown approximately within the pink area identified on sheet 6 of the important hedgerows plan.	To facilitate construction of the authorised development (Work No. 5).
Boston Borough Council	Removal of those parts of the hedgerow (including sections of hawthorn hedgerow within the drainage ditch) shown approximately within the pink area identified on sheets 7 and 8 of the important hedgerows plan.	To facilitate construction of the authorised development (Work No. 5).
Boston Borough Council	Removal of that part of the hedgerow (including a section of hawthorn) shown approximately within the pink area identified on sheet 12 of the important hedgerows plan.	To facilitate construction of the authorised development (Work No. 5A).
Boston Borough Council	Removal of that part of the hedgerow (which includes various woodland comprising oak, goat willow, silver birch, hazel, field maple, aspen, lime, ash and dogwood) shown approximately within the pink area on sheet 13 of the important hedgerows plan.	To facilitate construction of the authorised development (Work No. 5B).

SCHEDULE 11

Article 37

DOCUMENTS AND PLANS TO BE CERTIFIED

(1) *Document name*	*(2)* *Applicant's Document reference*	*(3)* *Revision number*	*(4)* *Date*
book of reference	4.3	7.0	February 2024
environmental statement	6.1, 6.2, and 6.3	2.0	August 2023 (unless otherwise stated below)
	6.1.17 6.2.5 6.2.7 6.2.13 - 6.2.14 6.2.16-6.2.20 6.3.1 - 6.3.3 6.3.6 - 6.3.10 6.3.12 6.3.14 - 6.3.18	1.0	February 2023
	6.3.4.1	1.0	March 2023
	ExA.6.3.7.13-D3.V2	1.0	November 2023
	6.1.0 - 6.1.3 6.1.7 - 6.1.9 6.1.12 - 6.1.15 6.1.18 6.1.20 6.2.1 - 6.2.3 6.2.6 - 6.2.12 6.2.15 6.3.6 6.3.14	2.0	August 2023
	6.1.10 6.1.16 6.1.19 6.2.3 - 6.2.4 6.2.10	2.0	November 2023
	6.3.6.9	3.0	August 2023
	6.1.5 6.2.2 6.2.6	3.0	November 2023
	6.2.6	4.0	December 2023
	6.1.4	5.0	January 2024
	6.1.11	4.0	January 2024
	6.1.6	3.0	February 2024
ES technical note – updated information on cumulative projects	ExA.ESTN-Cumulative-D5.V4	4.0	February 2024
Appendix 8.13 – biodiversity net gain assessment report	ExA.6.3.8.13-D4.V2	2.0	January 2024
ES transport and	ExA.ESTATN.D3.V1	1.0	December 2023

access technical note – sensitivity of cowbridge road, bicker drove, and vicarage drove			
ES technical note – additional ecology information	ExA.ESTNE.D3.V1	1.0	December 2023
equality impact assessment	ExA.EIA-D3.V1	1.0	December 2023
ES transport and access technical note – assessment of triton knoll access track, doubletwelves drove and bicker drove	ExA.ESTATN-Access-D5.V1	1.0	February 2024
flood risk assessment	6.3.9.1	2.0	March 2023
important hedgerows plan	2.9	3.0	January 2024
interface area plan	ExA.BFInterface.D5.V1	1.0	February 2024
land and crown land plan	2.1	5.0	January 2024
outline energy storage safety management plan	7.11	3.0	January 2024
outline construction environmental management plan	7.7	6.0	February 2024
outline construction traffic management plan	7.10	5.0	February 2024
outline decommissioning and restoration plan	7.9	4.0	February 2024
outline design principles	7.1	4.0	January 2024
outline landscape ecological management plan	7.8	6.0	February 2024
outline operational environmental management plan	ExA.oOEMP-D5.V3	3.0	February 2024
outline soil management plan	7.15	3.0	February 2024
outline supply chain, employment and skills plan	7.12	4.0	February 2024
outline written scheme of investigation – evaluation	7.13	2.0	November 2023
outline written scheme of investigation – mitigation	7.14	2.0	November 2023
rights of way plan	2.3	4.0	January 2024
streets and access	2.7	5.0	January 2024

plans			
works plans	2.2	6.0	February 2024

SCHEDULE 12

Article 38

ARBITRATION RULES

Commencing an arbitration

1.—(1) The arbitration is deemed to have commenced when a party ("the claimant") serves a written notice of arbitration on the other party ("the respondent").

(2) The primary objective of these Arbitration Rules is to achieve a fair, impartial, final and binding award on the substantive difference between the parties (save as to costs) within 4 months from the date the arbitrator is appointed pursuant to article 38 of the Order.

Time periods

2.—(1) All time periods in these Arbitration Rules are measured in days and include weekends, but not bank or public holidays.

(2) Time periods are calculated from the day after the arbitrator is appointed which is either—

(a) the date the arbitrator notifies the parties in writing of his/her acceptance of an appointment by agreement of the parties; or

(b) the date the arbitrator is appointed by the Secretary of State.

Timetable

3.—(1) The timetable for the arbitration is that which is 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 must provide both the respondent and the arbitrator with—

(a) a written statement of claim which describes the nature of the difference between the parties, the legal and factual issues, the claimant's contentions as to those issues, the amount of its claim or the remedy it is seeking; and

(b) all statements of evidence and copies of all documents on which it relies, including contractual documentation, correspondence (including electronic documents), legal precedents and expert witness reports.

(3) Within 14 days of receipt of the claimant's statements under sub-paragraph (2) by the arbitrator and respondent, the respondent must provide the claimant and the arbitrator with—

(a) a written statement of defence consisting of a response to the claimant's statement of claim, its statement in respect of the nature of the difference, the legal and factual issues in the claimant's claim, its acceptance of any elements of the claimant's claim and its contentions as to those elements of the claimant's claim it does not accept;

(b) all statements of evidence and copies of all documents on which it relies, including contractual documentation, correspondence (including electronic documents), legal precedents and expert witness reports; and

(c) any objections it wishes to make to the claimant's statements, comments on the claimant's expert reports (if submitted by the claimant) and explanations of the objections.

(4) Within seven days of the respondent serving its statements under sub-paragraph (3), the claimant may make a statement of reply by providing both the respondent and the arbitrator with—

(a) a written statement responding to the respondent's submissions, including its reply in respect of the nature of the difference, the issues (both factual and legal) and its contentions in relation to the issues;

(b) all statements of evidence and copies of documents in response to the respondent's submissions;

(c) any expert report in response to the respondent's submissions;

(d) any objections to the statements of evidence, expert reports or other documents submitted by the respondent; and

(e) its written submissions in response to the legal and factual issues involved.

Procedure

4.—(1) The parties' pleadings, witness statements and expert reports (if any) must be concise. A single pleading must not exceed 30 single-sided A4 pages using 10pt Arial font.

(2) The arbitrator will make an award on the substantive differences based solely on the written material submitted by the parties unless the arbitrator decides that a hearing is necessary to explain or resolve any matters.

(3) Either party may, within two days of delivery of the last submission, request a hearing giving specific reasons why it considers a hearing is required.

(4) Within seven days of receiving the last submission, the arbitrator must notify the parties whether a hearing is to be held and the length of that hearing.

(5) Within 10 days of the arbitrator advising the parties that a hearing is to be held, the date and venue for the hearing are to be fixed by agreement with the parties, save that if there is no agreement the arbitrator must direct a date and venue which the arbitrator considers is fair and reasonable in all the circumstances. The date for the hearing must not be less than 35 days from the date of the arbitrator's direction confirming the date and venue of the hearing.

(6) A decision must be made by the arbitrator on whether there is any need for expert evidence to be submitted orally at the hearing. If oral expert evidence is required by the arbitrator, then any experts attending the hearing may be asked questions by the arbitrator.

(7) There is to be no examination or cross-examination of experts, but the arbitrator must invite the parties to ask questions of the experts by way of clarification of any answers given by the experts in response to the arbitrator's questions. Prior to the hearing in relation to the experts—

(a) at least 28 days before a hearing, the arbitrator must provide a list of issues to be addressed by the experts;

(b) if more than one expert is called, they will jointly confer and produce a joint report or reports within 14 days of the issues being provided; and

(c) the form and content of a joint report must be as directed by the arbitrator and must be provided at least seven days before the hearing.

(8) Within 14 days of a hearing or a decision by the arbitrator that no hearing is to be held the parties may by way of exchange provide the arbitrator with a final submission in connection with the matters in dispute and any submissions on costs. The arbitrator must take these submissions into account in the award.

(9) The arbitrator may make other directions or rulings as considered appropriate in order to ensure that the parties comply with the timetable and procedures to achieve an award on the substantive difference within four months of the date on which the arbitrator is appointed, unless both parties otherwise agree to an extension to the date for the award.

(10) If a party fails to comply with the timetable, procedure or any other direction then the arbitrator may continue in the absence of a party or submission or document, and may make a decision on the information before the arbitrator attaching the appropriate weight to any evidence submitted beyond any timetable or in breach of any procedure or direction.

(11) The arbitrator's award must include reasons. The parties must accept that the extent to which reasons are given must be proportionate to the issues in dispute and the time available to the arbitrator to deliver the award.

Arbitrator's powers

5.—(1) The arbitrator has all the powers of the Arbitration Act 1996, save where modified in this Schedule.

(2) There must be no discovery or disclosure, except that the arbitrator is to have the power to order the parties to produce such documents as are reasonably requested by another party no later than the statement of reply, or by the arbitrator, where the documents are manifestly relevant, specifically identified and the burden of production is not excessive. Any application and orders should be made by way of a Redfern Schedule without any hearing.

(3) Any time limits fixed in accordance with this procedure or by the arbitrator may be varied by agreement between the parties, subject to any such variation being acceptable to and approved by the arbitrator. In the absence of agreement, the arbitrator may vary the timescales or procedure—

(a) if the arbitrator is satisfied that a variation of any fixed time limit is reasonably necessary to avoid a breach of the rules of natural justice and 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 must consider the relevant costs collectively.

(3) The final award must fix the costs of the arbitration and decide which of the parties are to bear them or in what proportion they are to be borne by the parties.

(4) The arbitrator must award recoverable costs on the general principle that each party should bear its own costs, having regard to all material circumstances, including such matters as exaggerated claims or defences, the degree of success for different elements of the claims, claims that have incurred substantial costs, the conduct of the parties and the degree of success of a party.

Confidentiality

7.—(1) Hearings in this arbitration are to take place in public unless otherwise agreed by the arbitrator on application from one or both of the parties.

(2) Materials, documents, awards, expert reports and any matters relating to the arbitration are confidential and must not be disclosed to any third party without prior written consent of the other party, save for any application to the courts or where disclosure is required under any legislative or regulatory requirement.

SCHEDULE 13

Article 39

PROTECTIVE PROVISIONS

PART 1

FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

1. For the protection of the utility undertakers referred to in this Part of this Schedule (save for Anglian Water which is protected by Part 3 of this Schedule, National Gas Transmission Plc as gas undertaker and electricity undertaker which is protected by Parts 4 and 6 of this Schedule, National Grid Viking Limited which is protected by Part 10 of this Schedule, Beacon Fen Energy Park Limited which is protected by Part 11 of this Schedule, and Triton Knoll OFTO Limited which is protected by Part 12 of this Schedule) the following provisions have effect, unless otherwise agreed in writing between the undertaker and the utility undertakers concerned.

2. In this Part of this Schedule—

"alternative apparatus" means alternative apparatus adequate to enable the utility 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 utility 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 utility 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 of the Water Industry Act 1991(**a**);

(d) in the case of a sewerage undertaker—

(i) any drain or works vested in the utility 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) 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 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;

"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; and

"utility undertaker" means—

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

(**a**) 1991 c. 56.

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

(c) a water undertaker within the meaning of the Water Industry Act 1991; and

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

for the area of the authorised development, and in relation to any apparatus, means the utility undertaker to whom it belongs or by whom it is maintained.

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 utility undertaker are regulated by the provisions of Part 3 of the 1991 Act.

4. Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 11 (temporary closure of public rights of way), a utility undertaker is at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

No acquisition etc. except by agreement

5. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

Removal of apparatus

6.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that the utility undertaker's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of a utility undertaker to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided, to the reasonable satisfaction of the utility undertaker in question in accordance with sub-paragraphs (2) to (7).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to the utility 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 a utility undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the utility 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 utility undertaker in question must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed

(**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).

between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 38 (arbitration).

(5) The utility undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 38 (arbitration), and after the grant to the utility 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 utility 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 utility undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker.

(7) Nothing in sub-paragraph (6) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

Facilities and rights for alternative apparatus

7.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 38 (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 utility 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 utility undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

8.—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 6(2), the undertaker must submit to the utility 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 utility undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the utility undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by a utility 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 a utility undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 7 apply as if the removal of the apparatus had been required by the undertaker under paragraph 6(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 utility 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.

9.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker the reasonable expenses incurred by that utility undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 6(2).

(2) There is to be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule, that value being calculated after removal.

(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 38 (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 utility undertaker 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 where such extension is required in consequence of the execution of any such works as are referred to in paragraph 6(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.

(5) An amount which apart from this sub-paragraph would be payable to a utility undertaker in respect of works by virtue of sub-paragraph (1), 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 utility 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.

Expenses and costs

10.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 6(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 a utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any utility undertaker, the undertaker must—

(a) bear and pay the cost reasonably incurred by that utility undertaker in making good such damage or restoring the supply; and

(b) make reasonable compensation to that utility undertaker for any other expenses, loss, damages, penalty or costs incurred by the utility 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 a utility undertaker, its officers, servants, contractors or agents.

(3) A utility undertaker 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.

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

PART 2

FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

12.—(1) For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the operator.

(2) In this Part of this Schedule—

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

"the electronic communications code" has the same meaning as in section 106 (application of the electronic communications code) of the 2003 Act;

"electronic communications code network" means—

(a) so much of an electronic communications network or conduit system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the 2003 Act; and

(b) an electronic communications network which the 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; and

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

13. The exercise of the powers of article 28 (statutory undertakers) is subject to Part 10 (undertakers' works affecting electronic communications apparatus) of the electronic communications code.

14.—(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised development or its construction, or of any subsidence resulting from any of 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 make reasonable compensation to that operator for any

other expenses, loss, damages, penalty or costs incurred by it, by reason, or in consequence of, any such damage or interruption.

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

(3) The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the undertaker 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) Any difference arising between the undertaker and the operator under this Part of this Schedule must be referred to and settled by arbitration under article 38 (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

(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 ANGLIAN WATER

Application

17. For the protection of Anglian Water the following provisions have effect, unless otherwise agreed in writing between the undertaker and Anglian Water.

Interpretation

18. In this Part of this Schedule—

"alternative apparatus" means alternative apparatus adequate to enable Anglian Water to fulfil its statutory functions in a manner no less efficient than previously;

"Anglian Water" means Anglian Water Services Limited;

"apparatus" means—

(a) works, mains, pipes or other apparatus belonging to or maintained by Anglian Water for the purposes of water supply and sewerage;

(b) any drain or works vested in Anglian Water under the Water Industry Act 1991;

(c) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act;

(d) any drainage system constructed for the purpose of reducing the volume of surface water entering any public sewer belonging to Anglian Water; and

(e) includes a sludge main, disposal main or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus,

and for the purpose of this definition, where words are defined by section 219 of that Act, they shall be taken to have the same meaning;

"functions" includes powers and duties;

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

"Ofwat" means The Water Services Regulation Authority;

"plan" includes all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed.

Protective works to buildings

19. The undertaker, in the case of the powers conferred by article 15 (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 Anglian Water (such consent not to be unreasonably withheld or delayed).

Acquisition of land

20. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

Removal of apparatus

21.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or requires that Anglian Water's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of Anglian Water to maintain that apparatus in that land must not be extinguished, until—

(a) alternative apparatus has been constructed and is in operation to the reasonable satisfaction of Anglian Water in accordance with sub-paragraphs (2) to (8); and

(b) facilities and rights have been secured for that alternative apparatus in accordance with paragraph 22.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to Anglian Water 28 days' written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order an undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to Anglian Water the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed Anglian Water must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between Anglian Water and the undertaker or in default of agreement settled by arbitration in accordance with article 38 (arbitration).

(5) Anglian Water must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 38, and after the grant to Anglian Water of any such facilities and rights as are referred to in sub-paragraphs (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently

to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if Anglian Water determines acting reasonably that there is a technical requirement for 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 and Anglian Water gives notice in writing to the undertaker that it desires the undertaker to execute such reasonably required works, or to the extent that Anglian Water fails to proceed with that work in accordance with sub-paragraph (5), or the undertaker and Anglian Water otherwise agree, that work, instead of being executed by Anglian Water, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of Anglian Water.

(7) If Anglian Water fails either reasonably to approve, or to provide reasons for its failure to approve along with an indication of what would be required to make acceptable, any proposed details relating to required removal works under sub-paragraph (2) within 28 days of receiving a notice of the required works from the undertaker, then such details are deemed to have been approved. For the avoidance of doubt, any such "deemed consent" does not extend to the actual undertaking of the removal works, which shall remain the sole responsibility of Anglian Water or its contractors.

(8) Whenever alternative apparatus is to be or is being substituted for existing apparatus, the undertaker shall, before taking or requiring any further step in such substitution works, use reasonable endeavours to comply with Anglian Water's reasonable requests for a reasonable period of time to enable Anglian Water to—

(a) make network contingency arrangements; or

(b) bring such matters as it may consider reasonably necessary to the attention of end users of the utility in question.

Facilities and rights for alternative apparatus

22.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the undertaker and Anglian Water or in default of agreement settled by arbitration in accordance with article 38 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to Anglian Water than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to Anglian Water as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

(3) Such facilities and rights as are set out in this paragraph are deemed to include any statutory permits granted to the undertaker in respect of the apparatus in question, whether under the Environmental Permitting (England and Wales) Regulations 2016 or other legislation.

Retained apparatus

23.—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus (or any means of access to it) the removal of which has not been required by the undertaker under paragraph 21(2), the undertaker must submit to Anglian Water a plan of the works to be executed.

(2) Those works must be executed only in accordance with the plan submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by Anglian Water for the alteration or otherwise for the protection of the

apparatus, or for securing access to it, and Anglian Water is entitled to watch and inspect the execution of those works.

(3) Any requirements made by Anglian Water under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan under sub-paragraph (1) is submitted to it.

(4) If Anglian Water in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 20 to 22 apply as if the removal of the apparatus had been required by the undertaker under paragraph 21(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case must give to Anglian Water notice as soon as is reasonably practicable and a plan of those works as soon as is reasonably practicable subsequently and must comply with sub-paragraph (3) in so far as is reasonably practicable in the circumstances using its best endeavours to keep the impact of those emergency works on Anglian Water's apparatus, on the operation of its water and sewerage network and on end-users of the services Anglian Water provides to a minimum.

(7) For the purposes of sub-paragraph (1) and without prejudice to the generality of the principles set out in that sub-paragraph, works are deemed to be in land near Anglian Water's apparatus (where it is a pipe) if those works fall within the following distances measured from the medial line of such apparatus—

(a) 4 metres where the diameter of the pipe is less than 250 millimetres;

(b) 5 metres where the diameter of the pipe is between 250 and 400 millimetres; and

(c) 8 metres where the diameter of the pipe exceeds 400 millimetres.

Expenses and costs

24.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to Anglian Water all expenses reasonably incurred by Anglian Water in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in this Part of this Schedule.

(2) There must be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated, and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 38 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to Anglian Water by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

(a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to Anglian Water in respect of works by virtue of sub-paragraph (1), 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 Anglian Water 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.

(6) For the purpose of sub-paragraph (5), and for the avoidance of doubt, Anglian Water and the undertaker acknowledge that no financial benefit will exist in the event that Ofwat's final determination of Anglian Water's price control is set by reference to a capital maintenance allowance of apparatus at its actual age rather than the age it would have been if it had not been substituted.

25.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraphs 19 and 21(2), or by reason of any subsidence resulting from such development or works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of Anglian Water, or there is any interruption in any service provided, or in the supply of any goods, by Anglian Water, the undertaker must—

(a) bear and pay the cost reasonably incurred by Anglian Water in making good such damage or restoring the supply; and

(b) make reasonable compensation to Anglian Water for any other expenses, loss, damages, penalty or costs incurred by the undertaker,

by reason or in consequence of any such damage or interruption.

(2) The fact that any act or thing may have been done by Anglian Water on behalf of the undertaker or in accordance with a plan approved by Anglian Water or in accordance with any requirement of Anglian Water or under its supervision does not, subject to sub-paragraph (3), excuse the undertaker from liability under the provisions of sub-paragraph (1) unless Anglian Water fails to carry out and execute the works properly with due care and attention and in a skilful and professional like manner or in a manner that does not accord with the approved plan.

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

(4) Anglian Water must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made, without the consent of the undertaker (such consent not to be unreasonably withheld or delayed) who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(5) To the extent that Anglian Water has not used its reasonable endeavours to mitigate and minimise in whole or in part any costs, expenses, loss, demands, and penalties to which the provisions of this Part apply, that amount of such costs, expenses, loss, demands and penalties shall not be recoverable from the undertaker. If requested to do so by the undertaker, Anglian Water shall provide an explanation of how any claim has been minimised. The undertaker shall not be liable under this paragraph 25 for any claims to the extent that such claims are unreasonably incurred by Anglian Water or where Anglian Water fails to provide an explanation of how a claim has been minimised.

Cooperation

26. Where in consequence of the proposed construction of any of the authorised development, the undertaker or Anglian Water requires the removal of apparatus under paragraph 21(2) or Anglian Water makes requirements for the protection or alteration of apparatus under paragraph 23, the undertaker must use all reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of Anglian Water's undertaking, using existing processes where requested by Anglian Water, provided it is appropriate to do so, and Anglian Water must use all reasonable endeavours to co-operate with the undertaker for that purpose.

27. Where the undertaker identifies any apparatus which may belong to or be maintainable by Anglian Water but which does not appear on any statutory map kept for the purpose by Anglian Water, it shall inform Anglian Water of the existence and location of the apparatus as soon as reasonably practicable.

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

29. The undertaker and Anglian Water may by written agreement substitute any period of time for those time periods set out in this Part of this Schedule.

PART 4

FOR THE PROTECTION OF NATIONAL GAS TRANSMISSION PLC AS GAS UNDERTAKER

Application

30.—(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 32 (consent to transfer benefit of Order)—

(a) any agreement of the type mentioned in sub-paragraph (1) has effect as if it had been made between National Gas and the transferee or grantee (as the case may be); and

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

(3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to National Gas (but without prejudice to paragraph 38(3)(b)).

Interpretation

31. In this Part of this Schedule—

"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;

"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's approval a ground mitigation scheme;

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

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

"maintain" and "maintenance" shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of 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 1 National Grid House Warwick Technology Park, Gallows Hill, Warwick, CV34 6DA or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986;

"Network Code" means the network code prepared by National Gas pursuant to Standard Special Condition A11(3) of its Gas Transporter's Licence, which incorporates the Uniform Network Code, as defined in Standard Special Condition A11(6) of National Gas's Gas Transporters Licence, as both documents are amended from time to time;

"Network Code Claims" means any claim made against National Gas by any person or loss suffered by National Gas under the Network Code arising out of or in connection with any failure by National Gas to make gas available for off take at, or a failure to accept gas tendered for delivery from, any entry point to or exit point from the gas national transmission system, as a result of the authorised works or any costs and/or expenses incurred by National Gas as a result of or in connection with, it taking action (including purchase or buy back of capacity) for the purpose of managing constraint or potential constraint on the gas national transmission system which may arise as a result of the authorised works;

"plan" or "plans" include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

"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 paragraph 8 of T/SP/SSW/22 (National Gas's policies for safe working in proximity to gas apparatus, Specification for safe working in the vicinity of National Gas, High pressure Gas pipelines and associated installation requirements for third parties (T/SP/SSW/22)); and

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

On Street Apparatus

32. Except for paragraphs 37 (retained apparatus: protection), 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 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.

Protective works to buildings

33. The undertaker, in the case of the powers conferred by article 15 (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

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 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 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 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-paragraphs (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 36(1)) 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 will, 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-paragraphs (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

36.—(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 38 (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

37.—(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;

(d) the position of all apparatus;

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

(f) any intended maintenance regimes.

(3) The undertaker must not commence any works to which sub-paragraphs (1) and (2) apply until National Gas has given written approval of the plan so submitted.

(4) Any approval of National Gas required under sub-paragraph (3)—

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (6); and

(b) must not be unreasonably withheld.

(5) In relation to any work to which sub-paragraphs (1) and/or (2) apply, National Gas may require such modifications to be made to the 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 30 to 32 and 34 to 36 apply as if the removal of the apparatus had been required by the undertaker under paragraph 35(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 (6), (7) and (8) 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 this Order National Gas must comply with National Gas's 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 39.

Expenses

38.—(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;

(b) using its own compulsory purchase powers to acquire any necessary rights under paragraph 35(3); or

(c) exercising any compulsory purchase powers in this Order transferred to or benefitting National Gas;

(d) 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;

(e) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;

(f) the approval of plans;

(g) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;

(h) 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 38 (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

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 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 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 32 (consent to transfer benefit of the Order) subject to the proviso that once such works

become apparatus ("new apparatus"), any authorised works yet to be executed and not falling within this sub-paragraph (3)(b) will be subject to the full terms of this Part of this Schedule including this paragraph 39; and/or

(c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable.

(4) National Gas must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

(5) National Gas must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(6) National Gas must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where it is within National Gas's reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of National Gas's control and if reasonably requested to do so by the undertaker National Gas must provide an explanation of how the claim has been minimised, where relevant.

(7) Before carrying out any specified works the undertaker must put in place a policy of insurance with a reputable insurer the coverage and level of cover to be first agreed in writing between the undertaker and National Gas, and evidence of such insurance to be provided on request and thereafter maintained for the duration of the carrying out of any specified works.

(8) Any dispute between the undertaker and NGET regarding the terms, cover or insured level of the insurance policy shall be resolved in accordance with paragraph 38 (arbitration).

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 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

41.—(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 35(2) or National Gas 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 Gas's 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'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 paragraph 34(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

43. Save for differences or disputes arising under paragraphs 35(2), 35(4), 36(1) and 37 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 38 (arbitration).

Notices

44. Notwithstanding article 40 (service of notices), any plans submitted to National Gas by the undertaker pursuant to paragraph 37 must be submitted to https://lsbud.co.uk/ or such other address as National Gas may from time to time appoint instead for that purpose and notify to the undertaker in writing.

PART 5

FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

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

(2) In this part of this Schedule—

"Agency" means the Environment Agency;

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

"drainage work" means any main river and includes any land which provides or is expected to provide flood storage capacity for any main river and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage, flood defence or tidal monitoring;

"fishery" means any waters containing fish and fish in, or migrating to or from, such waters and the spawn, spawning ground, habitat or food of such fish;

"main river" has the same meaning given in section 113 of the Water Resources Act 1991;

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

"remote defence" means any berm, wall or embankment that is constructed for the purposes of preventing or alleviating flooding from, or in connection with, any main river;

"specified work" means so much of any work or operation authorised by this Order as is in, on, under, over or within—

(a) 8 metres of the base of a remote defence which is likely to—

(i) endanger the stability of, cause damage or reduce the effectiveness of that remote defence, or

(ii) interfere with the Agency's access to or along that remote defence;

(b) 8 metres of a drainage work or is otherwise likely to—

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

(ii) affect the flow, purity or quality of water in any watercourse or other surface waters;

(iii) cause obstruction to the free passage of fish or damage to any fishery;

(iv) affect the conservation, distribution or use of water resources; or

(v) affect the conservation value of the main river and habitats in its immediate vicinity;

or which involves—

(c) an activity that includes dredging, raising or taking of any sand, silt, ballast, clay, gravel or other materials from or off the bed or banks of a drainage work (or causing such

materials to be dredged, raised or taken), including hydrodynamic dredging or desilting; and

(d) any quarrying or excavation within 16 metres of a drainage work which is likely to cause damage to or endanger the stability of the banks or structure of that drainage work.

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

Submission and approval of plans

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

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the Agency, or determined under paragraph 56.

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

(a) must not be unreasonably withheld or delayed;

(b) is deemed to have been refused if it is neither given nor refused within 2 months of the submission of the plans or receipt of further particulars if such particulars have been requested by the Agency for approval (under sub-paragraph (1)) whichever is later; and

(c) may be given subject to such reasonable requirements as the Agency may have for the protection of any drainage work or the fishery or for the protection of water resources, or for the prevention of flooding or pollution or for nature conservation or in the discharge of its environmental duties.

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

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

Construction of protective works

47. Without limiting paragraph 46, the requirements which the Agency may have under that paragraph include conditions requiring the undertaker, at its own expense, to construct such protective works, whether temporary or permanent, before or during the construction of the specified works (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

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

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

by reason of any specified work.

Timing of works and service of notices

48.—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the Agency under paragraph 47, must be constructed—

(a) without unreasonable delay in accordance with the plans approved under this Part of this Schedule; and

(b) to the reasonable satisfaction of the Agency,

and the Agency is entitled by its officer to watch and inspect the construction of such works.

(2) The undertaker must give to the Agency not less than 14 days' notice in writing of its intention to commence construction of any specified work and notice in writing of its completion not later than 7 days after the date on which it is completed.

(3) If the Agency reasonably requires, the undertaker must construct all or part of the protective works so that they are in place prior to the construction of any specified work to which the protective works relate.

Works not in accordance with this Schedule

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

(2) Subject to sub-paragraph (3) if, within a reasonable period, being not less than 28 days beginning with the date when a notice under sub-paragraph (1) is served upon the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may execute the works specified in the notice and any reasonable expenditure incurred by the Agency in so doing is recoverable from the undertaker.

(3) In the event of any dispute as to whether sub-paragraph (1) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the Agency must not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (2) until the dispute has been finally determined in accordance with paragraph 56.

Maintenance of works

50.—(1) Subject to sub-paragraph (6) the undertaker must from the commencement of the construction of the specified works maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation and on land held by the undertaker for the purposes of or in connection with the specified works, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

(2) If any such drainage work which the undertaker is liable to maintain is not maintained to the reasonable satisfaction of the Agency, the Agency 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 Agency 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 Agency reasonably requires.

(3) Subject to sub-paragraph (5) 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 requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may do what is necessary for such compliance and any reasonable expenditure incurred by the Agency in so doing is recoverable from the undertaker.

(4) If there is any failure by the undertaker to obtain consent or comply with conditions imposed by the Agency in accordance with these protective provisions the Agency may serve written notice requiring the undertaker to cease all or part of the specified works and the undertaker must cease the specified works or part thereof until it has obtained the consent or complied with the condition unless the cessation of the specified works or part thereof would cause greater damage than compliance with the written notice.

(5) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the Agency must not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined in accordance with paragraph 56.

(6) This paragraph does not apply to—

(a) drainage works which are vested in the Agency, or which the Agency or another person is liable to maintain and is not proscribed by the powers of the Order from doing so; and

(b) any obstruction of a drainage work expressly authorised in the approval of specified works plans and carried out in accordance with the provisions of this Part provided that any obstruction is removed as soon as reasonably practicable.

Remediating impaired drainage work

51. If by reason of the construction of any specified work or of the failure of any such work, the efficiency of any drainage work for flood defence purposes is impaired, or that drainage work is otherwise damaged, such impairment or damage must be made good by the undertaker to the reasonable satisfaction of the Agency and if the undertaker fails to do so, the Agency may make good the impairment or damage and recover any expenditure incurred by the Agency in so doing from the undertaker.

Agency access

52. If by reason of construction of the specified work the Agency's access to flood defences or equipment maintained for flood defence purposes is materially obstructed, the undertaker must provide such alternative means of access that will allow the Agency to maintain the flood defence or use the equipment no less effectively than was possible before the obstruction within 24 hours of or as soon as reasonably practicable after the undertaker becoming aware of such obstruction.

Free passage of fish

53.—(1) The undertaker must take all such measures as may be reasonably practicable to prevent any interruption of the free passage of fish in the fishery during the construction of any specified work.

(2) If by reason of—

(a) the construction of any specified work; or

(b) the failure of any such work,

damage to the fishery is caused, or the Agency has reason to expect that such damage may be caused, the Agency may serve notice on the undertaker requiring it to take such steps as may be reasonably practicable to make good the damage, or, as the case may be, to protect the fishery against such damage.

(3) If within such time as may be reasonably practicable for that purpose after the receipt of written notice from the Agency of any damage or expected damage to a fishery, the undertaker fails to take such steps as are described in sub-paragraph (2), the Agency may take those steps and any expenditure incurred by the Agency in so doing is recoverable from the undertaker.

(4) In any case where immediate action by the Agency is reasonably required in order to secure that the risk of damage to the fishery is avoided or reduced, the Agency may take such steps as are reasonable for the purpose, and may recover from the undertaker any expenditure incurred in so doing provided that notice specifying those steps is served on the undertaker as soon as reasonably practicable after the Agency has taken, or commenced to take, the steps specified in the notice.

Indemnity

54. The undertaker indemnifies the Agency in respect of all costs, charges and expenses which the Agency may reasonably incur—

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

(b) in the inspection of the construction of the specified works or any protective works required by the Agency under this Part of this Schedule; and

(c) in the carrying out of any surveys or tests by the Agency which are reasonably required in connection with the construction of the specified works.

55.—(1) The undertaker is responsible for and indemnifies the Agency against all costs and losses, liabilities, claims and demands not otherwise provided for in this Schedule which may be reasonably incurred or suffered by the Agency by reason of, or arising out of—

(a) the authorised development; or

(b) the construction, operation or maintenance of any specified works comprised within the authorised development or the failure of any such works comprised within them; or

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

(2) For the avoidance of doubt, in sub-paragraph (1)—

(a) "costs" includes—

(i) expenses and charges;

(ii) staff costs and overheads;

(iii) legal costs;

(b) "losses" includes physical damage;

(c) "claims" and "demands" include as applicable—

(i) costs (within the meaning of sub-paragraph (2(a)) incurred in connection with any claim or demand;

(ii) any interest element of sums claimed or demanded;

(d) "liabilities" includes—

(i) contractual liabilities;

(ii) tortious liabilities (including liabilities for negligence or nuisance);

(iii) liabilities to pay statutory compensation or for breach of statutory duty;

(iv) liabilities to pay statutory penalties imposed on the basis of strict liability (but does not include liabilities to pay other statutory penalties).

(3) The Agency must give to the undertaker reasonable notice of any such claim or demand and must not settle or compromise a claim without the agreement of the undertaker and that agreement must not be unreasonably withheld or delayed.

(4) The Agency must, at all times take reasonable steps to prevent and mitigate any such claims, demands, proceedings, costs, damages, expenses or loss.

(5) The fact that any work or thing has been executed or done by the undertaker in accordance with a plan approved by the Agency, or to its satisfaction, or in accordance with any directions or award of an arbitrator, must not relieve the undertaker from any liability under the provisions of this Part of this Schedule.

(6) Nothing in this paragraph imposes any liability on the undertaker with respect to any costs, charges, expenses, damages, claims, demands or losses to the extent that they are attributable to the neglect or default of the Agency, its officers, servants, contractors or agents.

Disputes

56. Any dispute arising between the undertaker and the Agency under this Part of this Schedule must, if the parties agree, be determined by arbitration under article 38 (arbitration), but failing agreement be determined by the Secretary of State for Environment, Food and Rural Affairs or its successor and the Secretary of State for Energy Security and Net Zero or its successor acting jointly on a reference to them by the undertaker or the Agency, after notice in writing by one to the other.

PART 6

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

Application

57.—(1) For the protection of NGET as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and NGET.

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and NGET, where the benefit of this Order is transferred or granted to another person under article 32 (consent to transfer benefit of Order)—

(a) any agreement of the type mentioned in sub-paragraph (1) has effect as if it had been made between NGET and the transferee or grantee (as the case may be); and

(b) written notice of the transfer or grant must be given to NGET 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 NGET (but without prejudice to paragraph 66(3)(b)).

Interpretation

58. In this Part of this Schedule—

"1991 Act" means the New Roads and Street Works Act 1991;

"alternative apparatus" means appropriate alternative apparatus to the satisfaction of NGET to enable NGET to fulfil its statutory functions in a manner no less efficient than previously;

"apparatus" means any electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by NGET together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of NGET 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 NGET (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 NGET'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 NGET receives under its electricity transmission licence which is caused by an event on its transmission system that causes electricity not to be supplied to a demand customer and which arises as a result of the authorised works;

"maintain" and "maintenance" shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of NGET: construct, use, repair, alter, inspect, renew or remove the apparatus;

"NGET" 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;

"NGESO" has the same meaning 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;

"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 62(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 62(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 NGET 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 NGET's transmission system which arises as a result of the authorised works;

"Transmission Owner" has the same meaning defined in the STC;

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

On Street Apparatus

59. Except for paragraphs 64 (retained apparatus: protection), 65 (expenses) and 66 (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 NGET, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and NGET are regulated by the provisions of Part 3 of the 1991 Act.

Protective works to buildings

60. The undertaker, in the case of the powers conferred by article 15 (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 NGET.

Acquisition of land

61.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not—

(a) appropriate or acquire or take temporary possession of any land or apparatus; or

(b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of NGET 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 NGET 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 NGET or affect the provisions of any enactment or agreement regulating the relations between NGET and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as NGET reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between NGET and the undertaker acting reasonably and which must be no less favourable on the whole to NGET unless otherwise agreed by NGET, 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 NGET and the undertaker the undertaker and NGET 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 NGET and/or other enactments relied upon by NGET 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 NGET under paragraph 64 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).

Removal of apparatus

62.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in or possesses temporarily any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of NGET 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 NGET in accordance with sub-paragraphs (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 NGET 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 NGET 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 NGET to its satisfaction (taking into account paragraph 63(1)) 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, NGET will, 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 NGET 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 NGET and the undertaker.

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

Facilities and rights for alternative apparatus

63.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for NGET 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 NGET and must be no less favourable on the whole to NGET than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by NGET.

(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 NGET 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 70 (arbitration) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to NGET as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection

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

(2) In relation to specified works the plan to be submitted to NGET 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 NGET'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 NGET has given written approval of the plan so submitted.

(5) Any approval of NGET required under sub-paragraph (4)—

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (6) or (8); and

(b) must not be unreasonably withheld.

(6) In relation to any work to which sub-paragraphs (2) or (3) apply, NGET 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.

(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 NGET and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (6) or (8) by NGET for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and NGET will be entitled to watch and inspect the execution of those works.

(8) Where NGET 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 NGET's satisfaction prior to the commencement of any authorised development (or any relevant part thereof) for which protective works are required and NGET 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 NGET 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, paragraphs 57 to 59 and 61 to 63 apply as if the removal of the apparatus had been required by the undertaker under paragraph 62(2).

(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 development, 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 NGET notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances and comply with sub-paragraph (12) at all times.

(12) At all times when carrying out any works authorised under the Order, the undertaker must comply with NGET's policies for development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".

Expenses

65.—(1) Save where otherwise agreed in writing between NGET and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to NGET within 30 days of receipt of an itemised invoice or claim from NGET all charges, costs and expenses reasonably anticipated within the following three months or reasonably and properly incurred by NGET 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 NGET in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by NGET as a consequence of NGET—

(i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 62(3); or

(ii) exercising any compulsory purchase powers in the Order transferred to or benefitting NGET;

(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 70 (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 NGET 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 NGET 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 NGET 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

66.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of NGET, or there is any interruption in any service provided, or in the supply of any goods, by NGET, or NGET 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 NGET the cost reasonably and properly incurred by NGET in making good such damage or restoring the supply; and

(b) indemnify NGET for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from NGET, by reason or in consequence of any such damage or interruption or NGET becoming liable to any third party and including STC Claims or an Incentive Deduction other than arising from any default of NGET.

(2) The fact that any act or thing may have been done by NGET on behalf of the undertaker or in accordance with a plan approved by NGET or in accordance with any requirement of NGET 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 NGET 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 NGET, 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 NGET 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 32 (consent to transfer benefit of the Order) subject to the proviso that once such works become apparatus ("new apparatus"), any authorised works yet to be executed and not falling within this sub-paragraph (3)(b) will be subject to the full terms of this Part of this Schedule including this paragraph 66; and/or

(c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable.

(4) NGET 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) NGET 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) NGET 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 NGET'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 NGET's control and if reasonably requested to do so by the undertaker NGET must provide an explanation of how the claim has been minimised, where relevant.

(7) Before carrying out any specified works the undertaker must put in place a policy of insurance with a reputable insurer the coverage and level of cover to be first agreed in writing between the Undertaker and NGET, and evidence of such insurance to be provided on request and thereafter maintained for the duration of the carrying out of any specified works.

(8) Any dispute between the undertaker and NGET regarding the terms, cover or insured level of the insurance policy shall be resolved in accordance with paragraph 70 (arbitration).

Enactments and agreements

67. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between NGET 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 NGET in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

68.—(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or NGET requires the removal of apparatus under paragraph 62(2) or NGET makes requirements for the protection or alteration of apparatus under paragraph 64, 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 NGET's undertaking and NGET shall use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever NGET's consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

Access

69. If in consequence of the agreement reached in accordance with paragraph 61(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 NGET to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

70. Save for differences or disputes arising under paragraphs 62(2), 62(4), 63(1) and 64 any difference or dispute arising between the undertaker and NGET under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and NGET, be determined by arbitration in accordance with article 38 (arbitration).

Notices

71. Notwithstanding article 40 (service of notices), any plans submitted to NGET by the undertaker pursuant to paragraph 64 must be submitted using the LSBUD system (https://lsbud.co.uk/) or to such other address as NGET may from time to time appoint instead for that purpose and notify to the undertaker in writing.

PART 7

FOR THE PROTECTION OF DRAINAGE AUTHORITIES

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

73. In this Part—

"authorised development" has the same meaning as in article 2(1) (interpretation) of this Order and (unless otherwise specified) for the purposes of this Part of this Schedule includes the operation and maintenance of the authorised development and the construction of any works authorised by this Part of this Schedule;

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

"drainage authority" means—

(a) in relation to an ordinary watercourse, the drainage board concerned within the meaning of section 23 (prohibition on obstructions etc. in watercourses) of the Land Drainage Act 1991; or

(b) in the case of any area for which there is no such drainage board, the lead local flood authority within the meaning of section 6 (other definitions) of the Flood and Water Management Act 2010;

"drainage work" means any ordinary watercourse and includes any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage or flood defence, which is the responsibility of the drainage authority;

"ordinary watercourse" has the meaning given by section 72 (interpretation) of the Land Drainage Act 1991;

"plans" includes any information reasonably required by the drainage authority including location details, grid references, sections, drawings, specifications, assessments 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 9 metres of a drainage work which is the responsibility of Black Sluice Internal Drainage Board, or, in the case of a drainage work which is the responsibility of a drainage authority other than Black Sluice Internal Drainage Board, within 8 metres of such drainage work or which is otherwise likely to affect the flow of water in any watercourse.

74.—(1) Before commencing construction of a 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) A 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 81.

(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 28 days of the submission of the plans for approval, or submission of further particulars (where required by the drainage authority under sub-paragraph (1)) whichever is the later; and

(c) may be given subject to such reasonable requirements as the drainage authority may make for the protection of any drainage work taking into account the terms of this Order.

(4) Any refusal under this paragraph must be accompanied by a statement of the reasons for refusal.

75. Without limiting the scope of paragraph 74, 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 taking into account the terms of this Order—

(a) to safeguard any drainage work against damage by reason of any specified work; or

(b) to secure that the efficiency of any drainage work for flood defence and land drainage purposes is not impaired, and that the risk of flooding is not otherwise increased beyond the level of flood risk that was assessed in the environmental statement, by reason of any specified work.

76.—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the drainage authority under paragraph 75, 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 seven days after the date on which the completed specified work 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 (provided such expense would be reasonable) 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 agreed, 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 reasonably necessary steps to comply with the reasonable 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 reasonably incurred by it in so doing is recoverable from the undertaker.

(6) In the event of any dispute as to whether sub-paragraph (4) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the drainage authority must not except in an emergency exercise the powers conferred by sub-paragraph (5) until the dispute has been finally determined.

77.—(1) Subject to sub-paragraph (5), the undertaker must from the commencement of the construction of the specified work until the completion of the specified work maintain in reasonable repair and condition and free from obstruction any drainage work which 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 which 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 the 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 specified 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 reasonably necessary 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 which are vested in the drainage authority, or which 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 provided that any obstruction is removed as soon as reasonably practicable.

78. If by reason of the construction of a specified work or of the failure of any such work the efficiency of any drainage work for flood defence purposes or land drainage is impaired, or that drainage work is otherwise damaged, the impairment or damage must be made good by the undertaker as soon as reasonably practicable 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.

79. The undertaker must pay reasonable compensation to the drainage authority in respect of costs, charges and expenses which the drainage authority may reasonably incur—

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

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

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

80.—(1) The undertaker must pay reasonable compensation to the drainage authority in respect of liabilities, costs and losses, which may be reasonably incurred or suffered by the drainage authority, by reason of—

(a) the construction of any specified works comprised within the authorised development; or

(b) any act or omission of the undertaker, its employees, contractors or agents or others while engaged upon the construction of the authorised development.

(2) The drainage authority must give to the undertaker reasonable notice of any such claim or demand.

(3) The undertaker may at its own expense conduct all negotiations for the settlement of the same and any litigation that may arise therefrom.

(4) The drainage authority must not compromise or settle any such claim or make any admission which might be prejudicial to the claim without the agreement of the undertaker which agreement must not be unreasonably withheld or delayed.

(5) The drainage authority will, having regard to its statutory functions, at all times take reasonable steps to prevent and mitigate any such claims, demands, proceedings, costs, damages, expenses or losses.

(6) The drainage authority will, at the request of the undertaker and having regard to its statutory functions, afford all reasonable assistance for the purpose of contesting any such claim or action, and is entitled to be repaid its reasonable expenses reasonably incurred in so doing.

(7) 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.

(8) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage to the extent that it is attributable to the act, neglect or default of the drainage authority or the breach of a statutory duty of the drainage authority, its officers, servants, contractors or agents.

81. Any dispute arising between the undertaker and the drainage authority under this Part must, unless otherwise agreed in writing between the parties, be determined by arbitration under article 38 (arbitration).

PART 8

FOR THE PROTECTION OF RAILWAY INTERESTS

82. The provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 101 of this Part of this Schedule any other person on whom rights or obligations are conferred by that paragraph.

83. In this Part of this Schedule—

"asset protection agreement" means an agreement to regulate the construction and maintenance of the specified work in a form prescribed from time to time by Network Rail;

"construction" includes execution, placing, alteration and reconstruction and "construct" and "constructed" have corresponding meanings;

"the engineer" means an engineer appointed by Network Rail for the purposes of this Order;

"network licence" means the network licence, as the same is amended from time to time, granted to Network Rail by the Secretary of State in exercise of their powers under section 8 (licences) of the Railways Act 1993;

"Network Rail" means Network Rail Infrastructure Limited (company number 02904587, whose registered office is at Waterloo General Office, London SE1 8SW) and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition "associated company" means any company which is (within the meaning of section 1159 of the Companies Act 2006) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited and any successor to Network Rail Infrastructure Limited's railway undertaking;

"plans" includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

"railway operational procedures" means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

"railway property" means any railway belonging to Network Rail and—

(a) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and

(b) any easement or other property interest held or used by Network Rail or a tenant or licencee of Network Rail for the purposes of such railway or works, apparatus or equipment;

"regulatory consents" means any consent or approval required under—

(a) the Railways Act 1993;

(b) the network licence; and/or

(c) any other relevant statutory or regulatory provisions;

by either the Office of Rail and Road or the Secretary of State for Transport or any other competent body including change procedures and any other consents, approvals of any access or beneficiary that may be required in relation to the authorised development;

"specified work" means so much of any of the authorised development as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property and, for the avoidance of doubt, includes the maintenance of such works under the powers conferred by article 5 (maintenance of authorised development) in respect of such works.

84.—(1) Where under this Part of this Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail must—

(a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and

(b) use their reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development pursuant to this Order.

85.—(1) The undertaker must not exercise the powers conferred by—

(a) article 3 (development consent etc. granted by this Order);

(b) article 5 (power to maintain authorised development);

(c) article 14 (discharge of water);

(d) article 16 (authority to survey and investigate the land);

(e) article 17 (compulsory acquisition of land);

(f) article 19 (compulsory acquisition of rights);

(g) article 20 (private rights);

(h) article 22 (acquisition of subsoil only);

(i) article 23 (power to override easements and other rights);

(j) article 26 (temporary use of land for carrying out the authorised development);

(k) article 27 (temporary use of land for maintaining the authorised development);

(l) article 28 (statutory undertakers);

(m) article 35 (felling or lopping of trees and removal of hedgerows);

(n) article 36 (trees subject to tree preservation orders);

(o) the powers conferred by section 11(3) (power of entry) of the 1965 Act;

(p) the powers conferred by section 203 (power to override easements and rights) of the Housing and Planning Act 2016;

(q) the powers conferred by section 172 (right to enter and survey land) of the Housing and Planning Act 2016;

(r) any powers in respect of the temporary possession of land under the Neighbourhood Planning Act 2017;

in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(3) The undertaker must not exercise the powers conferred by sections 271 or 272 of the 1990 Act, article 28 (statutory undertakers), article 23 (power to override easements and other rights) or article 20 (private rights), in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

(4) The undertaker must not under the powers of this Order acquire or use or acquire new rights over, or seek to impose any restrictive covenants over, any railway property, or extinguish any existing rights of Network Rail in respect of any third party property, except with the consent of Network Rail.

(5) The undertaker must not under the powers of this Order do anything which would result in railway property being incapable of being used or maintained or which would affect the safe running of trains on the railway.

(6) Where Network Rail is asked to give its consent pursuant to this paragraph, such consent must not be unreasonably withheld but may be given subject to reasonable conditions but it shall never be unreasonable to withhold consent for reasons of operational or railway safety (such matters to be in Network Rail's absolute discretion).

(7) The undertaker must enter into an asset protection agreement prior to the carrying out of any specified work.

86.—(1) The undertaker must before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration under article 38 (arbitration) of this Order.

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated their disapproval of those plans and the grounds of such disapproval the undertaker may serve upon the engineer written notice requiring the engineer to intimate approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further 28 days the engineer has not intimated approval or disapproval, the engineer shall be deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail must construct it without unnecessary delay on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.

(4) When signifying their approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes must be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works must be carried out at the expense of the undertaker in either case without unnecessary delay and the undertaker must not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to their reasonable satisfaction.

87.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 86(4) must, when commenced, be constructed—

(a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 86;

(b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;

(c) in such manner as to cause as little damage as is possible to railway property; and

(d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction shall be caused by the carrying out of, or in consequence of the construction of a specified work, the undertaker must, notwithstanding any such approval, make good such damage and must pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Part of this Schedule imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents or any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

88. The undertaker must—

(a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and

(b) supply the engineer with all such information as they may reasonably require with regard to a specified work or the method of constructing it.

89. Network Rail must at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by Network Rail under this Part of this Schedule during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

90.—(1) If any permanent or temporary alterations or additions to railway property are identified as being reasonably necessary in consequence of the construction or completion of a specified work during a period of 36 months after completion of that work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the undertaker 56 days' notice (or in the event of an emergency or safety critical issue such notice as is reasonable in the circumstances) of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work is to be constructed, Network Rail must assume construction of that part of the specified work and the undertaker must, notwithstanding any such approval of a specified work under paragraph 86(3), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 91(a) provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

(4) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving must be set off against any sum payable by the undertaker to Network Rail under this paragraph.

91. The undertaker must repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

(a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 86(3) or in constructing any protective works under the provisions of paragraph 86(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;

(b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work;

(c) in respect of the employment or procurement of the services of any inspectors, signallers, watch-persons and other persons whom it shall be reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;

(d) in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and

(e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

92.—(1) In this paragraph—

"EMI" means, subject to sub-paragraph (2), electromagnetic interference with Network Rail apparatus generated by the operation of the authorised development where such interference is of a level which adversely affects the safe operation of Network Rail's apparatus; and

"Network Rail's apparatus" means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised development) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail's apparatus carried out after approval of plans under paragraph 86(1) for the relevant part of the authorised development giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the undertaker must in the design and construction of the authorised development take all measures necessary to prevent EMI and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) In order to facilitate the undertaker's compliance with sub-paragraph (3)—

(a) the undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail's apparatus which may be at risk of EMI, and thereafter must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 86(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;

(b) Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail's apparatus identified pursuant to sub-paragraph (a); and

(c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail's apparatus identified pursuant to sub-paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail's apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail's apparatus, but the means of prevention and the method of their execution must be selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 86(1) has effect subject to the sub-paragraph.

(6) Prior to the commencement of operation of the authorised development the undertaker shall test the use of the authorised development in a manner that shall first have been agreed with Network Rail and if, notwithstanding any measures adopted pursuant to sub-paragraph (3), the testing of the authorised development causes EMI then the undertaker must immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) the undertaker's apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail's apparatus.

(7) In the event of EMI having occurred—

(a) the undertaker must afford reasonable facilities to Network Rail for access to the undertaker's apparatus in the investigation of such EMI;

(b) Network Rail must afford reasonable facilities to the undertaker for access to Network Rail's apparatus in the investigation of such EMI;

(c) Network Rail must make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail's apparatus or such EMI; and

(d) the undertaker shall not allow the use or operation of the authorised development in a manner that has caused or will cause EMI until measures have been taken in accordance with this paragraph to prevent EMI occurring.

(8) Where Network Rail approves modifications to Network Rail's apparatus pursuant to sub-paragraphs (5) or (6)—

(a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus;

(b) any modifications to Network Rail's apparatus approved pursuant to those sub-paragraphs must be carried out and completed by the undertaker in accordance with paragraph 87.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 96(1) applies to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.

(10) For the purpose of paragraph 91(a) any modifications to Network Rail's apparatus under this paragraph shall be deemed to be protective works referred to in that paragraph.

93. If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.

94. The undertaker must not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail unless it has first consulted Network Rail and it must comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and

any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

95. Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work must, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to Network Rail.

96.—(1) The undertaker must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule which may be occasioned to or reasonably incurred by Network Rail—

(a) by reason of the construction, maintenance or operation of a specified work or the failure thereof;

(b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work;

(c) by reason of any act or omission of the undertaker or any person in its employ or of its contractors or others whilst accessing to or egressing from the authorised development;

(d) in respect of any damage caused to or additional maintenance required to, railway property or any such interference or obstruction or delay to the operation of the railway as a result of access to or egress from the authorised development by the undertaker or any person in its employ or of its contractors or others; or

(e) in respect of costs incurred by Network Rail in complying with any railway operational procedures or obtaining any regulatory consents which procedures are required to be followed or consents obtained to facilitate the carrying out or operation of the authorised development;

and the undertaker must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission: and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision shall not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(2) Network Rail must—

(a) give the undertaker reasonable written notice of any such claims or demands;

(b) not make any settlement or compromise of such a claim or demand without the prior consent of the undertaker; and

(c) take such steps as are within its control and are reasonable in the circumstances to mitigate any liabilities relating to such claims or demands.

(3) The sums payable by the undertaker under sub-paragraph (1) shall if relevant include a sum equivalent to the relevant costs.

(4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(5) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs shall, in the event of default, be enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-paragraph (4).

(6) In this paragraph—

"the relevant costs" means the costs, losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any specified work including but not limited to any restriction of the use of Network Rail's railway network as a result of

the construction, maintenance or failure of a specified work or any such act or omission as mentioned in sub-paragraph (1); and

"train operator" means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

97. Network Rail must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part of this Schedule (including the amount of the relevant costs mentioned in paragraph 96) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Part of this Schedule (including any claim relating to those relevant costs).

98. In the assessment of any sums payable to Network Rail under this Part of this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part of this Schedule or increasing the sums so payable.

99. The undertaker and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the undertaker of—

(a) any railway property shown on the works and land plans and described in the book of reference;

(b) any lands, works or other property held in connection with any such railway property; and

(c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

100. Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part I of the Railways Act 1993.

101. The undertaker must give written notice to Network Rail if any application is proposed to be made by the undertaker for the Secretary of State's consent, under article 29 (consent transfer of benefit of the Order) of this Order and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

(a) the nature of the application to be made;

(b) the extent of the geographical area to which the application relates; and

(c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

102. The undertaker must no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 37 (certification of plans and documents, etc.) are certified by the Secretary of State, provide a set of those plans to Network Rail in a format specified by Network Rail.

103. Any dispute arising under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and Network Rail, be determined in accordance with the provisions of article 38 (arbitration).

PART 9

FOR THE PROTECTION OF LINCOLNSHIRE FIRE AND RESCUE

Interpretation

104.—(1) For the protection of Lincolnshire Fire and Rescue as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and Lincolnshire Fire and Rescue.

(2) In this Part of this Schedule—

"Index Linked" means an increase in the sums payable on an annual basis or pro rata per diem in accordance with the most recent published figure for the Consumer Price Index, or during any period when no such index exists the index which replaces it or is the nearest equivalent to it; and

"Lincolnshire Fire and Rescue" means Lincolnshire County Council in its capacity as a fire and rescue authority pursuant to section 1(2)(a) of the Fire and Rescue Services Act 2004.

Site visits

105.—(1) The undertaker must, prior to the date of final commissioning of Work No. 2, use reasonable endeavours to facilitate a site familiarisation exercise in connection with Work No. 2 of the authorised development for Lincolnshire Fire and Rescue for the purposes of providing the necessary assurance to Lincolnshire Fire and Rescue that all the required systems and measures are in place in accordance with the battery safety management plan.

(2) Following the first anniversary of the date of final commissioning of Work No. 2 of the authorised development, the undertaker must use reasonable endeavours to facilitate an annual review of Work No. 2 by Lincolnshire Fire and Rescue at the reasonable request of Lincolnshire Fire and Rescue, up until the year in which the undertaker commences decommissioning of Work No. 2.

Costs

106.—(1) Pursuant to the provisions set out at paragraph 105, the undertaker must pay to Lincolnshire Fire and Rescue—

(a) £16,665 in the first year of operation of the authorised development for, or in connection with Lincolnshire Fire and Rescue's attendance at the site familiarisation exercise facilitated by the undertaker pursuant to paragraph 105(1), such sum to be paid within 30 days following the date of the site familiarisation exercise; and

(b) £1,530 in each subsequent year of operation of the authorised development until the date of decommissioning of Work No. 2, such sums to be paid within 30 days of the date of the annual review for that year, if in that year an annual review has taken place pursuant to paragraph 105(2).

(2) The costs payable under this sub-paragraph (1)(b) are to be Index Linked.

Arbitration

107. Any difference or dispute arising between the undertaker and Lincolnshire Fire and Rescue under this Part of this Schedule must be determined by arbitration in accordance with article 38 (arbitration).

PART 10

FOR THE PROTECTION OF NATIONAL GRID VIKING LINK LIMITED

Application

108.—(1) For the protection of Viking Link as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and Viking Link.

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and Viking Link, where the benefit of this Order is transferred or granted to another person under article 32 (consent to transfer benefit of the Order)—

(a) any agreement of the type mentioned in sub-paragraph (1) has effect as if it had been made between Viking Link and the transferee or grantee (as the case may be); and

(b) written notice of the transfer or grant must be given to Viking Link on or before the date of that transfer or grant.

(3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to Viking Link (but without prejudice to paragraph 115(3)(b).

Interpretation

109. In this Part of this Schedule—

"1991 Act" means the New Roads and Street Works Act 1991;

"apparatus" means any electric lines, cables or electrical plant as defined in the Electricity Act 1989 and including convertor stations and sub-stations, belonging to or maintained by Viking Link together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of Viking Link for the purposes of the conveyance of electricity between Great Britain and Denmark and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

"authorised works" has the same meaning as is given to the term "authorised development" in article 2(1) of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this 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;

"CUSC" means the Connection and User of Systems Code, being the contractual framework for connecting to and using the National Electricity Transmission System administered by the National Grid ESO;

"CUSC Claims" means any claim made under the CUSC against Viking Link 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 or solely as a result of the de-energisation of plant and apparatus forming part of Viking Link's interconnector system which arises as a result of the authorised works;

"deed of consent" means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

"functions" includes powers and duties;

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

"ground monitoring scheme" means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for Viking Link's approval a ground mitigation scheme;

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

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

"Interconnector Owner" means Viking Link or such other entity which holds the licence to operate the apparatus from time to time;

"maintain" and "maintenance" shall include the ability and right to do any of the following in relation to any apparatus of Viking Link: construct, use, repair, inspect, renew or remove the apparatus;

"Viking Link" means National Grid Viking Link Limited (Company Number 09075537) whose registered office is at 1-3 Strand, London, UK WC2N 5EH or any successor as a licence holder within the meaning of Part 1 of the Electricity Act 1989;

"plan" or "plans" include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

"specified works" means any of the authorised works or activities undertaken in association with the authorised works which—

(a) will or may be situated over, or within 15 metres measured in any direction of any apparatus; and/or

(b) may in any way adversely affect any apparatus;

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

On Street Apparatus

110. Except for paragraphs 113 (apparatus: protection), 114 (expenses) and 115 (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 Viking Link, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and Viking Link are regulated by the provisions of Part 3 of the 1991 Act.

Protective works to buildings

111. The undertaker, in the case of the powers conferred by article 15 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of Viking Link.

Acquisition of land

112.—(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 Viking Link otherwise than by agreement (such agreement not to be unreasonably withheld).

(2) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between Viking Link and the undertaker) that is subject to the requirements of this Part of this

Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of Viking Link or affect the provisions of any enactment or agreement regulating the relations between Viking Link and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as Viking Link reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between Viking Link and the undertaker acting reasonably and which must be no less favourable on the whole to Viking Link unless otherwise agreed by Viking Link, and it will be the responsibility of the undertaker to procure and/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 Viking Link and the undertaker the undertaker and Viking Link agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus (including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by Viking Link and/or other enactments relied upon by Viking Link as of right or other use in relation to the apparatus, then the provisions in this Schedule shall prevail.

(4) Any agreement or consent granted by Viking Link under paragraph 113 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).

Apparatus: protection

113.—(1) Not less than 56 days before the commencement of any specified works, the undertaker must submit to Viking Link a plan of the works to be executed and seek from Viking Link details of the underground extent of their electricity assets.

(2) In relation to specified works the plan to be submitted to Viking Link under sub-paragraph (1) must include a method statement and describe—

(a) the exact position of the works;

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

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

(d) the position of all apparatus;

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

(f) any intended maintenance regimes;

(g) an assessment of risks of rise of earth issues; and

(h) a ground monitoring scheme, where required.

(3) The undertaker must not commence any works to which sub-paragraph (2) applies until Viking Link has given written approval of the plan so submitted.

(4) Any approval of Viking Link required under sub-paragraph (3)—

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (7); and

(b) must not be unreasonably withheld.

(5) In relation to any work to which sub-paragraph (2) applies, Viking Link may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage, for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works executed under sub-paragraph (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 Viking Link and in accordance with

such reasonable requirements as may be made in accordance with sub-paragraphs (5) or (7) by Viking Link for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and Viking Link will be entitled to watch and inspect the execution of those works.

(7) Where Viking Link 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 Viking Link's satisfaction prior to the commencement of any authorised development (or any relevant part thereof) for which protective works are required and Viking Link 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).

(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 authorised development, 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 will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to Viking Link notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (5), (6) and (7) insofar as is reasonably practicable in the circumstances.

Expenses

114.—(1) Save where otherwise agreed in writing between Viking Link and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to Viking Link within 30 days of receipt of an itemised invoice or claim from Viking Link all charges, costs and expenses reasonably anticipated within the following three months or reasonably and properly incurred by Viking Link in, or in connection with, the inspection, or protection of any apparatus which may be required in consequence of the execution of any authorised works including without limitation—

(a) any costs reasonably incurred by or compensation properly paid by Viking Link in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by Viking Link as a consequence of Viking Link exercising any compulsory purchase powers in the Order transferred to or benefitting Viking Link;

(b) the approval of plans;

(c) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;

(d) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

Indemnity

115.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of Viking Link, or there is any interruption in any service provided, or in the supply of any goods, by Viking Link, or Viking Link 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 Viking Link the cost reasonably and properly incurred by Viking Link in making good such damage or restoring the supply; and

(b) indemnify Viking Link for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from Viking Link, by reason or in consequence of any such damage or interruption or Viking Link becoming liable to any third party other than arising from any default of Viking Link.

(2) The fact that any act or thing may have been done by Viking Link on behalf of the undertaker or in accordance with a plan approved by Viking Link or in accordance with any requirement of Viking Link or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless Viking Link fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) 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 Viking Link, 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 Viking Link as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article 32 (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 115; and/or

(c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable.

(4) Viking Link must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

(5) Viking Link must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(6) Viking Link must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where it is within Viking Link's reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of Viking Link's control and if reasonably requested to do so by the undertaker Viking Link must provide an explanation of how the claim has been minimised, where relevant.

(7) Before carrying out any specified works the undertaker must put in place a policy of insurance with a reputable insurer the coverage and level of cover to be first agreed in writing between the undertaker and Viking Link, and evidence of such insurance to be provided on request and thereafter maintained for the duration of the carrying out of any specified works.

(8) Any dispute between the undertaker and Viking Link regarding the terms, cover or insured level of the insurance policy shall be resolved in accordance with paragraph 119 (arbitration).

Enactments and agreements

116. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between Viking Link 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 Viking Link in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

117.—(1) Where in consequence of the proposed construction of any part of the authorised works, Viking Link makes requirements for the protection or alteration of apparatus under paragraph 113, 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 Viking Link's undertaking and Viking Link shall use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever Viking Link's consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

Access

118. If in consequence of the agreement reached under paragraph 112(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 Viking Link to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

119. Save for differences or disputes arising under paragraph 113, any difference or dispute arising between the undertaker and Viking Link under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and Viking Link, be determined by arbitration in accordance with article 38 (arbitration).

Notices

120. Notwithstanding article 40 (service of notices), any plans submitted to Viking Link by the undertaker pursuant to paragraph 113 must be submitted using the LSBUD system (https://lsbud.co.uk/) or to such other address as Viking Link may from time to time appoint instead for that purpose and notify to the undertaker in writing.

PART 11

FOR THE PROTECTION OF BEACON FEN ENERGY PARK LIMITED

121. The provisions of this Part apply for the protection of Beacon Fen unless otherwise agreed in writing between the undertaker and Beacon Fen.

122. In this Part—

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

"Beacon Fen Energy Park" means the proposed solar and battery storage park on land to the east of Sleaford, Lincolnshire and which will be subject to a development consent order application to be made to the Secretary of State pursuant to section 37 of the Planning Act 2008 (Planning Inspectorate Case Reference: EN010151);

"Beacon Fen Works" means works to install cables, structures or other infrastructure within the Interface Area in conjunction with the proposed Beacon Fen Energy Park; and

"Interface Area" means those areas hatched yellow on the Interface Area Plan.

123. The undertaker does not need to comply with the obligations in this Part where the order authorising the Beacon Fen Energy Park has expired without the authorised development having been commenced.

124. The undertaker must consult with Beacon Fen in the formulation of the proposed method of working and timing of execution of the undertaker's works within the Interface Area, not less than 60 days prior to such works commencing, and have regard to reasonable representations received from Beacon Fen made at least 30 days prior to such works commencing.

125. The undertaker and Beacon Fen must act in good faith and use reasonable endeavours to co-operate to formulate the proposed method of working and timing of execution of works within the Interface Area (in accordance with paragraph 124) in a way which enables the undertaker and Beacon Fen to deliver the authorised development and the Beacon Fen Works respectively.

126. The undertaker must give to Beacon Fen not less than 30 days' written notice of its intention to commence the construction of the undertaker's works within the Interface Area and, not more than 14 days after completion of their construction, must give Beacon Fen written notice of the completion.

127. The undertaker must at all reasonable times during construction of the undertaker's works in the Interface Area allow Beacon Fen and its servants and agents reasonable access to the Interface Area and all reasonable facilities for inspection of the works within the Interface Area.

128. In the event that Beacon Fen notifies the undertaker that it no longer has an interest in the Interface Area or no longer proposes to carry out works in the Interface Area, the undertaker does not need to comply with the obligations in paragraphs 124 to 127.

129. Any difference or dispute arising between Beacon Fen and the undertaker must, unless otherwise agreed in writing between Beacon Fen and the undertaker, be determined by arbitration in accordance with article 38 (arbitration) of the Order.

PART 12

FOR THE PROTECTION OF TRITON KNOLL OFTO LIMITED

Application

130. For the protection of Triton Knoll as referred to in these Protective Provisions the following provisions have effect, unless otherwise agreed in writing between the undertaker and Triton Knoll.

Interpretation

131. In these Protective Provisions—

"1991 Act" means the New Roads and Street Works Act 1991;

"alternative apparatus" means appropriate alternative apparatus to the reasonable satisfaction of Triton Knoll to enable Triton Knoll to fulfil its statutory functions in a manner no less efficient than previously;

"apparatus" means any electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by Triton Knoll together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of Triton Knoll for the purposes of transmission, distribution 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 these Protective Provisions includes the use and maintenance of the authorised works and construction of any works authorised by these Protective Provisions;

"commence" and "commencement" in these Protective Provisions shall include any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment;

"functions" includes powers and duties;

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

"ground monitoring scheme" means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for Triton Knoll's approval a ground mitigation scheme;

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

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

"maintain" and "maintenance" shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of Triton Knoll: construct, use, repair, alter, inspect, renew or remove the apparatus;

"plan" or "plans" include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

"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 135(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 135(2) or otherwise;

"Triton Knoll" means Triton Knoll OFTO Limited (company registration number 14141892) whose registered office address is at 3rd Floor (South), 200 Aldersgate Street, London, United Kingdom, EC1A 4HD;

"Triton Knoll access track" means the area of the Order land comprised of plots 64, 66A, 67A, 67B, 67C, 67D, 68A, 68B, 68D, 68E, 90, 97, 273, 274, 301, 317 and 349 contained in the book of reference to the Order connecting the A17 to Doubletwelves Drove required in connection with Work No.10;

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

On Street Apparatus

132. Except for paragraphs 137 (retained apparatus: protection), 138 (expenses) and 139 (indemnity) of these Protective Provisions which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of Triton Knoll, the other provisions of these Protective Provisions do not apply to apparatus in respect of which the relations between the undertaker and Triton Knoll are regulated by the provisions of Part 3 of the 1991 Act.

Protective works to buildings

133. The undertaker, in the case of the powers conferred by article 15 (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 Triton Knoll.

Acquisition of land

134.—(1) Save for in respect of the Triton Knoll access track (to which the restrictions of this paragraph do not apply for the avoidance of doubt), the undertaker may not—

(a) appropriate or acquire or take temporary possession of any land or apparatus; or

(b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of Triton Knoll otherwise than by agreement (such agreement not to be unreasonably withheld).

(2) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between Triton Knoll and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of Triton Knoll or affect the provisions of any enactment or agreement regulating the relations between Triton Knoll and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as Triton Knoll reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between Triton Knoll and the undertaker acting reasonably and which must be no less favourable on the whole to Triton Knoll unless otherwise agreed by Triton Knoll, and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) The undertaker and Triton Knoll agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation 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 Triton Knoll and/or other enactments relied upon by Triton Knoll 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 Triton Knoll under paragraph 137 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).

Removal of apparatus

135.—(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 these Protective Provisions and any right of Triton Knoll to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of Triton Knoll in accordance with sub-paragraphs (2) to (5).

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to Triton Knoll advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order Triton Knoll reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), secure any necessary consents for the alternative apparatus and afford to Triton Knoll to its reasonable satisfaction (taking into account paragraph 136(1)) the necessary facilities and rights—

(a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and

(b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or

part of such apparatus is to be constructed, Triton Knoll must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for Triton Knoll to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under these Protective Provisions must be constructed in such manner and in such line or situation as may be agreed between Triton Knoll and the undertaker.

(5) Triton Knoll must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the grant to Triton Knoll of any such facilities and rights as are referred to in sub-paragraphs (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of these Protective Provisions.

Facilities and rights for alternative apparatus

136.—(1) Where, in accordance with the provisions of these Protective Provisions, the undertaker affords to or secures for Triton Knoll facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and Triton Knoll and must be no less favourable on the whole to Triton Knoll than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by Triton Knoll (acting reasonably).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to Triton Knoll than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to Triton Knoll as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection

137.—(1) Not less than 56 days (or such lesser period agreed by Triton Knoll, acting reasonably) before the commencement of any specified works the undertaker must submit to Triton Knoll a plan of the works to be executed including a ground monitoring scheme and seek from Triton Knoll details of the underground extent of their electricity assets.

(2) In relation to works which will or may be situated on, over, under or within—

(a) 15 metres measured in any direction of any apparatus, or

(b) involve embankment works within 15 metres of any apparatus, the plan to be submitted to Triton Knoll under sub-paragraph (1) must include a method statement and describe—

(i) the exact position of the works;

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

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

(iv) the position of all apparatus;

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

(vi) any intended maintenance regimes;

(vii) an assessment of risks of rise of earth issues; and

(viii) a methodology to demonstrate that all such works will have no adverse effect on the rating of the apparatus.

(3) The undertaker must not commence any works to which sub-paragraphs (1) or (2) apply until Triton Knoll has given written approval of the plan so submitted.

(4) Any approval of Triton Knoll required under sub-paragraph (3)—

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (7) or (8); and

(b) must not be unreasonably withheld or delayed.

(5) In relation to any work to which sub-paragraphs (1) or (2) apply, Triton Knoll 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-paragraph (2) must be executed in accordance with the plan, submitted under sub-paragraph (1), as approved or as amended from time to time by agreement between the undertaker and Triton Knoll and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5) or (7) by Triton Knoll for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and Triton Knoll will be entitled to watch and inspect the execution of those works.

(7) Where Triton Knoll requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to Triton Knoll's reasonable satisfaction prior to the commencement of any authorised development (or any relevant part thereof) (unless otherwise agreed by Triton Knoll, acting reasonably) for which protective works are required and Triton Knoll must give notice of its requirement for such works as soon as reasonably practicable and in any event within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(8) If Triton Knoll in accordance with sub-paragraphs (5) or (7) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 130 to 132 and 134 to 136 apply as if the removal of the apparatus had been required by the undertaker under paragraph 136(2).

(9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the authorised development, 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.

(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 Triton Knoll notice as soon as is reasonably practicable and a plan of those works. and must comply with sub-paragraphs (5), (6) and (7) insofar as is reasonably practicable in the circumstances.

(11) Following completion of the work the undertaker shall submit a written report demonstrating that the works have had no adverse effect on the rating of the apparatus.

(12) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker will implement an appropriate ground mitigation scheme except that Triton Knoll retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs pursuant to paragraph 139.

Expenses

138.—(1) Save where otherwise agreed in writing between Triton Knoll and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to Triton Knoll within 40 days of receipt of an itemised invoice or claim (accompanied by supporting evidence) from Triton Knoll all charges, costs and expenses reasonably and properly incurred by Triton Knoll in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works including without limitation—

(a) any costs reasonably incurred by or compensation properly paid by Triton Knoll in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by Triton Knoll as a consequence of Triton Knoll—

(i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 135(3); or

(ii) exercising any compulsory purchase powers in the Order transferred to or benefitting Triton Knoll;

(b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;

(c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;

(d) the approval of plans;

(e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;

(f) the supervision and surveillance of all specified works by Triton Knoll and its engineers including the cost of travel; and

(g) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in these Protective Provisions.

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of these Protective Provisions 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 these Protective Provisions—

(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 143 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under these Protective Provisions exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to Triton Knoll by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

(a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) Any amount which apart from this sub-paragraph would be payable to Triton Knoll in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on Triton Knoll any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

Indemnity

139.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by these Protective Provisions 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 these Protective Provisions or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of Triton Knoll, or there is any interruption in any service provided, or in the supply of any goods, by Triton Knoll, or Triton Knoll becomes liable to pay any amount to any third party, the undertaker will—

(a) bear and pay on demand accompanied by an invoice or claim from Triton Knoll the cost reasonably and properly incurred by Triton Knoll in making good such damage or restoring the supply; and

(b) indemnify Triton Knoll for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from Triton Knoll, by reason or in consequence of any such damage or interruption or Triton Knoll becoming liable to any third party.

(2) The fact that any act or thing may have been done by Triton Knoll on behalf of the undertaker or in accordance with a plan approved by Triton Knoll or in accordance with any requirement of Triton Knoll as a consequence of the authorised works or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of sub-paragraph (1) unless Triton Knoll fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) 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 Triton Knoll, its officers, servants, contractors or agents;

(b) any authorised works and/or any other works authorised by these Protective Provisions carried out by Triton Knoll as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article 31 (consent to transfer benefit of the Order) subject to the proviso that once such works become apparatus ("new apparatus"), any authorised works yet to be executed and not falling within this sub-paragraph (3)(b) will be subject to the full terms of these Protective Provisions including this paragraph 139; and/or

(c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable.

(4) Triton Knoll must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must unless payment is required in connection with a statutory compensation scheme be made without first consulting the undertaker and considering their representations (such representations not to be unreasonably withheld or delayed).

(5) Triton Knoll must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(6) Triton Knoll must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity provisions under this paragraph apply where it is within Triton Knoll's reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of Triton

Knoll's control and if reasonably requested to do so by the undertaker Triton Knoll must provide an explanation of how the claim has been minimised, where relevant.

Enactments and agreements

140. Save to the extent provided for to the contrary elsewhere in these Protective Provisions or by agreement in writing between Triton Knoll and the undertaker, nothing in these Protective Provisions affects the provisions of any enactment or agreement regulating the relations between the undertaker and Triton Knoll in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

141.—(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or Triton Knoll requires the removal of apparatus under paragraph 135(2) or Triton Knoll makes requirements for the protection or alteration of apparatus under paragraph 137, the undertaker shall use its reasonable endeavours to co-ordinate the execution of any works (which are subject to these Protective Provisions) in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of Triton Knoll's undertaking and Triton Knoll shall use its reasonable endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever Triton Knoll's consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

Access

142. If in consequence of the agreement reached in accordance with paragraph 134(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 Triton Knoll to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

143. Save for differences or disputes arising under paragraphs 135(2), 135(4) 136(1) and 137, any difference or dispute arising between the undertaker and Triton Knoll under these Protective Provisions must, unless otherwise agreed in writing between the undertaker and Triton Knoll, be determined by arbitration in accordance with article 38 (arbitration).

Notices

144. Notwithstanding article 40 (service of notices), any plans submitted to Triton Knoll by the undertaker pursuant to paragraph 137 must be submitted to Triton Knoll at its registered office or to such other address as Triton Knoll may from time to time appoint instead for that purpose and notify to the undertaker in writing.

SCHEDULE 14

Article 41

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

Interpretation

1. In this Schedule—

"appeal documentation" means a written statement of appeal which describes the nature of the differences between the parties, the factual issues, the undertaker's case and evidence relied on;

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

"relevant authority" means any authority or body named in any of the provisions of this Order and whose consent, agreement or approval is sought; and

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

Applications made under provisions of this Order

2.—(1) Where an application has been made to the relevant planning authority for any consent, agreement or approval required by a requirement the relevant planning authority must give notice to the undertaker of its decision on the application within a period of ten weeks beginning with the later of—

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

(b) the day immediately following that on which further information has been supplied by the undertaker under paragraph 3; or

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

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

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

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

(b) include confirmation that the application has been notified and provided to the requirement consultees in accordance with sub-paragraph (5), if the provision governing or requiring the application specifies that consultation with a requirement consultee is required. Such confirmation to include contact details for the requirement consultees.

(4) Where an application has been made to the relevant planning authority for any consent, agreement or approval required by a requirement included in this Order and the relevant planning authority does not determine the application within the period set out in sub-paragraph (1)—

(a) and the application is accompanied by a report pursuant to sub-paragraph (3)(a) which states that the subject matter of such application is likely to give rise to any materially

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

new or materially different environmental effects compared to those in the environmental statement; or

(b) the relevant planning authority consider that the subject matter of such applications will 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.

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

Further information and consultation

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

(2) In the event that the relevant planning authority considers such further information to be necessary and the provision governing or requiring the application does not specify that consultation with a requirement consultee is required, the relevant planning authority must, within 20 working days of receipt of the application, notify the undertaker in writing specifying the further information required.

(3) If the provision governing or requiring the application specifies that consultation with a requirement consultee is required, the relevant planning authority must issue the consultation to the requirement consultee within 10 working days of receipt of the application, and must notify the undertaker in writing specifying any further information the relevant planning authority considers necessary or that is requested by the requirement consultee within 10 working days of receipt of such a request and in any event within 20 working days of receipt of the application (or such other period as is agreed in writing between the undertaker and the relevant planning authority).

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

(5) Where further information is requested under this paragraph in relation to part only of an application, that part is to be treated as separate from the remainder of the application for the purposes of calculating time periods in paragraph 2 and paragraph 3.

Appeals

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

(a) the relevant planning authority refuses an application for any consent, agreement or approval required by a requirement included in this Order or grants it subject to conditions;

(b) the relevant planning authority is deemed to have refused an application pursuant to paragraph 2(2);

(c) on receipt of a request for further information pursuant to paragraph 3 the undertaker considers that either the whole or part of the specified information requested by the relevant planning authority is not necessary for consideration of the application; or

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

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

(a) any appeal by the undertaker must be made within 42 days of the date of the notice of the decision or the determination, or (where no determination has been made) the expiry of the time period set out in paragraph 2(1), giving rise to the appeal referred to in paragraph 2(2);

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

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

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

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

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

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

(3) In the event that the appointed person considers that further information is necessary to enable the appointed person to consider the appeal they must, within ten working days of the appointed person's appointment, notify the appeal parties in writing specifying the further information required.

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

(5) The appointed person may—

(a) allow or dismiss the appeal; or

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

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

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

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

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

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

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

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

Fees

5.—(1) Where an application is made to the relevant planning authority for a discharge, a fee is to apply and must be paid to the relevant planning authority for each application.

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

(a) a fee of £2,535 for the first application for the discharge of each of the requirements 6, 7, 8, 11, 12, 13, 14, 15, 16, 18, 19, and 20;

(b) a fee of £578 for each subsequent application for the discharge of each of the requirements listed in paragraph (a) and any application under requirement 5 in respect of the requirements listed in paragraph (a); and

(c) a fee of £145 for any application for the discharge of—

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

(ii) any application under requirement 5 in respect of requirements not listed in paragraph (a); and

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

(3) Any fee paid under this 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 for determining the application has been agreed pursuant to paragraph 2(1) of this Schedule.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises Ecotricity (Heck Fen Solar) Limited (referred to in this Order as the undertaker) to construct, operate, maintain and decommission a ground mounted solar photovoltaic generating station with a gross electrical output capacity over 50 megawatts and associated development. The Order would permit the undertaker to acquire, compulsorily or by agreement, land and rights in land and to use land for this purpose.

A copy of the Order plans and the book of reference mentioned in this Order and certified in accordance with article 37 of this Order (certification of plans and documents, etc.) may be inspected free of charge during working hours at North Kesteven District Council and Boston Borough Council.

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