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

2025 No. 1372

INFRASTRUCTURE PLANNING

The Helios Renewable Energy Project Order 2025

Made - - - - *3rd December 2025*

Coming into force *29th December 2025*

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

The application was examined by the Examining Authority appointed by the Secretary of State pursuant to section 61 and section 65 of Part 6 of the 2008 Act and carried out in accordance with Chapter 4 of Part 6 of the 2008 Act and with the Infrastructure Planning (Examination Procedure) Rules 2010((**c**)). The Examining Authority has submitted a report to the Secretary of State under section 74(2) of the 2008 Act.

The Secretary of State has considered the report and recommendation of the Examining Authority, and has taken into account the environmental information in accordance with regulation 4 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017((**d**)), and, as a national policy statement has effect in relation to the proposed development, has had regard to the documents and matters referred to in section 104(2) of the 2008 Act.

The Secretary of State, having decided the application, has determined to make an Order giving effect to the proposals comprised in the application on terms that in the opinion of the Secretary of State are not materially different from those proposed in the application.

The Secretary of State, in exercise of the powers conferred by sections 114(**e**), 115(**a**), 120(**b**), 122(**c**), 123(**d**) and 140 of the 2008 Act, makes the following Order.

(**a**) 2008 c. 29. Parts 1 to 7 were amended by Chapter 6 of Part 6 of the Localism Act 2011 (c. 20). Section 37 was amended by sections 128(2) and 137 of, and paragraphs 1 and 5 of Part 1 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, S.I. 2018/378 and S.I. 2019/734.
(**c**) S.I. 2010/103, amended by S.I. 2012/635.
(**d**) S.I. 2017/572.
(**e**) As amended by paragraph 55 of Part 1 of Schedule 13 to the Localism Act 2011.

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Helios Renewable Energy Project Order 2025 and comes into force on 29th December 2025.

Interpretation

2.—(1) In this Order—

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

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

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

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

"the 1984 Act" means the Road Traffic Regulations Act 1984(**i**)

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

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

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

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

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

"access and rights of way plan" means the plan certified by the Secretary of State as the access and rights of way plan for the purposes of this Order under article 35 (certification of plans, etc);

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

"the book of reference" means the book of reference certified by the Secretary of State as the book of reference for the purposes of this Order under article 35 (certification of plans, etc);

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

"CEMP" means the construction environmental management plan approved pursuant to requirement 3;

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

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

"DEMP" means the decommissioning environmental management plan approved pursuant to requirement 5;

(**a**) As amended by paragraph 56 of Part 1 of Schedule 13 and Part 20 of Schedule 25 to the Localism Act 2011, section 160 of the Housing and Planning Act 2016 (c. 22) and section 43 of the Wales Act 2017 (c. 4).
(**b**) As amended by section 140 of paragraph 60 of Part 1 of Schedule 13 to, the Localism Act 2011.
(**c**) As amended by paragraph 62 of Part 1 of Schedule 13 to the Localism Act 2011.
(**d**) Ibid.
(**e**) 1961 c. 33.
(**f**) 1965 c. 56.
(**g**) 1980 c. 66.
(**h**) 1981 c. 66.
(**i**) 1984 c. 27.
(**j**) 1989 c. 29.
(**k**) 1990 c. 8.
(**l**) 1991 c. 22.
(**m**) 2008 c. 29.

"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 certified by the Secretary of State as the environmental statement for the purpose of this Order under article 35 (certification of plans, etc);

"flood risk assessment" means the document certified by the Secretary of State as the flood risk assessment for the purposes of this Order under article 35 (certification of plans, etc);

"generating station" has the same meaning as in Part 1 of the 1989 Act;

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

"land plans" means the plans certified by the Secretary of State as the land plans for the purposes of this Order under article 35 (certification of plans, etc);

"local planning authority" means the planning authority for the area to which the provision relates;

"LEMP" means the landscape and ecological plan approved pursuant to requirement 10;

"location and order limits plan" means the plan certified by the Secretary of State as the location and order limits plan for the purposes of this Order under article 35 (certification of plans, etc);

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

"NGET" means National Grid Electricity Transmission plc (company number 02366977) whose registered office is at 1-3 The Strand, London, WC2N 5EH;

"OEMP" means the operational environmental management plan approved pursuant to requirement 7;

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

"outline archaeological mitigation strategy" means the document certified by the Secretary of State as the outline archaeological mitigation strategy for the purposes of this Order under article 35 (certification of plans, etc);

"outline battery safety management plan" means the document certified by the Secretary of State as the outline battery safety management plan for the purposes of this Order under article 35 (certification of plans, etc);

"outline CEMP" means the document certified by the Secretary of State as the outline construction environmental management plan for the purposes of this Order in accordance with article 35 (certification of plans, etc);

"outline CTMP" means the document certified by the Secretary of State as the outline construction traffic management plan for the purposes of this Order in accordance with article 35 (certification of plans, etc);

"outline DEMP" means the document certified by the Secretary of State as the outline decommissioning environmental management plan for the purposes of this Order in accordance with article 35 (certification of plans, etc);

"outline design principles document" means the document certified by the Secretary of State as the outline design principles document for the purposes of this Order in accordance with article 35 (certification of plans, etc.);

(**a**) "highway" is defined in section 328(1); for "highway authority" see section 1.

"outline LEMP" means the document certified by the Secretary of State as the outline landscape and ecological management plan for the purposes of this Order in accordance with article 35 (certification of plans, etc);

"outline OEMP" means the document certified by the Secretary of State as the outline operational environmental management plan for the purposes of this Order under article 35 (certification of plans, etc.);

"outline soil resource management plan" means the document certified by the Secretary of State as the outline soil resource management plan for the purposes of this Order under article 35 (certification of plans, etc.);

"outline supply chain, employment and skills plan" means the document certified by the Secretary of State as the outline supply chain, employment and skills plan for the purposes of this Order in accordance with article 35 (certification of plans, etc.);

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

"site preparation works" means all or any of—

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

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

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

(d) site clearance (including vegetation removal along the A1041 to facilitate the site accesses as part of work No. 8);

"street" means a street within the meaning of section 48 of the 1991 Act, together with land on the verge of a street or between 2 carriageways, and includes any footpath or part of a street;

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

"undertaker" means Enso Green Holdings D Limited (company number 12762856), whose registered office is at 17th Floor Hylo, 103-105 Bunhill Row, London, United Kingdom, EC1Y 8LZ;

"watercourse" includes all rivers, streams, creeks, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain (except where stated to the contrary);

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

"works plans" means the plans certified by the Secretary of State as the works plans for the purposes of this Order in accordance with article 35 (certification of plans, etc).

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

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

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

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

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

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

and are for the benefit of land which is acquired under this Order or over which rights are created and acquired under this Order or is otherwise comprised in this Order.

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

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

PART 2

PRINCIPAL POWERS

Development consent etc. granted by the Order

3.—(1) Subject to the provisions of this Order, including 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.

Maintenance of authorised development

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

(2) This article only authorises the carrying out of maintenance works within the Order Limits;

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

Operation of generating station

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

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

Benefit of the Order

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

(2) Subject to paragraph (3), the undertaker may with the written consent of the Secretary of State—

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

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

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

(4) The consent of the Secretary of State is required for the exercise of the powers of paragraph (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;

(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;

(c) the transfer or grant is made to—

(i) Northern Powergrid (Yorkshire) plc (company number 04112320) whose registered office is at Lloyds Court, 78 Grey Street, Newcastle Upon Tyne, NE1 6AF for the purposes of undertaking Work Nos. 3, 4(b), 5 and 6; and

(ii) National Grid Electricity Transmission plc (company number 02366977) whose registered office is at 1-3 Strand, London, WC2N 5EH for the purposes of undertaking Work No. 6.

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

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

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

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

(c) the powers to be transferred or granted;

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

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

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

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

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

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

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

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

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

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

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

(c) is a consequence of the use of the authorised development and that it cannot be reasonably avoided.

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

Disapplication and modification of legislative provisions

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

(a) regulation 12 (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016(**c**) in relation to the carrying on of a flood risk activity; and

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

PART 3

STREETS

Street works

9.—(1) The undertaker may for the purposes of the authorised development enter on so much of any of the streets specified in column (2) of Schedule 3 (streets subject to street works) as is within the order limits and may—

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

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

(c) place and keep apparatus under the street;

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

(e) repair, replace or otherwise alter the surface or structure of it; and

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(**a**) 1990 c. 43. Section 82 was amended by section 103 of the Clean Neighbourhoods and Environment Act 2005 (c. 16); section 79 was amended by sections 101 and 102 of the same Act. There are other amendments not relevant to this Order.
(**b**) 1974 c. 40.
(**c**) S.I. 2016/1154.
(**d**) 2017 c. 20.

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

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

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

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

Power to alter layout, etc. of streets

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

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

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

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

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

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

(c) reduce the width of the carriageway;

(d) make and maintain passing places; and

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

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

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

(5) If a street authority which receives an application for consent under paragraph (4) fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application was made, it is deemed to have granted consent.

Application of the 1991 Act

11.—(1) The provisions of the 1991 Act mentioned in paragraph (2) that apply in relation to the carrying out of street works under that Act and any regulations made or code of practice issued or approved under those provisions apply (with all necessary modifications) in relation to—

(a) the carrying out of works under article 9 (street works) and 10 (power to alter layout, etc. of streets); and

(b) the temporary closure, temporary alteration or temporary diversion of a public right of way by the undertaker under article 13 (temporary closure of and permitting vehicular use on public rights of way),

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

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

(a) subject to paragraph (3), section 55 (notice of starting date of works);

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

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

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

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

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

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

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

(3) Section 55 of the 1991 Act as applied by paragraph (2) has effect as if references in section 57 of that Act to emergency works included a reference to a temporary closure, alteration or diversion (as the case may be) required in a case of emergency.

(4) The following provisions of the 1991 Act do not apply in relation to any works executed under the powers conferred by this Order—

(a) section 56(d) (power to give directions as to timing of street works);

(b) section 56A(e) (power to give directions as to placing of apparatus);

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

(d) section 58A(g) restriction on works following substantial road works);

(e) section 61 (protected streets); and

(f) schedule 3A(h) (restriction on works following substantial street works).

Construction and maintenance of altered streets

12.—(1) The permanent alterations of each of the streets specified in Part 1 (permanent alteration of layout) of Schedule 4 (alteration of streets) to this Order must be completed to the reasonable satisfaction of the highway or street authority and, unless otherwise agreed by the highway or street authority, the alterations must be maintained to the same condition 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 highway authority.

(2) Subject to paragraph (3), the temporary alteration to each of the streets specified in Part 2 (temporary alteration of streets) of Schedule 4 (alteration of streets) must be completed to the reasonable satisfaction of the street authority, in a form reasonably required by the street authority, and, unless otherwise agreed by the street authority, the temporary alterations must be maintained to the same condition 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 10(3) (power to alter layout, etc. of streets) must be completed to the reasonable satisfaction of the street authority, in a form reasonably required by the street authority, and must be maintained to the same condition 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.

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

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

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

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

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

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

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

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

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

Temporary closure of and permitting vehicular use on public rights of way

13.—(1) The undertaker, during and for the purposes of constructing or maintaining the authorised development, may temporarily closure, alter or divert any public rights of way within the Order limits and may for any reasonable time—

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

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

(2) Without limiting paragraph (1), the undertaker may use any public rights of way temporarily closed under the powers conferred by this article and within the Order limits as a temporary working site.

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

(4) Without limiting paragraph (1), the undertaker may temporarily close, alter or divert the public rights of way specified in column (2) of Part 1 of Schedule 5 (public rights of way to be temporarily closed) to the extent specified in column (3) of that Schedule.

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

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

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

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

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

Access to works

14.—(1) The undertaker may, for the purposes of the authorised development and in connection with the authorised development—

(a) form and lay out the permanent means of access, or improve or maintain an existing means of access, in the locations specified in columns (1) and (2) of Schedule 6 (access to works); and

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

Agreements with street authorities

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

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

(d) the adoption by a street authority which is the 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) Such agreement may, without prejudice to the generality of paragraph (1)—

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

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

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

Traffic regulation

16.—(1) Subject to the provisions of this article, the undertaker may make temporary provision for the purposes of the construction or decommissioning of the authorised development—

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

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

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

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

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

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

(3) Before exercising the power conferred by paragraph (1) the undertaker must—

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

(b) obtain the written consent of the traffic authority.

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

(a) given not less than 4 weeks' notice in writing of its intention to do so to the chief officer of police and to the traffic authority in whose area the road is situated;

(b) not less than 7 days before the provision is to take effect published the undertaker's intention to make the provision in 1 or more newspaper circulating in the area in which any road to which the provision relates is situated; and

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

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

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

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

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

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

PART 4

SUPPLEMENTAL POWERS

Discharge of water

17.—(1) Subject to paragraphs (3) and (4) below the undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, 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 pursuant to paragraph (1) is determined as if it were a dispute under section 106 (right to communicate with public sewers) of the Water Industry Act 1991(**c**).

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

(**a**) S.I. 2011/935.
(**b**) 2004 c. 18.
(**c**) 1991 c. 56. Section 106 was amended by section 35(8)(a) of the Competition and Service (Utilities) Act 1992 (c. 43) and section 99 of the Water Act 2003 (c. 37). There are other amendments to this section which are not relevant to this Order.

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

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

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

(5) Subject to paragraph (6) the undertaker must not, in carrying out or maintaining works pursuant to this article, damage or interfere with the bed or banks of, or construct any works in, under, over or within eight metres of, any watercourse forming part of a main river, or within 16 metres of a tidally influenced main river without the prior written consent of the Environment Agency.

(6) Where the undertaker discharges water into, or makes any opening into, a watercourse, public sewer or drain belonging to or under the control of a drainage authority (as defined in Part 3 of Schedule 9 (protective provisions)), the provisions of Part 3 of Schedule 9 (protective provisions) apply in substitution for the provisions of paragraphs (3) and (4).

(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 cause of or knowingly permit a water discharge activity or groundwater activity except under and to the extent authorised by and environmental permit under regulation 12(1) of the Environmental Permitting (England and Wales) Regulations 2016.

(9) In this article—

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

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

Protective work to buildings

18.—(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 5 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 purposes of carrying out protective works under this article to a building, the undertaker may (subject to paragraphs (5) and (6))—

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

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

(5) Before exercising—

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

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

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

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

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

(6) Where a notice is served under paragraph (5)(a), (c), or (d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question of whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 40 (arbitration).

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

(8) Where—

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

(b) within the period of 5 years beginning with the date of final commissioning it appears that the protective works are inadequate to protect the building against damage caused by the construction, operation or maintenance of that part of the authorised development,

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

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

(10) 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.

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

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

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

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

Authority to survey and investigate land

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

(a) survey or investigate the land;

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

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

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

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

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

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

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

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

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

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

but such consent must not be unreasonably withheld.

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

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

(a) under paragraph (4)(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.

(7) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the entry onto, or possession of lad 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

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

(2) Paragraph (1) does not apply in relation to any existing mines or mining activity.

(3) This article is subject to article 21 (Time limit for exercise of authority to acquire land compulsorily), paragraph (2) of article 22 (compulsory acquisition of rights), article 25 (Acquisition of subsoil only), article 28 (Rights under or over streets) and article 29 (temporary use of land for carrying out the authorised development).

Time limit for exercise of authority to acquire land compulsorily

21.—(1) After the end of the period of 5 years beginning on the day on which the Order is made—

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

(b) no declaration is to be executed under section 4 (execution of declaration) of the 1981 Act as applied by article 24 (application of the 1981 Act).

(2) The authority conferred by article 29 (temporary use of land for carrying out the authorised development) ceases at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

Compulsory acquisition of rights

22.—(1) Subject to paragraph (2) and article 29 (temporary use of land for carrying out the authorised development), the undertaker may acquire compulsorily such rights or impose restrictive covenants over the Order land as may be required for any purpose for which that land may be acquired under article 20 (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 23 (private rights) and article 31 (statutory undertakers), in the case of the Order land specified in column (1) of Schedule 7 (land in which only new rights etc. may be acquired) the undertaker's powers of compulsory acquisition are limited to the acquisition of such new rights and the imposition of restrictive covenants for the purpose specified in relation to that land in column (3) of that Schedule.

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

(4) Schedule 8 (modification of compensation and compulsory purchase enactments for the creation of new rights and imposition of new restrictive covenants) has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of restrictive covenants.

(5) In any case where the acquisition of new rights or imposition of a restriction under paragraph (1) or (2) is required for the purpose of diverting, replacing or protecting apparatus of a statutory undertaker, the undertaker may, with the consent of the Secretary of State, transfer the power to acquire such rights to the statutory undertaker in question.

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

Private rights

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

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

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

whichever is the earliest.

(2) Subject to the provisions of this article, all private rights or restrictive covenants over land subject to the compulsory acquisition of rights or the imposition of restrictive covenants under article 22 (compulsory acquisition of rights) cease to have effect in so far as their continuance would be inconsistent with the exercise of the right or compliance with the restrictive covenant—

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

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

whichever is the earliest.

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

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

(5) This article does not apply in relation to any right to which section 138 (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) of the 2008 Act or article 31 (statutory undertakers) applies.

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

(a) any notice given by the undertaker before—

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

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

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

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

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

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

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

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

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

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

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

Application of the 1981 Act

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

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

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

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

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

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

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

(6) In section 5B(**a**) (extension of time limit during challenge) for "section 23 (Grounds for application to High Court) of the Acquisition of Land Act 1981, the 3 year period mentioned in section 5A" substitute "section 118 (legal challenges relating to applications for orders granting development consent) of the 2008 Act, the 5 year period mentioned in article 21 (time limit for exercise of authority to acquire land compulsorily) of the Helios Renewable Energy Project 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 25(3) of the Helios Renewable Energy Project 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 27 (modification of Part 1 of the Compulsory Purchase Act 1965) to the compulsory acquisition of land under this Order.

Acquisition of subsoil only

25.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in paragraph (1) of article 20 (compulsory acquisition of land) or article 22 (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;

(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 dwelling or building.

Power to override easements and other rights

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

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

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

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

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

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

(**a**) Section 5B was inserted by Section 202(2) of the Housing and Planning Act 2016 (c. 22).

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

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

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

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

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

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

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

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

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

(b) fails to discharge that liability,

the liability is enforceable against the undertaker.

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

Modification of Part 1 of the Compulsory Purchase Act 1965

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

(2) In section 4A(1) (extension of time limit during challenge), for "section 23 of the Acquisition of Land Act 1981 (grounds for application to the high court), the 3 year period mentioned in section 4" substitute "section 118 of the 2008 Act (legal challenges relating to applications for orders granting development consent), the 5 year period mentioned in article 21 (time limit for exercise of authority to acquire land compulsorily) of the Helios Renewable Energy Project Order 2025".

(3) In section 11A (powers of entry: further notices 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) (interests omitted from purchase), for "section 4 of this Act" substitute "article 21 (time limit for exercise of authority to acquire land compulsorily) of the Helios Renewable Energy Project 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—

but see article 25(3) (acquisition of subsoil only) of the Helios Renewable Energy Project Order 2025, which excludes the acquisition of subsoil only from this Schedule.

(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 18 (protective work to buildings), article 29 (temporary use

of land for carrying out the authorised development) or article 30 (temporary use of land for maintaining the authorised development) of the Helios Renewable Energy Project Order 2025.".

Rights under or over streets

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

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

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

(a) any subway or underground building; or

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

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

(5) Compensation is not payable under paragraph (4) to any person who is an undertaker to whom section 85 (sharing of 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

29.—(1) The undertaker may, in connection with the carrying out of the authorised development—

(a) 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;

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

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

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

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

(f) carry out mitigation works required pursuant to the requirements in Schedule 2.

(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 1 year beginning with the date of completion of the part of the authorised development for which temporary

possession of the land was taken unless the undertaker has, before the end of that period, served 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 3 (streets subject to street works); or

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

(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 (5), 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 (5).

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

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

(11) 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

30.—(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 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 of the 2008 Act (compensation in case where no right to claim in nuisance) or under any other enactment in respect of loss or damage arising from the maintenance of the authorised development, other than loss or damage for which compensation is payable under paragraph (6).

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

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

(11) In this article "the maintenance period" means the period of 5 years beginning with the date on which a phase of the authorised development first exports electricity to the national electricity transmission network.

Statutory undertakers

31. Subject to the provisions of Schedule 9 (protective provisions) the undertaker may—

(a) acquire new rights or impose restrictive covenants over the land belonging to statutory undertakers shown on the land plans (as certified by the Secretary of State in accordance with article 35) within the Order land; and

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

Apparatus and rights of statutory undertakers in temporarily closed streets

32. Where a street is altered or diverted or its use is temporarily prohibited or restricted under article 9 (street works), article 10 (power to alter layout, etc. of streets), article 12 (construction and maintenance of altered streets) or article 13 (temporary closure of and permitting vehicular use on public rights of way) any statutory undertaker whose apparatus is in, on, along or across the street has the same powers and rights in respect of that apparatus, subject to Schedule 9 (protective provisions), as if this Order had not been made.

Recovery of costs of new connections

33.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 31 (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 31 (statutory undertakers), any person who is—

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

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

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

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

(4) In this article—

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

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

PART 6

MISCELLANEOUS AND GENERAL

Operational land for the 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.

Certification of plans, etc.

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

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

Service of notices

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

(a) by post;

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

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

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

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

(**a**) 2003 c. 21.
(**b**) 1978 c. 30.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Felling or lopping of trees or removal of hedgerows

37.—(1) The undertaker may fell or lop any tree, or shrub within the Order limit, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree, or shrub—

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

(b) from 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, must be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(4) The undertaker may for the purposes of the authorised development or in connection with the authorised development, subject to paragraph (2) and requirement 10, undertake works to remove or manage any hedgerows within the Order limits.

(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.

Trees subject to tree preservation orders

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

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

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

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

Arbitration

39.—(1) Any difference under any provision of this Order, unless otherwise provided for, shall be referred to and settled in arbitration in accordance with the rules at Schedule 10 (arbitration rules) of this Order, by a single arbitrator to be agreed upon by the parties, within 14 days of receipt of the notice of arbitration, or if the parties fail to agree within the time period stipulated, to be appointed on application of either party (after giving written notice to the other) by the Secretary of State.

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

Requirements, appeals etc.

40.—(1) Where an application is made to, or a request is made of, the local planning authority or any other relevant person for any consent, agreement or approval required or contemplated by any of the provisions of this Order, such consent, agreement or approval must, to be validly given, be given in writing.

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

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

Application of landlord and tenant law

41.—(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 may prejudice the operation of any agreement to which this article applies.

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

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

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

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

Protective provisions

42. Schedule 9 (protective provisions) has effect.

Funding

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

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

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

(2) The provisions are—

(a) article 20 (compulsory acquisition of land);

(b) article 22 (compulsory acquisition of rights);

(c) article 23 (private rights);

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

(e) article 30 (rights under or over streets);

(f) article 29 (temporary use of land for carrying out the authorised development);

(g) article 30 (temporary use of land for maintaining the authorised development); and

(h) article 31 (statutory undertakers).

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

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

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

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

3rd December 2025

SCHEDULE 1

Article 2(1)

AUTHORISED DEVELOPMENT

1. In this Schedule—

"balance of solar plant" means inverters, transformers and switchgear, comprising either—

(a) field stations being a station comprising centralised inverters, transformers and switchgear with each component for each field station comprising either—

(i) a "field station" located outside, with a concrete foundation on a gravel sub-base for each of the inverters and transformers and switchgear; or

(ii) housed together within a container sitting on a concrete foundation on a gravel sub-base; or

(b) string inverters attached either to mounting structures or a ground mounted frame switchgear and transformers on a concrete foundation on a gravel sub-base;

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

"electrical cables" means

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

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

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

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

"mounting structure" means a frame or rack made of galvanised steel, anodised aluminium or other material design to support the solar panels and provide for single-axis tracking, mounted on piles driven into the ground, piles rammed into a pre-drilled hole, or pillars fixed to a concrete foundation;

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

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

"substation" means a compound containing electrical equipment required to switch, transform, convert electricity and provide reactive power compensation with welfare facilities, means of access and other associated facilities;

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

"transformer" means a structure serving to transform electricity to a higher voltage; and

"trenchless installation techniques" means the installation of new electrical cabling and/or associated equipment by means of boring techniques including horizontal directional drilling, auger boring and micro-tunnelling.

2. In the administrative area of North Yorkshire Council the construction, operation, maintenance and decommissioning of a nationally significant infrastructure project as defined in sections 14(1) and 15 of the 2008 Act with associated development under section 115(1)(b) of the 2008 Act.

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

Work No. 1 – a ground mounted solar photovoltaic generating station comprising—

(a) solar panels fitted to mounting structures;

(b) balance of solar plant,

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

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

(a) battery energy storage system units;

(b) auxiliary transformers and associated bunding;

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

(d) containers or enclosures housing all or any of Work No. 2(b) and (c) and ancillary equipment sitting on a concrete foundation on a gravel sub-base;

(e) monitoring and control systems;

(f) heating, ventilation and air conditioning systems;

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

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

Work No. 3 – works in connection with an onsite substation comprising—

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

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

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

(d) monitoring and control systems;

(e) 132 kilovolt harmonic filter compound;

(f) electrical cables;

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

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

Work No. 4 – works including—

(a) electrical cables up to 33 kilovolt connecting Work No. 1 and Work No. 2 to Work No. 3;

(b) electrical cables up to 132 kilovolt connecting Work No. 3 to Work No. 6;

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

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

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

(f) works for the provision of security and monitoring measures such as closed circuit television security system (CCTV), columns, lighting, cameras, weather stations, communications infrastructure, and perimeter fencing;

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

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

Work No. 4A – works including—

(a) electrical cables up to 33 kilovolt connecting Work No. 1 and Work No. 2 to Work No. 3;

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

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

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

Work No. 5 – works including—

(a) electrical cables up to 132 kilovolt connecting Work No. 3 to Work No. 6;

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

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

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

Work No. 6 – within the NGET substation construction of electrical substation infrastructure including—

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

(b) electrical cables; and

(c) 132 kilovolt connection bay located at the NGET Drax 132kV Substation including all associated electrical equipment and civil works necessary to enable the onward transmission of electricity.

Work No. 6A – access to the NGET substation for the construction, operation, maintenance and decommissioning of Work No. 6.

Work No. 7 – temporary construction compounds comprising—

(a) works to excavate and store soil, clear vegetation and obstacles, level, shape and prepare surface for construction compounds to be installed, and civils investigations and works to reinforce ground with weight-bearing support infrastructure;

(b) creation of temporary construction compounds, laydown and working areas;

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

(d) areas of hardstanding, car parking, site and welfare offices, canteens and workshops, area for download and turning, security infrastructure, site drainage and waste management infrastructure, and electricity, water, waste-water and telecommunications connections; and

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

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

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

(b) visibility splays;

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

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

Work No. 8A – works including—

(a) electrical cables up to 132 kilovolt connecting Work No. 3 to Work No. 6;

(b) works required for crossing the railway using trenchless installation techniques; and

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

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

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

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

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

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

(a) roads, ramps, watercourse and other temporary crossings, vehicular and pedestrian means of access including creation of temporary accesses, new tracks and paths, widening upgrades alterations and improvements of existing roads tracks and paths (including the installation of temporary traffic lights, visibility splays, banksmen or other measures to manage traffic);

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

(c) bunds, embankments, trenching and swales;

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

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

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

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

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

(i) works to alter the course of or otherwise interfere with non-navigable rivers, streams or watercourses, and the temporary closure of watercourses for installation of culverts, drainage and other features to cross watercourses;

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

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

(l) works of restoration;

(m) tunnelling, boring and drilling works; and

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

SCHEDULE 2

Articles 2(1) and 40

REQUIREMENTS

PART 1

REQUIREMENTS

Time limits

1. The authorised development must commence no later than the expiration of 5 years beginning with the date this Order comes into force.

Phases of authorised development and date of final commissioning

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

(2) The scheme submitted and approved pursuant to sub-paragraph (1) must be implemented as approved.

(3) Notice of the date of final commissioning with respect to each phase of Work No. 1 must be given to the local planning authority within 21 working days of the date of final commissioning for that phase.

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

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

Detailed design approval

3.—(1) No phase of the authorised development may commence until details of—

(a) the layout;

(b) scale;

(c) proposed finished ground levels;

(d) external appearance;

(e) hard surfacing materials;

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

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

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

(i) programme for landscaping works;

(j) fencing;

(k) security measures; and

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

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

(2) The details submitted must accord with—

(a) the location and order limits plan;

(b) the works plans;

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

(d) the outline design principles document.

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

Construction environmental management plan (CEMP)

4.—(1) No phase of the authorised development may commence until a CEMP for that phase has been submitted to and approved by the local planning authority, in consultation with the Environment Agency in relation to matters in relation to its statutory functions.

(2) Any CEMP submitted for approval must be in accordance with the outline CEMP and any approved CEMP must be adhered to for the duration of the works in the phase of the authorised development to which the CEMP relates.

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

(a) site and construction working hours including details of out of hours working procedures;

(b) community liaison;

(c) complaints procedures;

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

(e) construction dust assessment;

(f) site waste and materials management measures;

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

(h) security measures and use of artificial lighting; and

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

Decommissioning and restoration

5.—(1) Decommissioning works must commence no later than 40 years following the date of the final commissioning of Work No. 1 that is the subject of the last notice given by the undertaker pursuant to requirement 2(3) (phase of authorised development and date of final commissioning).

(2) No later than 12 months prior to the commencement of any decommissioning works for any part of the authorised development, the undertaker must—

(a) submit to the local planning authority for approval a decommissioning environmental management plan for that part; and

(b) submit to the local planning authority for approval in consultation with National Highways (or its successors) a decommissioning traffic management plan for that part.

(3) No later than year 15 of operation the undertaker must notify the local planning authority that the undertaker has put in place the requisite decommissioning security in the form as required by the landowners.

(4) The plans submitted and approved under sub-paragraph (2) must be substantially in accordance with the relevant part of the outline DEMP.

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

(6) No decommissioning works must be carried out until the local planning authority approves the plans submitted in relation to such works are approved as set out on subparagraph (2).

(7) The plans submitted to and approved pursuant to sub-paragraph (2) must be implemented as approved for the works required to decommission that phase of the authorised development unless otherwise approved in writing.

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

Construction traffic management plan (CTMP)

6.—(1) No phase of the authorised development may commence until a CTMP covering that phase and in accordance with the outline CTMP has been submitted to and approved by the local planning authority, in consultation with the highway authority for the highway(s) to which the CTMP for that phase relates.

(2) The CTMP must be substantially in accordance with the outline CTMP.

(3) The CTMP submitted and approved pursuant to sub-paragraph (1) must be implemented as approved.

Operational environmental management plan (OEMP)

7.—(1) Prior to the date of final commissioning for any phase of the authorised development, an OEMP for that part must be submitted to and approved by the local planning authority in consultation with the waste authority, the highway authority and the Environment Agency.

(2) The OEMP must include details of—

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

(b) associated traffic movements, including delivery vehicles and staff operation/vehicle movements.

(3) The OEMP must be substantially in accordance with the outline OEMP

(4) The OEMP submitted and approved pursuant to sub-paragraph (1) must be implemented and maintained as approved throughout the operation of the relevant phase of the authorised development to which the plan relates.

Soil management

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

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

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

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

(5) Prior to the commencement of decommissioning works for any phase of the authorised development, a soil resource management plan, which must be substantially in accordance with the outline soil resource management plan as relevant to decommissioning activities, for that phase must be submitted to and approved by the local planning authority.

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

Battery safety management plan

9.—(1) Work No. 2 must not commence until a battery safety management plan has been submitted to and approved by the local planning authority in consultation with North Yorkshire Fire and Rescue Service and the Environment Agency.

(2) The submitted battery safety management plan must either accord with the outline battery safety management plan or detail such changes as the undertaker considers are required to facilitate safety during the construction, operation and decommissioning of Work No. 2 including the transportation of new, used and replacement battery cells both to and from the authorised development.

(3) The outline battery safety management plan submitted and approved pursuant to sub-paragraph (1) must be implemented as approved.

Landscape and ecological management plan (LEMP)

10.—(1) No phase of the authorised development may commence until a LEMP covering that phase which accords with the outline LEMP has been submitted to and approved by the local planning authority in consultation with Natural England.

(2) The LEMP must include—

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

(b) details of habitat creation including how a minimum of 10% biodiversity net gain in habitat units, calculated using the Department of Environment, Food and Rural Affairs' Statutory Metric (July 2025), or if this is withdrawn or replaced, a biodiversity metric approved by the relevant planning authority in consultation with the relevant statutory nature conservation body), will be achieved during the operation of the authorised development;

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

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

(e) landscaping details; and

(f) detailed arrangements for—

(i) regular monitoring of the condition and effectiveness of the habitat provided for ground nesting birds, including the recording of the number and location of any skylark plots provided;

(ii) regular monitoring of population and productivity of ground nesting birds.

(3) The arrangements under (1) and (2) must be carried out for the duration of the lifetime of the authorised development, unless otherwise agreed in writing by the local planning authority.

(4) The landscape and ecological management plan must be substantially in accordance with the outline landscape and ecological management plan.

(5) The LEMP submitted and approved pursuant to sub-paragraph (1) must be implemented as approved.

Implementation and maintenance of landscaping

11.—(1) All landscaping works must be carried out in accordance with the LEMP approved under requirement 10 (landscape and ecological management plan), and in accordance with the relevant recommendations of the appropriate British Standards.

(2) Any tree or shrub planted as part of an approved landscaping management scheme that, within a period of 5 years after planting, is removed, dies or becomes, in the reasonable opinion of the local planning authority, seriously damaged or diseased must be replaced in the first available planting season with a specimen of the same species and size as that originally planted.

Public rights of way management plan

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

(2) The plan must include details of—

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

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

(3) The public rights of way management plan must be implemented as approved unless otherwise agreed with the local planning authority, in consultation with the highway authority.

Fencing and other means of enclosure

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

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

(3) Any temporary fencing must be removed on completion of the relevant work.

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

Archaeology

14.—(1) No phase within the authorised development may commence until a written scheme of investigation, substantially in accordance with the outline archaeological mitigation strategy, within that phase has been submitted to and approved by the local planning authority.

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

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

Requirement for written approval

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

Amendments to approved details

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

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

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

Consultation

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

Hydrogeological Risk Assessment

18. No phase of the authorised development which requires horizontal direct drilling or any other trenchless utility installation methods may commence until a hydrogeological risk assessment , the scope of which will be agreed in consultation with the Environment Agency, has been submitted to and approved by the local planning authority in consultation with the Environment Agency.

Foundation Works

19.—(1) No phase of the authorised development is to commence until method statements for all foundation works which may impact the principal and/or secondary A aquifers present on the site, and a foundation works risk assessment for such works within zone 1 (inner) of a groundwater source protection zone, have been submitted to and approved in writing by the local planning authority in consultation with the Environment Agency.

(2) The method statements must include details of the proposed foundation construction methodology, including measures to minimise the potential for detrimental impact on groundwater quality to result from the stated activity.

(3) The foundation works risk assessment must include—

(a) options for the proposed piling method at each location where piling is proposed; and

(b) for each piling method option at each location, mitigation measures to minimise detrimental impact on underlying groundwater resources.

(4) The authorised development must be carried out in accordance with the approved method statements and, where relevant, the approved risk assessment.

Glint and Glare Mitigation Strategy

20.—(1) No phase of the authorised development may commence until a Glint and Glare Mitigation Strategy for that phase has been submitted to and approved by the local planning authority in consultation with Burn Gliding Club.

(2) The Glint and Glare Mitigation Strategy shall be provided to Burn Gliding Club at the same time as it is submitted to the local planning authority.

(3) The Glint and Glare Mitigation Strategy shall be implemented as approved.

Flood Management Strategy

21.—(1) Prior to the commencement of Work No. 2 and Work No. 3 a flood management strategy must be submitted to and approved by the local planning authority in consultation with the Environment Agency.

(2) The flood management strategy submitted for approval must be in accordance with the flood risk assessment and include—

(a) details of the design of a suitable flood defence bund to provide protection works relating to Work No. 2 and Work No. 3 of the authorised development to ensure resilience to the design flood event with an allowance for climate change for the 2080s epoch as assessed by the approved site specific flood model referenced in the flood risk assessment over the lifetime of the authorised development to include the decommissioning phase;

(b) details of the design of a suitable 'level for level' and 'volume for volume' floodplain compensation scheme to mitigate the effect of the flood defence bund over the operational and decommissioning phases of the authorised development based on the scheme established in the flood risk assessment and informed by the approved site-specific flood model referenced in the flood risk assessment so as not to increase flood risk elsewhere; and

(c) details of the delivery and ongoing maintenance of the flood defence bund and floodplain compensation scheme over the lifetime of the development to include the operational and decommissioning phases.

(3) The flood management strategy must be implemented as approved.

Supply Chain, Employment and Skills Plan

22.—(1) No phase of the authorised development may commence until a supply chain, employment and skills plan in relation to that phase has been submitted to and approved by the local planning authority.

(2) The supply chain, employment and skills plan submitted under sub-paragraph (1) must be in accordance with the outline skills, supply chain and employment plan.

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

Operational Noise

23.—(1) No part of Work Nos. 1, 2 or 3 shall come into operation until an operational noise assessment has been submitted to and approved in writing by the Local Planning Authority. The assessment shall—

(a) be based on the final specification and layout of plant and equipment;

(b) demonstrate compliance with the rating levels set out in paragraph (3); and

(c) identify any mitigation measures required to achieve compliance.

(2) The development shall be operated in accordance with the approved assessment and any mitigation measures therein, which shall be implemented prior to operation and maintained for the lifetime of the development.

(3) The rating level (LAr) of noise from the operation of the authorised development shall not exceed—

(a) 40 dB LAr for any fifteen-minute period between 23:00 and 07:00; and

(b) 50 dB LAr for any one-hour period between 07:00 and 23:00, determined one metre free-field external to any window or door of any existing permanent residential premises using the definitions and methods described in BS4142:2014+A1:2019.

(4) In the event that substantiated noise complaints are received following commencement of operation, the operator shall, upon request, submit a noise impact assessment to the Local Planning Authority for approval. The assessment shall—

(a) Include attended measurements at or near the affected receptor(s);

(b) Include comparison with predicted noise levels and BS4142 assessment;

(c) Identify whether the operational noise is resulting in adverse impacts; and

(d) Where necessary, include details of mitigation measures and a timetable for implementation.

(5) Any approved mitigation shall be implemented in accordance with the agreed timetable and shall remain in place for the lifetime of the development.

PART 2

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

Interpretation

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

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

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

Applications made under requirements

25.—(1) Where an application has been made to the discharging authority for any consent, agreement or approval required by a requirement contained in Part 2 of this Schedule, or for any consent, agreement or approval further to any document referred to in any such requirement, the discharging authority must give notice to the undertaker of its decision on the application within a period of 8 weeks, or such longer period as may be agreed in writing by the undertaker and the discharging authority, beginning with the later of—

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

(b) where further information is requested under paragraph 25, the day immediately following that on which the further information has been supplied by the undertaker.

(2) In determining any application made to the discharging authority for any consent, agreement or approval required by a requirement contained in Part 1 of this Schedule, the discharging authority may subject to paragraphs 4 and 6—

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

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

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

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

(4) Any application made to the discharging authority pursuant to sub-paragraph (1) must include a statement to confirm whether it is likely that the subject matter of the application will give rise to any materially new or materially different environmental effects compared to those in

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

the environmental statement and if it will then it must be accompanied by information setting out what those effects are.

(5) Where an application has been made to the discharging authority for any consent, agreement or approval required by a requirement included in this Order and the discharging authority does not determine the application within the period set out in sub-paragraph (1) and the application is accompanied by a report pursuant to sub-paragraph (3) which states that the subject matter of such application is likely to give rise to any materially new or materially different environmental effects compared to those in the environmental statement then the application is to be taken to have been refused by the relevant planning authority at the end of that period.

(6) Any applications made to the discharging authority pursuant to sub-paragraph (1) must include a statement confirming whether it is likely that the subject matter of the application, including any mitigation measures, will give rise to a change in the conclusions of the Secretary of State's habitats regulations assessment and if it will then it must be accompanied by information setting out what those changes are.

(7) Where an application has been made to the discharging authority for any consent agreement or approval requirement by a requirement included in this Order and the discharging authority does not determine that application within the period set out in sub-paragraph (1) and is accompanied by a report pursuant to sub-paragraph (5) which states that the subject matter of such application, including any mitigation measures, will give rise to a change in the conclusions of the Secretary of State's habitats regulations assessment then the application is to be taken to have been refused by the discharging authority at the end of that period.

Further information regarding requirements

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

(2) If the discharging authority considers that further information is necessary and the requirement concerned contained in Part 1 of this Schedule does not specify that consultation with a consultee is required, the discharging authority must, within 28 days of receipt of the application, notify the undertaker in writing specifying the further information required.

(3) If the requirement concerned contained in Part 1 of this Schedule specifies that consultation with a consultee is required, the discharging authority must issue the application to the consultee within 14 days of receipt of the application, and notify the undertaker in writing specifying any further information requested by the consultee within 14 days of receipt of such a request.

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

Appeals

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

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

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

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

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

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

(d) on receipt of a request for further information pursuant to paragraph 26 of this Part of this Schedule, the applicant considers that either the whole or part of the specified information requested by the discharging authority is not necessary for consideration of the application; or

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

(2) The appeal process is as follows—

(a) any appeal by the applicant must be made within 42 days of the date of the notice of the decision or determination, or (where no determination has been made) the expiry of the time period set out in paragraph 25(1), giving rise to the appeal referred to in sub-paragraph (1);

(b) the applicant must submit the appeal documentation to the Secretary of State and must on the same day provide copies of the appeal documentation to the discharging authority and any consultee specified under the relevant requirement contained in Part 1 of this Schedule;

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

(d) the discharging authority and any consultee (if applicable) must submit their written representations together with any other representations to the appointed person in respect of the appeal within 14 days of the start date specified by the appointed person and must ensure that copies of their written representations and any other representations as sent to the appointed person are sent to each other and to the applicant on the day on which they are submitted to the appointed person;

(e) the applicant must make any counter-submissions to the appointed person within 14 days of receipt of written representations pursuant to sub-paragraph (d) above; and

(f) the appointed person must make a decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable after the end of the 10 day period for counter-submissions under sub-paragraph (e).

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

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

(5) Any further information required pursuant to sub-paragraph (4) must be provided by the party from whom the information is sought to the appointed person and to the other appeal parties by the date specified by the appointed person. The appointed person must notify the appeal parties of the revised timetable for the appeal on or before that day. The revised timetable for the appeal must require submission of written representations to the appointed person within 14 days of the date specified by the appointed person, but must otherwise be in accordance with the process and time limits set out in sub-paragraphs (2)(c) to (e).

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

(a) allow or dismiss the appeal; or

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

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

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

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

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

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

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

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

Fees

28.—(1) Where an application is made to the local planning authority for written consent, agreement or approval in respect of a requirement, the fee prescribed under regulation 16(1)(b) of the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012(**a**) (as may be amended or replaced from time to time) is to apply and must be paid to the local planning authority for each application.

(2) Any fee paid under this Schedule must be refunded to the undertaker within 4 weeks of—

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

(b) the local planning authority failing to determine the application within ten weeks from the relevant date in paragraph 25(1) unless—

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

(ii) a longer period of time for determining the application has been agreed pursuant to paragraph 25(1) of this Schedule.

SCHEDULE 3

Article 9

STREETS SUBJECT TO STREET WORKS

(1)	*(2)*
Area	*Location/Street Description*

(**a**) S.I. 2012/2920, amended by S.I. 2013/2153, S.I. 2014/357, S.I. 2014/643, S.I. 2017/1314, and S.I. 2019/1154.

North Yorkshire Council	public footpath (35.14/12/1) situated to the east of Tranmore Cottages, Selby as shown on the access and rights of way plan
North Yorkshire Council	public footpath (35.14/11/3) situated to the south east of 1 Tranmore Cottages, Selby as shown on the access and rights of way plan
North Yorkshire Council	mixed public footpath (35.14/13/1) and private road situated to the north east of Bales Wood Plantation, Selby as shown on the access and rights of way plan
North Yorkshire Council	public footpath (35.14/14/2) situated to the east of Bales Wood Plantation, Selby as shown on the access and rights of way plan
North Yorkshire Council	mixed public footpath (35.14/14/1) and private road situated to the west of Bales Wood Plantation, Selby as shown on the access and rights of way plan
North Yorkshire Council	mixed public footpath (35.14/11/4) and private road situated to the south west of Bales Wood Plantation, Selby as shown on the access and rights of way plan
North Yorkshire Council	mixed public footpath (35.17/1/1) and private road situated to the east of Fair Oaks, Selby as shown on the access and rights of way plan
North Yorkshire Council	public adopted highway (Chester Court Road) situated to the east of Bales Wood, Selby as shown on the access and rights of way plan
North Yorkshire Council	public adopted highway (A1041) situated to the south west of Sandpit Farm, Selby as shown on the access and rights of way plan
North Yorkshire Council	public adopted highway (A1041) situated to the north east of Keeper`s Cottage, Selby as shown on the access and rights of way plan
North Yorkshire Council	public adopted highway (A1041) situated to the west of Cobble Croft Wood, Selby as shown on the access and rights of way plan
North Yorkshire Council	private road from Stapletons Wood to Barrfs Close Plantation, Selby as shown on the access and rights of way plan
North Yorkshire Council	public adopted highway (Jowland Winn Lane) situated to the east of Chestercourt House Farm, Selby as shown on the access and rights of way plan
North Yorkshire Council	public footpath (35.18/14/1) situated to the south of Chestercourt Hall Farm as shown on the access and rights of way plan
North Yorkshire Council	public adopted highway (Chester Court Road) situated to the west of Crossley Wood, Selby as shown on the access and rights of way plan
North Yorkshire Council	public adopted highway (Hardenshaw Lane) situated to the north east of Rosehill Farm, Selby as shown on the access and rights of way plan
North Yorkshire Council	public adopted highway (Sandwith Lane) situated to the south of Rosehill Farm, Selby as shown on the access and rights of way plan
North Yorkshire Council	public adopted bridleway (35.18/13/1) situated to the south west of Rosehill Farm as shown on the access and rights of way plan
North Yorkshire Council	public adopted highway (Race Lane) situated to the south west of Rosehill Farm, Selby as shown on the access and rights of way plan
North Yorkshire Council	public adopted highway (Claypit Lane) situated to the west of Chestnut Tree Cottage, Selby as shown on the access and rights of way plan
North Yorkshire Council	public adopted highway (Brick Lands Lane) situated to the east of Temple Hirst, Selby as shown on the access and rights of way plan
North Yorkshire Council	public footpath (35.38/2/1) situated to the north east of Manor Farm, Selby as shown on the access and rights of way plan
North Yorkshire Council	public adopted highway (Stockwith Lane) situated to the north west of Kerrick Spring Wood, Selby as shown on the access and rights of way plan
North Yorkshire	public footpath (35.17/9/1) situated to the west of Little Underwit

Council	Wood, Selby as shown on the access and rights of way plan
North Yorkshire	public footpath (35.18/6/1) situated to the west of Little Underwit
Council	Wood, Selby as shown on the access and rights of way plan
North Yorkshire	public adopted highway (Station Road) situated to the east and the
Council	south of Camblesforth Community Primary School, Selby
North Yorkshire	public footpath (35.17/6/1) situated to the north of Drax Golf Club,
Council	Selby as shown on the access and rights of way plan
North Yorkshire	private road situated to the south of Camblesforth substation, Selby as
Council	shown on the access and rights of way plan
North Yorkshire	private road situated to the south east of Drax Sports and Social Club,
Council	Main Road, Selby as shown on the access and rights of way plan
North Yorkshire	private road situated to the west of New Acres, Selby as shown on the
Council	access and rights of way plan
North Yorkshire	public adopted highway (New Road) situated to the west of Station
Council	House, Selby as shown on the access and rights of way plan

SCHEDULE 4

Article 10

ALTERATION OF STREETS

PART 1

PERMANENT ALTERATION OF LAYOUT

(1) *Area*	*(2)* *Street subject to alteration*	*(3)* *Description of Alteration*
North Yorkshire Council	public footpath (35.14/12/1) situated to the east of Tranmore Cottages, Selby as shown on the access and rights of way plan	Works for the provision of a permanent means of access to the authorised development
North Yorkshire Council	public footpath (35.14/11/3) situated to the south east of 1 Tranmore Cottages, Selby as shown on the access and rights of way plan	Works for the provision of a permanent means of access to the authorised development
North Yorkshire Council	mixed public footpath (35.14/13/1) and private road situated to the north east of Bales Wood Plantation, Selby as shown on the access and rights of way plan	Works for the provision of a permanent means of access to the authorised development
North Yorkshire Council	public footpath (35.14/14/2) situated to the east of Bales Wood Plantation, Selby as shown on the access and rights of way plan	Works for the provision of a permanent means of access to the authorised development
North Yorkshire Council	mixed public footpath (35.14/14/1) and private road situated to the west of Bales Wood Plantation, Selby as shown on the access and rights of way plan	Works for the provision of a permanent means of access to the authorised development
North Yorkshire Council	mixed public footpath (35.14/11/4) and private road situated to the south west of Bales Wood Plantation, Selby as shown on the access and rights of way plan	Works for the provision of a permanent means of access to the authorised development
North Yorkshire Council	mixed public footpath (35.17/1/1) and private road situated to the east of Fair Oaks, Selby as shown on	Works for the provision of a permanent means of access to the authorised development

	the access and rights of way plan	
North Yorkshire Council	public adopted highway (Chester Court Road) situated to the east of Bales Wood, Selby as shown on the access and rights of way plan	Works for the provision of a permanent means of access to the authorised development
North Yorkshire Council	public adopted highway (A1041) situated to the south west of Sandpit Farm, Selby as shown on the access and rights of way plan	Works for the provision of a permanent means of access to the authorised development
North Yorkshire Council	public adopted highway (A1041) situated to the north east of Keeper`s Cottage, Selby as shown on the access and rights of way plan	Works for the provision of a permanent means of access to the authorised development
North Yorkshire Council	public adopted highway (A1041) situated to the west of Cobble Croft Wood, Selby as shown on the access and rights of way plan	Works for the provision of a permanent means of access to the authorised development
North Yorkshire Council	private road from Stapletons Wood to Barrfs Close Plantation, Selby as shown on the access and rights of way plan	Works for the provision of a permanent means of access to the authorised development
North Yorkshire Council	public adopted highway (Jowland Winn Lane) situated to the east of Chestercourt House Farm, Selby as shown on the access and rights of way plan	Works for the provision of a permanent means of access to the authorised development
North Yorkshire Council	public footpath (35.18/14/1) situated to the south of Chestercourt Hall Farm as shown on the access and rights of way plan	Works for the provision of a permanent means of access to the authorised development
North Yorkshire Council	public adopted highway (Chester Court Road) situated to the west of Crossley Wood, Selby as shown on the access and rights of way plan	Works for the provision of a permanent means of access to the authorised development
North Yorkshire Council	public adopted highway (Hardenshaw Lane) situated to the north east of Rosehill Farm, Selby as shown on the access and rights of way plan	Works for the provision of a permanent means of access to the authorised development

North Yorkshire Council	public adopted highway (Sandwith Lane) situated to the south of Rosehill Farm, Selby as shown on the access and rights of way plan	Works for the provision of a permanent means of access to the authorised development
North Yorkshire Council	public adopted bridleway (35.18/13/1) situated to the south west of Rosehill Farm as shown on the access and rights of way plan	Works for the provision of a permanent means of access to the authorised development
North Yorkshire Council	public adopted highway (Race Lane) situated to the south west of Rosehill Farm, Selby as shown on the access and rights of way plan	Works for the provision of a permanent means of access to the authorised development
North Yorkshire Council	public adopted highway (Claypit Lane) situated to the west of Chestnut Tree Cottage, Selby as shown on the access and rights of way plan	Works for the provision of a permanent means of access to the authorised development
North Yorkshire Council	public adopted highway (Brick Lands Lane) situated to the east of Temple Hirst, Selby as shown on the access and rights of way plan	Works for the provision of a permanent means of access to the authorised development
North Yorkshire Council	public footpath (35.38/2/1) situated to the north east of Manor Farm, Selby as shown on the access and rights of way plan	Works for the provision of a permanent means of access to the authorised development
North Yorkshire Council	public adopted highway (Stockwith Lane) situated to the north west of Kerrick Spring Wood, Selby as shown on the access and rights of way plan	Works for the provision of a permanent means of access to the authorised development
North Yorkshire Council	public footpath (35.17/9/1) situated to the west of Little Underwit Wood, Selby as shown on the access and rights of way plan	Works for the provision of a permanent means of access to the authorised development
North Yorkshire Council	public footpath (35.18/6/1) situated to the west of Little Underwit Wood, Selby as shown on the access and rights of way plan	Works for the provision of a permanent means of access to the authorised development
North Yorkshire Council	public adopted highway (Station Road) situated to the east and the south of Camblesforth Community Primary School, Selby as	Works for the provision of a permanent means of access to the authorised development

	shown on the access and rights of way plan	
North Yorkshire Council	public footpath (35.17/6/1) situated to the north of Drax Golf Club, Selby as shown on the access and rights of way plan	Works for the provision of a permanent means of access to the authorised development
North Yorkshire Council	private road situated to the south of Camblesforth substation, Selby as shown on the access and rights of way plan	Works for the provision of a permanent means of access to the authorised development
North Yorkshire Council	private road situated to the south east of Drax Sports and Social Club, Main Road, Selby as shown on the access and rights of way plan	Works for the provision of a permanent means of access to the authorised development
North Yorkshire Council	private road situated to the west of New Acres, Selby as shown on the access and rights of way plan	Works for the provision of a permanent means of access to the authorised development
North Yorkshire Council	public adopted highway (New Road) situated to the west of Station House, Selby as shown on the access and rights of way plan	Works for the provision of a permanent means of access to the authorised development

PART 2

TEMPORARY ALTERATION OF STREETS

(1)	*(2)*	*(4)*
Area	*Street subject to alteration*	*Description of alteration*
North Yorkshire Council	public footpath (35.14/12/1) situated to the east of Tranmore Cottages, Selby as shown on the access and rights of way plan	Works for the provision of a temporary means of access to the authorised development
North Yorkshire Council	public footpath (35.14/11/3) situated to the south east of 1 Tranmore Cottages, Selby as shown on the access and rights of way plan	Works for the provision of a temporary means of access to the authorised development
North Yorkshire Council	mixed public footpath (35.14/13/1) and private road situated to the north east of Bales Wood Plantation, Selby as shown on the access and rights of way plan	Works for the provision of a temporary means of access to the authorised development
North Yorkshire	public footpath	Works for the provision of a

Council	(35.14/14/2) situated to the east of Bales Wood Plantation, Selby as shown on the access and rights of way plan	temporary means of access to the authorised development
North Yorkshire Council	mixed public footpath (35.14/14/1) and private road situated to the west of Bales Wood Plantation, Selby as shown on the access and rights of way plan	Works for the provision of a temporary means of access to the authorised development
North Yorkshire Council	mixed public footpath (35.14/11/4) and private road situated to the south west of Bales Wood Plantation, Selby as shown on the access and rights of way plan	Works for the provision of a temporary means of access to the authorised development
North Yorkshire Council	mixed public footpath (35.17/1/1) and private road situated to the east of Fair Oaks, Selby as shown on the access and rights of way plan	Works for the provision of a temporary means of access to the authorised development
North Yorkshire Council	public adopted highway (Chester Court Road) situated to the east of Bales Wood, Selby as shown on the access and rights of way plan	Works for the provision of a temporary means of access to the authorised development
North Yorkshire Council	public adopted highway (A1041) situated to the south west of Sandpit Farm, Selby as shown on the access and rights of way plan	Works for the provision of a temporary means of access to the authorised development
North Yorkshire Council	public adopted highway (A1041) situated to the north east of Keeper`s Cottage, Selby as shown on the access and rights of way plan	Works for the provision of a temporary means of access to the authorised development
North Yorkshire Council	public adopted highway (A1041) situated to the west of Cobble Croft Wood, Selby as shown on the access and rights of way plan	Works for the provision of a temporary means of access to the authorised development
North Yorkshire Council	private road from Stapletons Wood to Barrfs Close Plantation, Selby as shown on the access and rights of way plan	Works for the provision of a temporary means of access to the authorised development
North Yorkshire Council	public adopted highway (Jowland Winn Lane) situated to the east of	Works for the provision of a temporary means of access to the authorised development

	Chestercourt House Farm, Selb as shown on the access and rights of way plan	
North Yorkshire Council	public footpath (35.18/14/1) situated to the south of Chestercourt Hall Farm as shown on the access and rights of way plan	Works for the provision of a temporary means of access to the authorised development
North Yorkshire Council	public adopted highway (Chester Court Road) situated to the west of Crossley Wood, Selby as shown on the access and rights of way plan	Works for the provision of a temporary means of access to the authorised development
North Yorkshire Council	public adopted highway (Hardenshaw Lane) situated to the north east of Rosehill Farm, Selby as shown on the access and rights of way plan	Works for the provision of a temporary means of access to the authorised development
North Yorkshire Council	public adopted highway (Sandwith Lane) situated to the south of Rosehill Farm, Selby as shown on the access and rights of way plan	Works for the provision of a temporary means of access to the authorised development
North Yorkshire Council	public adopted bridleway (35.18/13/1) situated to the south west of Rosehill Farm as shown on the access and rights of way plan	Works for the provision of a temporary means of access to the authorised development
North Yorkshire Council	public adopted highway (Race Lane) situated to the south west of Rosehill Farm, Selby as shown on the access and rights of way plan	Works for the provision of a temporary means of access to the authorised development
North Yorkshire Council	public adopted highway (Claypit Lane) situated to the west of Chestnut Tree Cottage, Selby as shown on the access and rights of way plan	Works for the provision of a temporary means of access to the authorised development
North Yorkshire Council	public adopted highway (Brick Lands Lane) situated to the east of Temple Hirst, Selby as shown on the access and rights of way plan	Works for the provision of a temporary means of access to the authorised development
North Yorkshire Council	public footpath (35.38/2/1) situated to the north east of Manor Farm, Selby as shown on the access and rights of way plan	Works for the provision of a temporary means of access to the authorised development

North Yorkshire Council	public adopted highway (Stockwith Lane) situated to the north west of Kerrick Spring Wood, Selby as shown on the access and rights of way plan	Works for the provision of a temporary means of access to the authorised development
North Yorkshire Council	public footpath (35.17/9/1) situated to the west of Little Underwit Wood, Selby as shown on the access and rights of way plan	Works for the provision of a temporary means of access to the authorised development
North Yorkshire Council	public footpath (35.18/6/1) situated to the west of Little Underwit Wood, Selby as shown on the access and rights of way plan	Works for the provision of a temporary means of access to the authorised development
North Yorkshire Council	public adopted highway (Station Road) situated to the east and the south of Camblesforth Community Primary School, Selby as shown on the access and rights of way plan	Works for the provision of a temporary means of access to the authorised development
North Yorkshire Council	public footpath (35.17/6/1) situated to the north of Drax Golf Club, Selby as shown on the access and rights of way plan	Works for the provision of a temporary means of access to the authorised development
North Yorkshire Council	private road situated to the south of Camblesforth substation, Selby as shown on the access and rights of way plan	Works for the provision of a temporary means of access to the authorised development
North Yorkshire Council	private road situated to the south east of Drax Sports and Social Club, Main Road, Selby as shown on the access and rights of way plan	Works for the provision of a temporary means of access to the authorised development
North Yorkshire Council	private road situated to the west of New Acres, Selby as shown on the access and rights of way plan	Works for the provision of a temporary means of access to the authorised development
North Yorkshire Council	public adopted highway (New Road) situated to the west of Station House, Selby as shown on the access and rights of way plan	Works for the provision of a temporary means of access to the authorised development

SCHEDULE 5

Article 13

PUBLIC RIGHTS OF WAY TO BE TEMPORARILY CLOSED

(1) *Area*	*(2)* *Public right of way to be temporarily closed*	*(3)* *Measures*
North Yorkshire Council	public footpath (35.14/12/1) as shown on the access and rights of way plan	Temporary management of the public footpath to facilitate the construction of the authorised development
North Yorkshire Council	public footpath (35.14/11/3) as shown on the access and rights of way plan	Temporary management of the public footpath to facilitate the construction of the authorised development
North Yorkshire Council	public footpath (35.14/13/1) and private road as shown on the access and rights of way plan	Temporary management of the public footpath to facilitate the construction of the authorised development
North Yorkshire Council	public footpath (35.14/14/2) as shown on the access and rights of way plan	Temporary management of the public footpath to facilitate the construction of the authorised development
North Yorkshire Council	public footpath (35.14/14/1) and private road as shown on the access and rights of way plan	Temporary management of the public footpath to facilitate the construction of the authorised development
North Yorkshire Council	public footpath (35.14/11/4) and private road as shown on the access and rights of way plan	Temporary management of the public footpath to facilitate the construction of the authorised development
North Yorkshire Council	public footpath (35.17/1/1) and private road as shown on the access and rights of way plan	Temporary management of the public footpath to facilitate the construction of the authorised development
North Yorkshire Council	public footpath (35.18/14/1) as shown on the access and rights of way plan	Temporary management of the public footpath to facilitate the construction of the authorised development
North Yorkshire Council	public bridleway (35.18/13/1) as shown on the access and rights of way plan	Temporary management of the public footpath to facilitate the construction of the authorised development
North Yorkshire Council	public footpath (35.38/2/1) as shown on the access and rights of way plan	Temporary management of the public footpath to facilitate the construction of the authorised development
North Yorkshire	public footpath (35.17/9/1) as shown on	Temporary management of the public footpath to facilitate the construction of the authorised

Council	the access and rights of way plan	development
North Yorkshire Council	public footpath (35.18/6/1) as shown on the access and rights of way plan	Temporary management of the public footpath to facilitate the construction of the authorised development
North Yorkshire Council	public footpath (35.17/6/1) as shown on the access and rights of way plan	Temporary management of the public footpath to facilitate the construction of the authorised development

SCHEDULE 6

Article 14

ACCESS TO WORKS

(1) *Area*	*(2)* *Street*	*(3)* *Description of means of access*
North Yorkshire Council	that part of Chester Court Road (west of New Close Plantation) as shown on the access and rights of way plan	The provision of a permanent means of vehicular access to the authorised development within the limits shown on the access and rights of way plan
North Yorkshire Council	that part of the A1041 (south west of Sandpit Farm, Selby) as shown on the access and rights of way plan	The provision of a permanent means of vehicular access to the authorised development within the limits shown on the access and rights of way plan
North Yorkshire Council	that part of the A1041 (west of Cobble Croft Wood, Selby) as shown on the access and rights of way plan	The provision of a permanent means of vehicular access to the authorised development within the limits shown on the access and rights of way plan
North Yorkshire Council	that part of Chester Court Road (east of Bales Wood, Selby) as shown on the access and rights of way plan	The provision of a permanent means of vehicular access to the authorised development within the limits shown on the access and rights of way plan
North Yorkshire Council	that part of Jowland Winn Lane (east of Chestercourt House Farm, Selby) as shown on the access and rights of way plan	The provision of a permanent means of vehicular access to the authorised development within the limits shown on the access and rights of way plan
North Yorkshire Council	that part of Hardenshaw Lane (north east of Rosehill Farm, Selby) as shown on the access and rights of way plan	The provision of a permanent means of vehicular access to the authorised development within the limits shown on the access and rights of way plan
North Yorkshire Council	that part of Claypit Lane (west of Chestnut Tree Cottage, Selby) as shown on the access and rights of way plan	The provision of a permanent means of vehicular access to the authorised development within the limits shown on the access and rights of way plan

North Yorkshire Council	that part of Race Lane (south west of Rosehill Farm, Selby) as shown on the access and rights of way plan	The provision of a permanent means of vehicular access to the authorised development within the limits shown on the access and rights of way plan
North Yorkshire Council	that part of Brick Lands Lane (east of Temple Hirst, Selby) as shown on the access and rights of way plan	The provision of a permanent means of vehicular access to the authorised development within the limits shown on the access and rights of way plan
North Yorkshire Council	that part of Stockwith Lane (north west of Kerrick Spring Wood, Selby) as shown on the access and rights of way plan	The provision of a permanent means of vehicular access to the authorised development within the limits shown on the access and rights of way plan
North Yorkshire Council	that part of Sandwith Lane (south of Rosehill Farm, Selby) as shown on the access and rights of way plan	The provision of a permanent means of vehicular access to the authorised development within the limits shown on the access and rights of way plan

SCHEDULE 7

Article 22

LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED

1. In this Schedule—

"access rights" means rights over land to—

(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 road widening and to remove impediments (including vegetation) to such access; and

(b) 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;

"cable rights" means rights over land to—

(a) 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 on-site substation;

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

(c) install, use, support, protect, inspect, alter, remove, replace, retain, renew, improve and maintain landscaping and biodiversity measures;

(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; and

(e) restrict and remove the erection of buildings or structures, restrict the altering of ground levels, restrict and remove vegetation and restrict the planting of trees or carrying out operations or actions (including but not limited to blasting and piling) which may obstruct, interrupt or interfere with the exercise of the rights or damage the authorised development;

"railway crossing rights" means rights over land to—

(a) 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 NGET Drax 132kV Substation;

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

(c) 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;

"substation connection rights" means rights over land to—

(a) 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 NGET Drax 132kV Substation;

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

(c) install, use, support, protect, inspect, alter, remove, replace, retain, renew, improve and maintain landscaping and biodiversity measures;

(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; and

(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;

"vegetation maintenance rights" means rights over land to—

(a) plant, inspect, alter, remove, replace, retain, renew, improve and maintain vegetation and restrict or prevent the removal of vegetation for the purposes of the authorised development and in connection with the authorised development.

(1) *Plot number(s)*	*(2)* *Work No.*	*(3)* *Purpose for which rights may be acquired*
1	Work No. 1, 4 and 9	Access rights, cable rights, vegetation maintenance rights
2	Work No. 1, 4 and 9	Access rights, cable rights, vegetation maintenance rights
3	Work No. 1, 4 and 9	Access rights, cable rights, vegetation maintenance rights
4	Work No. 1, 4 and 9	Access rights, cable rights, vegetation maintenance rights
5	Work No. 4 and 9	Access rights, cable rights, vegetation maintenance rights
6	Work No. 1, 4 and 9	Access rights, cable rights, vegetation maintenance rights
7	Work No. 4 and 9	Access rights, cable rights, vegetation maintenance rights
8	Work No. 4 and 9	Access rights, cable rights, vegetation maintenance rights
9	Work No. 1, 4, 8 and 9	Access rights, cable rights, vegetation maintenance rights
10	Work No. 4, 8 and 9	Access rights, cable rights, vegetation maintenance rights
11	Work No. 1, 4, 7, 8 and 9	Access rights, cable rights, vegetation maintenance rights
12	Work No. 4, 8 and 9	Access rights, cable rights, vegetation maintenance rights
13	Work No. 4 and 9	Access rights, cable rights, vegetation maintenance rights
14	Work No. 1,	Access rights, cable rights, vegetation maintenance rights

	4, 7, 8 and 9	
15	Work No. 4 and 9	Access rights, cable rights, vegetation maintenance rights
16	Work No. 4, 8 and 9	Access rights, cable rights, vegetation maintenance rights
17	Work No. 4, 7, 8 and 9	Access rights, cable rights, vegetation maintenance rights
18	Work No. 4 and 8	Access rights, cable rights
19	Work No. 4, 4A, 8 and 9	Access rights, cable rights, vegetation maintenance rights
20	Work No. 4 and 4A	Access rights, cable rights
21	Work No. 4 and 9	Access rights, cable rights, vegetation maintenance rights
22	Work No. 4, 4A, 8 and 9	Access rights, cable rights, vegetation maintenance rights
23	Work No. 4, 8 and 9	Access rights, cable rights, vegetation maintenance rights
24	Work No. 1, 2, 3, 4, 8 and 9	Access rights, cable rights, vegetation maintenance rights
25	Work No. 1, 4 and 9	Access rights, cable rights, vegetation maintenance rights
26	Work No. 1, 4, 4A, 8 and 9	Access rights, cable rights, vegetation maintenance rights
27	Work No. 4, 8 and 9	Access rights, cable rights, vegetation maintenance rights
28	Work No. 4 and 9	Access rights, cable rights, vegetation maintenance rights
29	Work No. 1, 4, 8 and 9	Access rights, cable rights, vegetation maintenance rights
30	Work No. 1, 4, 8 and 9	Access rights, cable rights, vegetation maintenance rights
31	Work No. 1, 4, 8 and 9	Access rights, cable rights, vegetation maintenance rights
32	Work No. 1, 4, 8 and 9	Access rights, cable rights, vegetation maintenance rights
33	Work No. 1, 4, 8 and 9	Access rights, cable rights, vegetation maintenance rights
34	Work No. 1, 4 and 9	Access rights, cable rights, vegetation maintenance rights
35	Work No. 1, 4, 8 and 9	Access rights, cable rights, vegetation maintenance rights
36	Work No. 4, 8 and 9	Access rights, cable rights, vegetation maintenance rights
37	Work No. 4, 8 and 9	Access rights, cable rights, vegetation maintenance rights
38	Work No. 4 and 9	Access rights, cable rights, vegetation maintenance rights
39	Work No. 4, 8 and 9	Access rights, cable rights, vegetation maintenance rights
40	Work No. 1, 4, 8 and 9	Access rights, cable rights, vegetation maintenance rights

41	Work No. 4 and 8	Access rights, cable rights
42	Work No. 4, 8 and 9	Access rights, cable rights, vegetation maintenance rights
43	Work No. 1, 4, 8 and 9	Access rights, cable rights, vegetation maintenance rights
44	Work No. 4, 8 and 9	Access rights, cable rights, vegetation maintenance rights
45	Work No. 1, 4, 8 and 9	Access rights, cable rights, vegetation maintenance rights
46	Work No. 1, 4, 5, 8 and 9	Access rights, cable rights, vegetation maintenance rights
47	Work No. 1, 4 and 9	Access rights, cable rights, vegetation maintenance rights
48	Work No. 4 and 5	Access rights, cable rights
49	Work No. 4 and 5	Access rights, cable rights
50	Work No. 5	Access rights, cable rights
51	Work No. 5 and 8A	Substation connection works
52	Work No. 5 and 8A	Access rights, cable rights, railway crossing rights
53	Work No. 5 and 8A	Substation connection works, railway crossing rights
54	Work No. 5 and 8A	Substation connection works, railway crossing rights
55	Work No. 5 and 8A	Access rights, cable rights, railway crossing rights
56	Work No. 5 and 8A	Substation connection works, railway crossing rights
57	Work No. 5 and 8A	Substation connection works, railway crossing rights
58	Work No. 5, 6A and 8A	Substation connection works, railway crossing rights
59	Work No. 5 and 8A	Substation connection works, railway crossing rights
60	Work No. 5 and 8A	Substation connection works, railway crossing rights
61	Work No. 5	Access rights, cable rights
62	Work No. 5	Access rights, cable rights
63	Work No. 5	Access rights, cable rights
64	Work No. 5	Access rights, cable rights
65	Work No. 5	Substation connection works
66	Work No. 5, 6 and 6A	Substation connection works
67	Work No. 5	Substation connection works
68	Work No. 5, 6 and 6A	Substation connection works
69	Work No. 5 and 6	Substation connection works, railway crossing rights

SCHEDULE 8

Article 22

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

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

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

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

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

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

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

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

"(5A) If—

(a) the acquiring authority enters on land for the purpose of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act (as modified by paragraph 7 of Schedule 8 to the Helios Renewable Energy Project Order 2025);

(b) the acquiring authority is subsequently required by a determination under paragraph 13 of Schedule 2A to the 1965 Act (as substituted by paragraph 10 of Schedule 8 to the Helios Renewable Energy Project Order 2025) to acquire an interest in the land;

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

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

(a) the right acquired or to be acquired, or the restriction imposed or to be imposed; or

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

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

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

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

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

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

(a) section 9(4) (refusal to convey, failure to make title, etc.);

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

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

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

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

7. Section 11 (powers of entry) of the 1965 Act is so modified as to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right or restrictive covenant, as well as the notice of entry required by subsection (1) of that section (as it applies to compulsory acquisition under article 22), it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant (which is deemed for this purpose to have been created on the date of service of the notice); and sections 11A (powers of entry: further notices of entry), 11B (counter-notice requiring possession to be taken on specified date), 12 (unauthorised entry) and 13 (refusal to give possession to acquiring authority) of the 1965 Act is modified correspondingly.

8. Section 20 (tenants at will, etc.) of the 1965 Act applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right or the enforcement of the restrictive covenant in question.

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

10. For Schedule 2A (counter notice requiring purchase of land not in notice to treat) to the 1965 Act substitute—

“Schedule 2A

COUNTER-NOTICE REQUIRING PURCHASE OF LAND

Introduction

1.—(1) This Schedule applies where an acquiring authority serve a notice to treat in respect of a right over, or restrictive covenant affecting, the whole or part of a house, building or factory and have not executed a general vesting declaration under section 4 of the 1981 Act as applied by article 24 (application of the 1981 Act) of the Helios Renewable Energy Project Order 2025 in respect of the land to which the notice to treat relates.

(2) But see article 25(3) (acquisition of subsoil only) of the Helios Renewable Energy Project 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 3 months beginning with the day on which the counter-notice is served (“the decision period”).

7. If the authority decides to refer the counter-notice to the Upper Tribunal they must do so within the decision period.

8. If the authority does not serve notice of a decision within the decision period they are to be treated as if they had served notice of a decision to withdraw the notice to treat at the end of that period.

9. If the authority serves notice of a decision to accept the counter-notice, the compulsory purchase order and the notice to treat are to have effect as if they included the owner’s interest in the house, building or factory.

Determination by the Upper Tribunal

10. On a referral under paragraph 7, the Upper Tribunal must determine whether the acquisition of the right or the imposition of the restrictive covenant would—

(a) in the case of a house, building or factory, cause material detriment to the house, building or factory, or

(b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

11. In making its determination, the Upper Tribunal must take into account—

(a) the effect of the acquisition of the right or the imposition of the covenant,

(b) the use to be made of the right or covenant proposed to be acquired or imposed, and

(c) if the right or covenant is proposed to be acquired or imposed for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.

12. If the Upper Tribunal determines that the acquisition of the right or the imposition of the covenant would have either of the consequences described in paragraph 10, it must determine how much of the house, building or factory the authority ought to be required to take.

13. If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in that land.

14.—(1) If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the authority may at any time within the period of 6 weeks beginning with the day on which the Upper Tribunal makes it determination withdraw the notice to treat in relation to that land.

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

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

SCHEDULE 9

Article 42

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, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the utility undertaker in question.

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 no 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 licence holder;

(b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by that gas transporter for the purposes of gas supply;

(c) in the case of a water undertaker, any mains, pipes or other apparatus belonging to or maintained by that water undertaker for the purposes of water supply; and

(d) in the case of a sewerage undertaker—

(i) any drain or works vested in the sewerage undertaker under the Water Industry Act 1991(**a**); and

(ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) (adoption of sewers and disposal works) of that Act or an agreement to adopt made under section 104 (agreements to adopt sewer, drain or sewerage disposal works at future date) of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 (general interpretation) of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works,

and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

"functions" includes powers and duties;

"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 1989 Act;

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

(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.

(**a**) 1991 c. 56.
(**b**) 1986 c. 44.

On street apparatus

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 regulations by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

Acquisition of land

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

Removal of apparatus

5.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed 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 to the reasonable satisfaction of the utility undertaker in question.

(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 28 days' 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 between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 39 (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 39 (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

6.—(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 39 (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.

Retained apparatus

7.—(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 5(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, the provisions of this Part of this Schedule apply as if the removal of the apparatus had been required by the undertaker under paragraph 5(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description instead of those 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 as well as a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

Expenses and costs

8.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker the reasonable expenses agreed with the undertaker in advance and reasonably 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 5(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 39 (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 must not 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 5(2); 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 must 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.

9.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraph 5(2) any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of 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 of or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to—

(a) 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; or

(b) any indirect or consequential loss of the utility undertaker or 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.

(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 and, if such

consent is withheld, the undertaker has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

Enactments and agreements

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

PART 2

FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

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

12. In this Part of this Schedule—

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

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

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

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

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

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

13. The exercise of the powers of article 31 (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 the authorised development—

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

(b) there is any interruption in the supply of the service provided by an operator,

the undertaker must bear and pay the cost agreed by the undertaker in advance and 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—

(**a**) 2003 c. 21.

(a) 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; or

(b) any indirect or consequential loss of the operator or 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.

(3) The operator 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 and, if such consent is withheld, the undertaker has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Any difference arising between the undertaker and the operator under this Part of this Schedule must be referred to and settled by arbitration under article 39 (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 THE DRAINAGE AUTHORITIES

17. For the protection of any drainage authority, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the drainage authority in question.

18. In this Part of this Schedule—

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

"drainage authority" means 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;

"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 in connection with an ordinary watercourse 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 sections, drawings, specifications and method statements; and

"specified work" means so much of any work or operation authorised by this Order as is in, on, under, over or within 7 metres of a drainage work or is otherwise likely to—

(a) affect any drainage work;

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

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

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

(2) The undertaker must not commence construction of the specified work until approval, unconditionally or conditionally, has been given as provided in this paragraph.

(3) 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 26.

(4) 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 56 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, for the protection of any ordinary watercourse or for the prevention of flooding.

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

(6) Any refusal under this paragraph must be accompanied by a statement of the reasons for refusal.

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

(a) to safeguard any drainage work against damage 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, by reason of any specified work.

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

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

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

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

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

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

(b) notice in writing of its completion not later than 7 days after the date of completion.

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

(5) Subject to sub-paragraph (6) and paragraphs 24 and 25, if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (4) is served on the

undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice or subsequently made reasonably expeditious progress towards their implementation, the drainage authority may execute the works specified in the notice, and any expenditure reasonably and properly 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 in accordance with paragraph 26.

22.—(1) Subject to sub-paragraph (5), the undertaker must from the commencement of the construction of the specified work maintain in good repair and condition and free from obstruction any drainage work which is situated within the Order Limits 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 such work, or (if the undertaker so elects and the drainage authority in writing consents, such consent not to be unreasonably withheld or delayed), to remove the specified work and restore the site to its former condition, to such extent and within such limits as the drainage authority reasonably requires.

(3) Subject to sub-paragraph (4), if, within a reasonable period being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2) on the undertaker, the undertaker has failed to begin taking steps to comply with the reasonable requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the drainage authority may do what is necessary for such compliance and may, subject to paragraphs 24 and 25, recover any expenditure reasonably and properly 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 in accordance with paragraph 26.

(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 of this Schedule provided that any obstruction is removed as soon as reasonably practicable.

23. Subject to paragraphs 24 and 25 and paragraph 22(5)(b), 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 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 and properly incurred by it in doing so.

24. The undertaker must compensate the drainage authority in respect of all costs, charges and expenses which the drainage authority may reasonably and properly 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 drainage authority under this Part of this Schedule; and

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

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

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

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

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

(d) any flooding or increased flooding of any such land.

(2) The drainage authority 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, which agreement must not be unreasonably withheld or delayed.

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

(4) 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 the provisions of this Part of this Schedule.

(5) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to—

(a) any loss arising out of or in consequence of any negligent act or default of the drainage authority or its officers, servants, agents or contractors or any person or body for which it is responsible; or

(b) any indirect or consequential loss of the drainage authority or any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption).

26. Any dispute arising between the undertaker and the drainage authority under this Part of this Schedule, if the parties agree, is to be determined by arbitration under article 39 (arbitration), but otherwise is to be determined by the Secretary of State for Energy Security and Net Zero on a reference to them by the undertaker or the drainage authority, after notice in writing by one to the other.

PART 4

FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

27.—(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;

"emergency" means an occurrence which presents a risk of—

(a) serious flooding;

(b) serious detrimental impact on drainage; or

(c) serious harm to the environment

"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;

"non-tidal main river" has the meaning given in paragraph 2(1) of Part 1 of Schedule 25 to the Environmental Permitting (England and Wales) Regulations 2016;

"plans" includes plans, sections, elevations, drawings, specifications, programmes, proposals, calculations, method statements and descriptions;

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

"sea defence" means any bank, wall, embankment (any berm, counterwall or cross-wall connected to any such bank, wall or embankment), barrier, tidal sluice and other defence, whether natural or artificial, against the inundation of land by sea water or tidal water, including natural or artificial high ground which forms part of or makes a contribution to the efficiency of the defences of the Agency's area against flooding, but excludes any sea defence works which are for the time being maintained by a coast protection authority under the provisions of the Coast Protection Act 1949 or by any local authority or any navigation, harbour or conservancy authority;

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

(a) 16 metres of the base of a sea defence which is likely to—

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

(ii) interfere with the Agency's access to or along that sea defence or the Agency's ability to undertake works to ensure the efficacy of that sea defence;

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

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

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

(c) 16 metres of a drainage work involving a tidal main river;

(d) 8 metres of a drainage work involving a non-tidal main river;

(e) any distance of a drainage work and is otherwise likely to—

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

(ii) affect the flow, purity or quality of water in any main river 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—

(f) 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

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

"tidal main river" has the meaning given in paragraph 2(1) of Part 1 of Schedule 25 to the Environmental Permitting (England and Wales) Regulations 2016.

Submission and approval of plans

28.—(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 38.

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

(a) must not be unreasonably withheld or delayed;

(b) subject to sub-paragraph (5), is deemed to have been refused if it is neither given nor refused within 2 months of the submission of the plans or such later date as is agreed between the Agency and the undertaker and if further particulars have been requested pursuant to sub paragraph (1) the period between the making of this request and the provision of further particulars in response to it shall not be taken into account in the calculation of the 2 months for the purposes of this sub-paragraph ; 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 the prevention of environmental harm 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, the Agency must provide reasons for the grounds of that refusal.

Construction of protective works

29.—(1) Without limiting paragraph 28 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

30.—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the Agency under paragraph 29, 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

31.—(1) 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 and where the Agency acting reasonably considers it necessary to avoid any of the risks specified in sub-paragraph (2), the Agency may serve written notice requiring the undertaker to cease all or part of the specified works as may be specified within the notice within the period specified in the notice, and the undertaker must cease constructing the specified works or part thereof until such time as it has obtained the consent or complied with the condition specified within the notice served.

(2) The risks specified in sub-paragraph (1) are—

(a) risk of flooding;

(b) risk of harm to the environment;

(c) risk of detrimental impact on drainage; and

(d) damage to the fishery.

(3) 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.

(4) Subject to sub-paragraph (5) if, within a reasonable period, being not less than 28 days beginning with the date when a notice under sub-paragraph (3) is served upon the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may execute the works specified in the notice and any reasonable expenditure incurred by the Agency in so doing is recoverable from the undertaker.

(5) In the event of any dispute as to whether sub-paragraph (3) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the Agency must not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (4) until the dispute has been finally determined in accordance with paragraph 38.

Maintenance of works

32.—(1) Subject to sub-paragraph (5) 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 (4) 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) 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 38.

(5) 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

33. 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

34. If by reason of the construction of any specified work or the failure of any such work, the Agency's access to flood defences or equipment maintained for flood defence purposes is materially obstructed, the undertaker must notify the Agency immediately and provide suitable alternative means of access that will allow the Agency to maintain the flood defence or use the equipment no less effectively than was possible before the obstruction occurred and such alternative access must be made available as soon as reasonably practicable after the undertaker becomes aware of such obstruction, except in the case of an emergency in which case the undertaker must provide such alternative means of access on demand.

Free passage of fish

35.—(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 within the period specified in the notice.

(3) If, the undertaker fails to take such steps as are described in the notice served under 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

36.—(1) The undertaker indemnifies the Agency in respect of all costs, charges and expenses which the Agency may 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.

37.—(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 construction, operation or maintenance of any specified works comprised within the authorised development or the failure of any such works comprised within them; or

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

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

"costs" includes—

(a) expenses and charges;

(b) staff costs and overheads;

(c) legal costs;

"losses" includes physical damage.

"claims" and "demands" include as applicable—

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

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

"liabilities" includes—

(a) contractual liabilities;

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

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

(d) 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

38. 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 39 (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 5

FOR THE PROTECTION OF NATIONAL GAS TRANSMISSION PLC AS GAS UNDERTAKER

Application

39.—(1) For the protection of NGT as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and NGT.

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writhing between the undertaker and NGT, where the benefit of this Order is transferred or granted to another person under article 6 (benefit of the Order)—

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

(b) written notice of the transfer or grant must be given to NGT 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 NGT (but without prejudice to 49(3)b).

Interpretation

40. In this Part of this Schedule—

"1991 Act" means the New Roads and Street Works Act 1991;

"acceptable credit provider" means a bank or financial institution with a credit rating that is not lower than: (i) "A-" if the rating is assigned by Standard & Poor's Ratings Group or Fitch Ratings; and "A3" if the rating is assigned by Moody's Investors Services Inc.;

"acceptable insurance" means general third party liability insurance effected and maintained by the undertaker with a combined property damage and bodily injury limit of indemnity of not less than £50,000,000.00 (fifty million pounds) per occurrence or series of occurrences arising out of one event. Such insurance shall be maintained—

(a) during the construction period of the authorised works; and

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

(i) a waiver of subrogation and an indemnity to principal clause in favour of NGT;

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

"acceptable security" means either—

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

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

"alternative apparatus" means appropriate alternative apparatus to the satisfaction of NGT to enable NGT 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 NGT 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 NGT 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 (interpretation) 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 NGT (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 NGT'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 NGT: construct, use, repair, alter, inspect, renew or remove the apparatus;

"NGT" means National Gas Transmission plc (Company Number 02006000) whose registered office is at National Grid House, Warwick Technology Park, Gallows Hill, Warwick CV34 6DA or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986;

"Network Code" means the network code prepared by NGT 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 NGT's Gas Transporters Licence, as both documents are amended from time to time;

"Network Code Claims" means any claim made against NGT by any person or loss suffered by NGT under the Network Code arising out of or in connection with any failure by NGT 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 NGT as a result of or in connection with, it taking action (including purchase or buy back of capacity) for the purpose of managing constraint or potential constraint on the gas national transmission system which may arise as a result of the authorised works;

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

"parent company" means a parent company of the undertaker acceptable to and which shall have been approved by NGT acting reasonably;

"specified works" means any of the authorised works or activities undertaken in association with the authorised works which—

(a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 45(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 45(2) or otherwise; and/or

(c) includes any of the activities that are referred to in paragraph 8 of T/SP/SSW/22 (NGT's policies for safe working in proximity to gas apparatus). Specification for safe working in the vicinity of NGT, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW/22;

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

On Street Apparatus

41. Except for paragraphs 42 (apparatus of NGT in temporarily closed streets), 47 (retained apparatus: protection), 48 (expenses) and 49 (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 NGT, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and NGT are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus of NGT in temporarily closed streets

42.—(1) Where any street is closed under article 13 (temporary closure of and permitting vehicular use on public rights of way), if NGT has any apparatus in the street or accessed via that street NGT has the same rights in respect of that apparatus as it enjoyed immediately before the closure and the undertaker must grant to NGT, or procure the granting to NGT of, legal easements reasonably satisfactory to NGT in respect of such apparatus and access to it prior to the closure of any such street or highway but nothing in this paragraph affects any right of the undertaker or NGT to require the removal of that apparatus under paragraph 45 or the power of the undertaker, subject to compliance with this sub-paragraph, to carry out works under paragraph 47.

(2) Notwithstanding the temporary closure or diversion of any highway under the powers of article 13 (temporary closure of and permitting vehicular use on public rights of way), NGT is at liberty at all times to take all necessary access across any such closed highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the closure or diversion was in that highway.

Protective work to buildings

43. The undertaker, in the case of the powers conferred by article 18 (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 NGT.

Acquisition of land

44.—(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 NGT 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 NGT 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 NGT or affect the provisions of any enactment or agreement regulating the relations between NGT and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as NGT reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between NGT and the undertaker acting reasonably and which must be no less favourable on the whole to NGT unless otherwise agreed by NGT, 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 NGT 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 NGT and/or other enactments relied upon by NGT 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 NGT under paragraph 47 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).

Removal of apparatus

45.—(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 NGT 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 NGT in accordance with sub-paragraph (2) to (5).

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to NGT 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 NGT 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 NGT to its satisfaction (taking into account paragraph 46(1) below) the necessary facilities and rights—

(a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and

(b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, NGT 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 NGT 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 NGT and the undertaker.

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

Facilities and rights for alternative apparatus

46.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for NGT 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 NGT and must be no less favourable on the whole to NGT than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by NGT.

(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 NGT 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 15 (Arbitration) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to NGT as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection

47.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to NGT a plan and, if reasonably required by NGT, a ground monitoring scheme in respect of those works.

(2) In relation to works which will or may be situated on, over, under or within (i) 15 metres measured in any direction of any apparatus, or (ii) involve embankment works within 15 metres of any apparatus, the plan to be submitted to NGT under sub-paragraph (1) must include a method statement and describe—

(a) the exact position of the works;

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

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

(d) the position of all apparatus;

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

(f) any intended maintenance regimes.

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

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

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (4) or (6); and,

(b) must not be unreasonably withheld.

(5) In relation to any work to which sub-paragraphs (1) and/or (2) apply, NGT 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 NGT and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5) or (7) by NGT for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and NGT will be entitled to watch and inspect the execution of those works.

(7) Where NGT 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 NGTs' satisfaction prior to the commencement of any specified works for which protective works are required and NGT 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 NGT 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 39 to 41 and 44 to 46 apply as if the removal of the apparatus had been required by the undertaker under paragraph 45(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 NGT 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 the Order NGT must comply with NGT's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of NGT, 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 NGT 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 48.

Expenses

48.—(1) Save where otherwise agreed in writing between NGT and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to NGT within 30 days of receipt of an itemised invoice or claim from NGT all charges, costs and expenses reasonably anticipated within the following three months or reasonably and properly incurred by NGT 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 NGT in connection with the acquisition of rights or the exercise of statutory powers for such

apparatus including without limitation all costs incurred by NGT as a consequence of NGT;

(b) using its own compulsory purchase powers to acquire any necessary rights under paragraph 45(3); or

(c) exercising any compulsory purchase powers in the Order transferred to or benefitting NGT;

(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 53 (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 NGT 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 NGT 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 NGT 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

49.—(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 NGT, or there is any interruption in any service provided, or in the supply of any goods or energy, by NGT, or NGT 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 NGT the cost reasonably and properly incurred by NGT in making good such damage or restoring the supply; and

(b) indemnify NGT for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from NGT, by reason or in consequence of any such damage or interruption or NGT becoming liable to any third party and including Network Code Claims other than arising from any default of NGT.

(2) The fact that any act or thing may have been done by NGT on behalf of the undertaker or in accordance with a plan approved by NGT or in accordance with any requirement of NGT 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 NGT 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 NGT, 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 NGT as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article 6 (benefit of Order) subject to the proviso that once such works become apparatus ("new apparatus"), any authorised works yet to be executed and not falling within this sub-section 3(b) will be subject to the full terms of this Part of this Schedule including this paragraph 49; 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) NGT 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) NGT 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) NGT 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 NGT'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 NGT's control and if reasonably requested to do so by the undertaker NGT must provide an explanation of how the claim has been minimised, where relevant.

(7) Not to commence construction (and not to permit the commencement of such construction) of the authorised works on any land owned by NGT or in respect of which NGT has an easement or wayleave for its apparatus or any other interest or to carry out any works within 15 metres of NGT's apparatus until the following conditions are satisfied—

(a) unless and until NGT is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has first provided the acceptable security (and provided evidence that it shall maintain such acceptable security for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and NGT has confirmed the same to the undertaker in writing; and

(b) unless and until NGT is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to NGT that it shall maintain such acceptable insurance for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and NGT has confirmed the same in writing to the undertaker.

(8) In the event that the undertaker fails to comply with 49(7) of this Part of this Schedule, nothing in this Part of this Schedule shall prevent NGT from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

Enactments and agreements

50. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between NGT 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 NGT 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

51.—(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or NGT requires the removal of apparatus under paragraph 45(2) or NGT makes requirements for the protection or alteration of apparatus under paragraph 47, 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 NGT's undertaking and NGT shall use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever NGT'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

52. If in consequence of the agreement reached in accordance with paragraph 44(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 NGT to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

53. Save for differences or disputes arising under paragraph 45(2), 45(4) 46(1) and 47 any difference or dispute arising between the undertaker and NGT under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and NGT, be determined by arbitration in accordance with article 39 (arbitration).

Notices

54. Notwithstanding article 36 (service of notices), any plans submitted to NGT by the undertaker pursuant to paragraph 47 must be submitted to https://lsbud.co.uk/ or such other address as NGT may from time to time appoint instead for that purpose and notify to the undertaker in writing.

PART 6

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

Application

55.—(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 6 (benefit of the Order)—

(a) any agreement of the type mentioned in subparagraph (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 65(3)b).

Interpretation

56. In this Part of this Schedule—

"1991 Act" means the New Roads and Street Works Act 1991;

"acceptable credit provider" means a bank or financial institution with a credit rating that is not lower than "A-" if the rating is assigned by Standard & Poor's Ratings Group or Fitch Ratings; and "A3" if the rating is assigned by Moody's Investors Services Inc.;

"acceptable insurance" means general third party liability insurance effected and maintained by the undertaker with a combined property damage and bodily injury limit of indemnity of not less than £50,000,000.00 (fifty million pounds) per occurrence or series of occurrences arising out of one event. Such insurance shall be maintained (a) during the construction period of the authorised works; and (b) after the construction period of the authorised works in respect of any use and maintenance of the authorised development by or on behalf of the undertaker which constitute specified works and arranged with an insurer whose security/credit rating meets the same requirements as an "acceptable credit provider", such insurance shall include (without limitation)—

(a) a waiver of subrogation and an indemnity to principal clause in favour of NGET;

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

"acceptable security" means either—

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

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

"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 02366977) 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" means as defined in the STC;

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

"parent company" means a parent company of the undertaker acceptable to and which shall have been approved by NGET acting reasonably;

"specified works" means any of the authorised works or activities undertaken in association with the authorised works which—

(a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 61(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 61(2) or otherwise; and/or

(c) includes any of the activities that are referred to in "Development near overhead lines" EN43-8 and the Health and Safety Executives (HSE) Guidance Note G6 "Avoiding Danger from Overhead Power 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" means as defined in the STC;

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

On Street Apparatus

57. Except for paragraphs 58 (Apparatus of NGET in closed streets), 63 (Retained apparatus: protection), 64 (Expenses) and 65 (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.

Apparatus of NGET in closed streets

58.—(1) Where any street is temporarily closed under article 9 (street works), 12 (construction and maintenance of altered streets) and 14 (temporary closure of and permitting vehicular use on public rights of way), if NGET has any apparatus in the street or accessed via that street NGET has the same rights in respect of that apparatus as it enjoyed immediately before the closure and the undertaker must grant to NGET, or procure the granting to NGET of, legal easements reasonably satisfactory to NGET in respect of such apparatus and access to it prior to the closure of any such street or highway but nothing in this paragraph affects any right of the undertaker or NGET to require the removal of that apparatus under paragraph 61 or the power of the undertaker, subject to compliance with this sub-paragraph, to carry out works under paragraph 63.

(2) Notwithstanding the temporary closure or diversion of any highway under the powers of article 13 (temporary closure of and permitting vehicular use on public rights of way), NGET is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the closure or diversion was in that highway.

Protective work to buildings

59. The undertaker, in the case of the powers conferred by article 19 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of NGET.

Acquisition of land

60.—(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 must 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 63 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).

Removal of apparatus

61.—(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-paragraph (2) to (5).

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to 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 62(1) below) the necessary facilities and rights—

(a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and

(b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, NGET may in its sole discretion, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances to assist the undertaker to obtain the necessary facilities and rights in the land in which the

alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for 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-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

62.—(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 National 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 69 (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

63.—(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-paragraphs (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 specified works (or any relevant part thereof) for which protective works are required and NGET shall give notice 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 55 to 57 and 60 to 62 apply as if the removal of the apparatus had been required by the undertaker under paragraph 61(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 specified works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.

(11) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to 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 (11) 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 the Health and Safety Executives (HSE) guidance note 6 "Avoidance of Danger from Overhead Power Lines".

Expenses

64.—(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 and properly 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 61(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 69 (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

65.—(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 6 (benefit of Order) subject to the proviso that once such works become apparatus ("new apparatus"), any authorised works yet to be executed and not falling within this sub-section 3(b) will be subject to the full terms of this Part of this Schedule including this paragraph 65; 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) Not to commence construction (and not to permit the commencement of such construction) of the authorised works on any land owned by NGET or in respect of which NGET has an easement or wayleave for its apparatus or any other interest or to carry out any works within 15 metres of NGET's apparatus until the following conditions are satisfied—

(a) unless and until NGET is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has first provided the acceptable security (and provided evidence that it shall maintain such acceptable security for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and NGET has confirmed the same to the undertaker in writing; and

(b) unless and until NGET is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to NGET that it shall maintain such acceptable insurance for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and NGET has confirmed the same in writing to the undertaker.

(8) In the event that the undertaker fails to comply with 65(7) of this Part of this Schedule, nothing in this Part of this Schedule shall prevent NGET from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

Enactments and agreements

66. 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

67.—(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 61(2) or NGET makes requirements for the protection or alteration of apparatus under paragraph 63, 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

68. If in consequence of the agreement reached in accordance with paragraph 60(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

69. Save for differences or disputes arising under paragraph 61(2), 61(4) 62(1) and 63 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 39 (arbitration).

Notices

70. Notwithstanding article 36 (service of notices), any plans submitted to NGET by the undertaker pursuant to paragraph 63 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 NORTHERN POWERGRID

71. For the protection of NPG the following provisions have effect, unless otherwise agreed in writing between the undertaker and NPG.

72. In this Part of this Schedule—

"alternative apparatus" means alternative apparatus adequate to enable NPG to fulfil its statutory functions in a manner not less efficient than previously;

"apparatus" means electric lines or electrical plant (as defined in the Electricity Act 1989) belonging to or maintained by NPG and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

"authorised works" means so much of the works authorised by this Order which affect existing NPG's apparatus within the Order limits;

"functions" includes powers and duties;

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

"plan" includes all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed and shall include measures proposed by the undertaker to ensure the grant of sufficient land or rights in land necessary to mitigate the impacts of the works on NPG's undertaking within the Order Limits; and

"NPG" means Northern Powergrid (Yorkshire) PLC (Company Number 04112320) whose registered address is Lloyds Court, 78 Grey Street, Newcastle upon Tyne, NE1 6AF.

73. This Part of this Schedule does not apply to apparatus and / or alternative apparatus in respect of which the relations between the undertaker and NPG are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

74. Regardless of any provision in this Order or anything shown on the land plans, or contained in the book of reference, the undertaker shall not acquire any apparatus, or override any easement or other interest of NPG otherwise than by agreement with NPG such agreement not to be unreasonably withheld or delayed.

75. Regardless of any provision in the Order or anything shown on the land plans or contained in the book of reference, the undertaker shall not interfere with any communications cables or equipment used by NPG in relation to its apparatus or acquire or interfere with rights or interests supporting the use, maintenance or renewal of such equipment including any easements other than

by agreement of NPG (such agreement not to be unreasonably withheld or delayed) and having regard to NPG's existing and known future requirements for such land or interests.

76.—(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 in or over which access to any apparatus is enjoyed or requires that NPG's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of NPG to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided pursuant to a completed easement which shall include rights to retain and subsequently maintain the apparatus being replaced or diverted for the lifetime of that alterative apparatus, all to the reasonable satisfaction of NPG in accordance with sub-paragraphs (2) to (5).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to NPG 42 days' advance written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order NPG reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to NPG 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—

(a) the undertaker must in the first instance use reasonable endeavours to acquire all necessary land interests or rights as NPG may reasonably require for the relocation and construction of alternative apparatus and must use reasonable endeavours to procure all necessary rights to access and maintain NPG's apparatus and alternative apparatus thereafter the terms of such access and maintenance to be agreed by NPG (acting reasonably);

(b) In the event that the undertaker is not able to procure the necessary land interest or rights referred to in the sub-paragraph (3) (a) NPG must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably practicable and at the cost of the undertaker (subject to prior approval by the undertaker of its estimate of costs of doing so) use reasonable endeavours to 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 NPG to use its compulsory purchase powers to this end; and

(c) In the event that neither the undertaker nor NPG can acquire all necessary land interest or rights which NPG may reasonably require for the relocation and construction of alternative apparatus pursuant to paragraph 76 (3) (a) and /or (b), the undertaker shall seek to amend the Order to include the relevant land and /or rights in the Order Land so that it can use its powers of compulsory purchase powers under the Order (where available) for the acquisition of any such land or land rights unless otherwise agreed by arbitration under article 39.

(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 NPG and the undertaker or in default of agreement settled by arbitration in accordance with article 39.

(5) NPG must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 39, and after the grant to NPG 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.

77.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to NPG 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 NPG or in default of agreement settled by arbitration in accordance with article 39 (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 NPG 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 NPG as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

78.—(1) Not less than 28 days before starting the execution of any authorised 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 76(2), the undertaker must submit to NPG a plan, section and description of the works to be executed and any such information as NPG reasonably requires relating to those works.

(2) Those authorised 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 NPG for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and NPG is entitled to watch and inspect the execution of those works.

(3) Any requirements made by NPG 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 NPG in accordance with sub-paragraph (2) and in consequence of the authorised works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 71 to 75 apply as if the removal of the apparatus had been required by the undertaker under paragraph (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 authorised 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 NPG notice as soon as is reasonably practicable and a plan, section and description of those authorised works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

79.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to NPG within fifty one (51) days of receipt of an itemised invoice or claim all reasonable and proper expenses incurred by NPG—

(a) in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 79(2); and including without limitation—

(i) any costs reasonably incurred or compensation properly paid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation in the event that NPG acquires any necessary land and / or rights for alternative apparatus by voluntary negotiation or elects to use its compulsory purchase powers to acquire any necessary rights under paragraph 75(3) all costs reasonably incurred as a result of such action;

(ii) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;

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

(iv) the approval of plans;

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

(vi) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule); and

(b) in assessing and preparing a design for its apparatus including alternative apparatus to address and accommodate the proposals of the undertaker whether or not the undertaker proceeds to implement those proposals or alternative or none at all, provided that if it so prefers NPG may abandon apparatus that the undertaker does not seek to remove in accordance with paragraph 76(1) having first decommissioned such apparatus.

(2) There is to be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule, that value being calculated after removal and for the avoidance of doubt, if the apparatus removed under the provisions of this Part of this Schedule has nil value, no sum will be deducted from the amount payable under sub-paragraph (1)

(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 placed,

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 39 (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 would be payable to NPG by virtue of sub-paragraph (1) is to be reduced by the amount of that excess save where it is not possible on account of project time limits and/or supply issues to obtain the existing type of operations, capacity, dimensions or place at the existing depth in which case full costs shall be borne by the undertaker.

(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 76(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.

80.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction use maintenance or failure of any of the authorised works referred to in in paragraph 76(2), by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by it) in the course of carrying out such authorised works, including without limitation authorised works carried out by the undertaker under this Schedule or any subsidence resulting from any of these works any damage is caused to any apparatus (other

than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of NPG, or there is any interruption in any service provided by NPG, or NPG becomes liable to pay any amount to a third party as a consequence of any default, negligence or omission by the undertaker in carrying out the authorised works, and provided that at all times NPG will be under an obligation to take reasonable steps to mitigate its loss, the undertaker must—

(a) bear and pay within 90 days of receipt of a demand accompanied by an appropriately detailed invoice or claim from NPG the cost reasonably incurred by NPG in making good such damage or restoring the supply; and

(b) indemnify NPG for any other expenses, loss, damages, penalty, proceedings, claims or costs incurred by or recovered from NPG by reason or in consequence of any such damage or interruption or NPG becoming liable to any third party.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to—

(a) any damage or interruption to the extent that it is attributable to the act, default, neglect or negligence of NPG, its officers, employees, servants, contractors or agents; and/or

(b) any authorised development and/or other works authorised by this Part of this Schedule carried out by NPG.

(3) NPG must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) NPG must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 10 applies. If requested to do so by the undertaker, NPG must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1). The undertaker shall only be liable under this paragraph 10 for claims reasonably incurred by NPG.

(5) NPG 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) Subject to sub-paragraphs (3) and (4), the fact that any act or thing may have been done by NPG on behalf of the undertaker or in accordance with a plan approved by NPG or in accordance with any requirement of NPG as a consequence of the authorised development or under its supervision will not (unless sub-paragraph (2) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (5) where the undertaker fails to carry out and execute the works properly with due care and attention and in a skillful and workman like manner or in a manner that does not materially accord with the approved plan or as otherwise agreed between the undertaker and the NPG.

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

82. Any difference or dispute arising between the undertaker and NPG under the provisions of this Part of the Schedule must, unless otherwise agreed in writing between the undertaker and NPG, be referred to and settled by arbitration in accordance with article 39 (arbitration).

83. Where in consequence of the proposed construction of any of the authorised works, the undertaker or NPG requires the removal of apparatus under paragraph 6 or otherwise or NPG makes requirements for the protection or alteration of apparatus under paragraph 8, the undertaker shall use its reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the need to ensure the safe and efficient operation of NPG's apparatus taking into account the undertaker's desire for the efficient and economic execution of the authorised

development and the undertaker and NPG shall use reasonable endeavours to co-operate with each other for those purposes.

84. For the avoidance of doubt whenever NPG'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 and any action, decision, cost and/or expense which may be claimed under this Part of this Schedule shall at all times be subject to NPG acting reasonably.

85. If in consequence of an agreement reached in accordance with paragraph 4 or the powers granted under this Order the access to any apparatus or alternative apparatus is materially obstructed, the undertaker shall provide such alternative means of access to such apparatus or alternative apparatus as will enable NPG to maintain or use the said apparatus no less effectively than was possible before such obstruction.

86. The plans submitted to NPG by the undertaker pursuant to this Part of the Schedule must be sent to NPG at property@northernpowergrid.com or such other address as NPG may from time to time appoint instead for that purpose and notify to the undertaker in writing

87. Prior to carrying out any works within the Order Limits NPG must give written notice of the proposed works to the undertaker, such notice to include full details of the location of the proposed works, their anticipated duration, access arrangements, depths of the works, and any other information that may impact upon the works consented by the Order.

88. Where practicable, the Undertaker and NPG will make reasonable efforts to liaise and co-operate in respect of information that is relevant to the safe and efficient construction operation and maintenance of the authorised development. Such liaison shall be carried out where any authorised works are—

(a) within 15m of any above ground apparatus; or

(b) within 15m of any apparatus and are to a depth of between 0 – 4m below ground level under any apparatus.

PART 8

FOR THE PROTECTION OF RAILWAY INTERESTS

89. 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 103 of this Part of this Schedule any other person on whom rights or obligations are conferred by that paragraph.

90. In this Part of this Schedule—

"asset protection agreement" means an agreement to regulate the construction and maintenance of the specified work in a form prescribed from time to time by Network Rail;

"construction" includes execution, placing, alteration and reconstruction and "construct" and "constructed" have corresponding meanings;

"the engineer" means an engineer appointed by Network Rail for the purposes of this Order;

"network licence" means the network licence, as the same is amended from time to time, granted to Network Rail Infrastructure Limited by the Secretary of State in exercise of their powers under section 8 (licences) of the Railways Act 1993(**a**);

"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

(**a**) 1993 c. 43.

(within the meaning of section 1159 of the Companies Act 2006(**a**) 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 arti;

"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 any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway;

"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 4 (maintenance of authorised development) in respect of such works.

91.—(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.

92.—(1) The undertaker must not exercise the powers conferred by—

(a) article 3 (development consent etc. granted by the Order);

(b) article 4 (maintenance of authorised development);

(c) article 17 (discharge of water);

(d) article 19 (authority to survey and investigate land);

(e) article 20 (compulsory acquisition of land);

(f) article 22 (compulsory acquisition of rights);

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

(h) article 26 (power to override easements and other rights);

(i) article 29 (temporary use of land for carrying out the authorised development);

(**a**) 2006 c. 46.

(j) article 30 (temporary use of land for maintaining the authorised development);

(k) article 31 (statutory undertakers);

(l) article 25 (private rights);

(m) article 37 (felling or lopping of trees or removal of hedgerows);

(n) article 38 (trees subject to tree preservation orders);

(o) the powers conferred by section 11(3) (powers of entry) of the Compulsory Purchase Act 1965;

(p) the powers conferred by section 203 (power to override easements and other 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 under in respect of the temporary possession of land under the Neighbourhood Planning Act 2017;

in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(3) The undertaker must not exercise the powers conferred by sections 271 or 272 of the 1990 Act, article 31 (statutory undertakers), article 26 (power to override easements and other rights) or article 23 (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.

93.—(1) The undertaker must before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph 93(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.

94.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 93(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 93;

(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.

95. 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.

96. 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.

97.—(1) If any permanent or temporary alterations or additions to railway property are reasonably necessary in consequence of the construction or completion of a specified work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the undertaker 56 days' notice (or in the event of an emergency or safety critical issue such notice as is reasonable in the circumstances) of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to Network Rail the

reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work is to be constructed, Network Rail must assume construction of that part of the specified work and the undertaker must, notwithstanding any such approval of a specified work under paragraph 93(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 98(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.

98. 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 93(3) or in constructing any protective works under the provisions of paragraph 93(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.

99.—(1) In this paragraph—

"EMI" means, subject to sub-paragraph 99(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 93(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 99(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 60(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 99(4)(a); and

(c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail's apparatus identified pursuant to sub-paragraph 99(4)(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 93(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 99(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 94.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 103(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 94 applies.

(10) For the purpose of paragraph 98(a) any modifications to Network Rail's apparatus under this paragraph shall be deemed to be protective works referred to in that paragraph.

100. 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.

101. 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.

102. 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.

103.—(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; or

(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;

(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.

104. 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 103) 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).

105. 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.

106. 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.

107. 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 35 (certification of plans, etc.) are certified by the Secretary of State, provide a set of those plans to Network Rail in a format specified by Network Rail.

108. Any dispute arising under this Part of this Schedule, unless otherwise provided for, must be referred to and settled by arbitration in accordance with article 39 (arbitration) and the Rules at Schedule 10 (arbitration Rules).

SCHEDULE 10

Article 39

ARBITRATION RULES

Primary objective

1.—(1) The primary objective of these arbitration rules is to achieve a fair, impartial, final and binding award on the substantive difference between the parties (save as to costs) within 4 months from the date the arbitrator is appointed pursuant to article 39 (arbitration) of this Order.

(2) The parties will first use their reasonable endeavours to settle a dispute amicably through negotiations undertaken in good faith by the senior management of the relevant parties. Any dispute which is not resolved amicably by the senior management of the relevant parties within 28 days of the dispute arising, or such longer period as agreed in writing by the parties, are to be subject to arbitration in accordance with the terms of this Schedule.

(3) The arbitration will be deemed to have commenced when a party ("the claimant") serves a written notice of arbitration on the other party ("the respondent").

Time periods

2.—(1) All time periods in these arbitration rules will be measured in days and this will include weekends, but not bank or public holidays.

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

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

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

Timetable

3.—(1) The timetable for the arbitration will be that set out in paragraphs (2) to (4) below unless amended in accordance with paragraph 5(3).

(2) Within 14 days of the arbitrator being appointed, the claimant will provide both the respondent and the arbitrator with—

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

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

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

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

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

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

(4) Within 7 days of the respondent serving its statements under sub-paragraph (3), the claimant may make a statement of reply by providing both the respondent and the arbitrator with—

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

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

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

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

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

Procedure

4.—(1) The parties' pleadings, witness statements and expert reports (if any) will be concise. No single pleading will exceed 30 single sided A4 pages using 10pt Arial font.

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

(3) Either party may, within 2 days of delivery of the last submission, request a hearing giving specific reasons why it considers a hearing is required.

(4) Within 7 days of receiving the last submission, the arbitrator will 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 they will hold a hearing, the date and venue for the hearing will be fixed by agreement with the parties, save that if there is no agreement the arbitrator is to direct a date and venue which they consider is fair and reasonable in all the circumstances. The date for the hearing must not be less than 35 days from the date of the arbitrator's direction confirming the date and venue of the hearing.

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

(7) There will be no process of examination and cross-examination of experts, but the arbitrator must invite the parties to ask questions of the experts by way of clarification of any answers given by the expert(s) in response to the arbitrator's questions. Prior to the hearing the procedure for the expert(s) will be that—

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

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

(c) the form and content of a joint report must be as directed by the arbitrator and must be provided at least 7 days before the hearing.

(8) Within 14 days of a hearing or a decision by the arbitrator that no hearing is to be held, the parties may by way of exchange provide the arbitrator with a final submission in connection with the matters in dispute and any submissions on costs. The arbitrator 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 4 months of the date on which they are appointed, unless both parties otherwise agree to an extension to the date for the award.

(10) If a party fails to comply with the timetable, procedure or any other direction then the arbitrator may continue in the absence of a party or submission or document, and may make a

decision on the information before him/her attaching the appropriate weight to any evidence submitted beyond any timetable or in breach of any procedure and/or direction.

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

Arbitrator's powers

5.—(1) The arbitrator has all the powers of the Arbitration Act 1996(**a**), including the non-mandatory sections, save where modified by these Rules 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 and/or procedure—

(a) if the arbitrator is satisfied that a variation of any fixed time limit is reasonably necessary to avoid a breach of the rules of natural justice and then;

(b) only for such a period that is necessary to achieve fairness between the parties.

(4) On the date the award is made, the arbitrator will notify the parties that the award is completed, signed and dated, and that it will be issued to the parties on receipt of cleared funds for the arbitrator's fees and expenses.

Costs

6.—(1) The costs of the arbitration must include the fees and expenses of the arbitrator, the reasonable fees and expenses of any experts and the reasonable legal and other costs incurred by the parties for the arbitration.

(2) Where the difference involves connected/interrelated issues, the arbitrator will consider the relevant costs collectively.

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

(4) The arbitrator will award recoverable costs on the general principle in paragraph (3) that each party should bear its own costs, having regard to all material circumstances, including such matters as exaggerated claims and/or defences, the degree of success for different elements of the claims, claims that have incurred substantial costs, the conduct of the parties and the degree of success of a party.

Confidentiality

7.—(1) Subject to sub-paragraphs (2) and (3), any arbitration hearing and documentation is to be open to and accessible by the public.

(2) The arbitrator may direct that the whole or part of a hearing is to be private or any documentation to be confidential where it is necessary in order to protect commercially sensitive information.

(3) Nothing in this paragraph prevents any disclosure of a document by a party pursuant to an order of a court in England and Wales or where disclosure is required under any enactment.

(**a**) 1996 c. 23.

SCHEDULE 11

Article 35

DOCUMENTS TO BE CERTIFIED

(1) Document	*(2) Application Document Reference*	*(3) Revision*	*(4) Date*
Access and rights of way plan	2.4	4	June 2024
Book of reference	4.1	B	May 2025
Environmental statement	Environmental Statement 6.1 (excluding Chapter 4)	0	June 2024
	Environmental Statement 6.1 Chapter 4	1	June 2024
	Environmental Statement 6.2 (excluding Figures 7.1-7.12)	0	June 2024
	Environmental Statement 6.2 Figures 7.1-7.12	1	June 2024
	Environmental Statement 6.3 (excluding Appendices 2.5, 3.1, 5.1, 5.2, 5.3, 5.4, 7.9, 8.8, 8.9, and 14.3)	0	June 2024
	Environmental Statement 6.3 Appendix 2.5	8	February 2025
	Environmental Statement 6.3 Appendix 8.8	A	January 2025
	Environmental Statement 6.3 Appendix 8.9	5	April 2025
	Environmental Statement 6.3 Appendix 14.3	1	January 2025
	Environmental Statement 6.4	1	June 2024
Flood risk assessment	7.5	3.1	April 2025
Land and crown plans	2.2	5	February 2025
Location and order limits plan	2.1	0	June 2024
Outline archaeological mitigation strategy	6.3.6.2	4	June 2024
Outline battery safety management plan	6.3.3.1	5	February 2025
Outline CEMP	6.3.5.1	4	May 2025
Outline CTMP	6.3.5.2	A	February 2025
Outline design principles document	9.15	0	April 2025

Outline DEMP	6.3.5.3	2	April 2025
Outline LEMP	6.3.7.9	4	May 2025
Outline OEMP	6.3.5.4	2	April 2025
Outline soil resource management plan	6.3.14.3	1	January 2025
Outline supply chain, employment and skills plan	9.16	0	April 2025
Works plans	2.3	6	June 2024

EXPLANATORY NOTE

(This note is not part of the Order)

This Order grants development consent for, and authorises the construction, operation and maintenance of a solar generating station and battery energy storage facility on land within the Order limits together with associated development. This Order imposes requirements in connection with the development and authorises the compulsory acquisition of rights in land and the right to use land and to override easements and other rights.

A copy of the plans and book of reference referred to in this Order and certified in accordance with article 36 (certification of plans and documents, etc.) may be inspected free of charge during working hours at the undertaker's registered office at 17th Floor Hylo 103-105 Bunhill Row, London, United Kingdom, EC1Y 8LZ as may be updated from time to time.

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